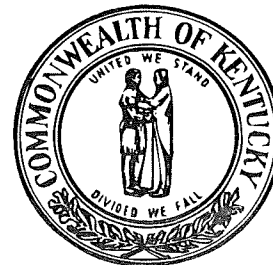


# ADMINISTRATIVE REGISTER OF KENTUCKY

## LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 1  
MONDAY, JULY 1, 1996



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#### MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on July 1, 1996.  
See tentative agenda beginning on page 1 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1994 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

**HOW TO CITE:** Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

**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

#### ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$48 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.  
POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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## **ADMINISTRATIVE REGISTER - 1**

### **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE TENTATIVE AGENDA - July 1, 1996, 10 a.m. Room 149, Capitol Annex**

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

#### **FINANCE AND ADMINISTRATION CABINET**

##### **Purchasing**

200 KAR 5:302E. Delegation of authority. (Repeals 200 KAR 5:301) (Agency Requests Deferral to August)

##### **Personnel Pilot 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. (Deferred from June) (Agency Requests Deferral to August)

#### **GENERAL GOVERNMENT CABINET**

##### **Board of Accountancy**

201 KAR 1:040E. Procedure for conducting examination. (Agency Requests Deferral to August)

##### **Board of Dentistry**

201 KAR 8:015. Registration of dental laboratories and technicians with board.

201 KAR 8:121. Repeal of 201 KAR 8:120.

201 KAR 8:150. Examination; application.

201 KAR 8:260. Dental hygiene; application.

201 KAR 8:330. Hygienists' temporary retirement; reinstatement.

201 KAR 8:430E. Unprofessional conduct.

##### **Board of Examiners and Registration of Landscape Architects**

201 KAR 10:050E. Fees. (Deferred from June) (Agency Requests Deferral to August)

##### **Board of Embalmers and Funeral Directors**

201 KAR 15:010. Definitions. (Repeals 201 KAR 15:060; 201 KAR 15:100)

201 KAR 15:030. Fees.

201 KAR 15:040. Examination.

201 KAR 15:050. Apprenticeship requirements.

201 KAR 15:080. Complaints of violations.

201 KAR 15:090 Hearings.

#### **TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources**

##### **Game**

301 KAR 2:111. Deer and turkey hunting on federal areas.

#### **NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection**

##### **Air Quality-New Source Requirements; Nonattainable Areas**

401 KAR 51:010. Attainment status designations.

#### **JUSTICE CABINET**

##### **Charitable Gaming**

500 KAR 11:001E. Definitions. (Agency Requests Deferral to August)

500 KAR 11:110E. Keno. (Agency Requests Deferral to August)

##### **Department of Corrections**

##### **Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:060. Northpoint Training Center.

#### **TRANSPORTATION CABINET**

##### **Driver Improvement (Agency Requests Deferral to August)**

601 KAR 13:090E. Medical Review Board; basis for examination, evaluation, tests. (Deferred from June)

601 KAR 13:100E. Medical standards for operators of motor vehicles. (Deferred from June)

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

##### **School Administration and Finance**

702 KAR 3:285E. School district Medicaid providers.

## ADMINISTRATIVE REGISTER - 2

### LABOR CABINET

**Kentucky Occupational Safety and Health Review Commission**  
803 KAR 50:010E. Hearings; procedure, disposition.

### PUBLIC SERVICE COMMISSION

#### Utilities

807 KAR 5:026. Gas service; gathering systems. (Not Amended After Hearing)  
807 KAR 5:062. Changing primary interexchange carrier; verification procedures. (Amended After Hearing)

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

#### Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Master heating, ventilation and air conditioning (HAVAC) contractor licensing requirements.  
815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

#### Plumbing

815 KAR 20:130. House sewers and storm water piping; methods of installation.

#### Hazardous Materials

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

#### Electrical Inspectors

815 KAR 35:015. Certification of electrical inspectors.  
815 KAR 35:030. Kentucky certification of electrical contractors.

### CABINET FOR HEALTH SERVICES Department for Health Services

#### Administration

902 KAR 1:400E. Administrative hearings.

#### Maternal and Child Health

902 KAR 4:040. Special Supplemental Food Program for Women, Infants and Children (WIC).

#### Public accommodations

902 KAR 7:010. Hotel and motel code.

#### Local Health Departments

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.  
902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

#### State and Local Confinement Facilities

902 KAR 9:010. Environmental health.

#### Sanitation

902 KAR 10:020. Frozen food locker plants.  
902 KAR 10:030. Sanitarians.  
902 KAR 10:040. Kentucky youth camps.  
902 KAR 10:045. Tattoo artist registration, tattoo studio certification and inspection.  
902 KAR 10:050. Refuse bins.  
902 KAR 10:120. Kentucky public swimming and bathing facilities regulation.  
902 KAR 10:140. On-site sewage disposal system installer certification program standards.  
902 KAR 10:150. Domestic septage disposal site approval procedures.  
902 KAR 10:160. Domestic septage disposal site operation.  
902 KAR 10:170. Septic tank servicing.

#### Emergency Medical Technicians

902 KAR 13:090. Disciplinary actions.  
902 KAR 13:120. Emergency medical technician automatic and semiautomatic defibrillation training program.  
902 KAR 13:130. Emergency medical technician maintenance and discontinuation of a preestablished peripheral intravenous (I.V.) infusion.

#### Emergency Medical Services and Ambulance Service Providers

902 KAR 14:070E. License procedures and fee schedule for ambulance providers.

#### Mobile Homes and recreational Vehicles Parks; Facilities Standards

902 KAR 15:010. Mobile homes.  
902 KAR 15:020. Recreational vehicles.

#### State Health Plan

902 KAR 17:021E. Repeal of 902 KAR 17:020.

#### Health Services and Facilities

902 KAR 20:350. Boarding homes.

#### Kentucky Board of Health Care Services

902 KAR 22:030. Midlevel health care practitioner.

#### Food and Cosmetics

902 KAR 45:005. Retail food code.  
902 KAR 45:006. Kentucky bed and breakfast administrative regulation.  
902 KAR 45:020. Shellfish.  
902 KAR 45:040. Carbonated beverages.



## ADMINISTRATIVE REGISTER - 3

- 902 KAR 45:080. Salvage.
- 902 KAR 45:100. Vending machines; food and beverages.
- 902 KAR 45:150. School sanitation.

### **Hazardous Substances**

- 902 KAR 47:040. Cellulose insulation.
- 902 KAR 47:050. Ban of paint, coatings, and certain consumer products containing lead.
- 902 KAR 47:060. Safety of toys and children's products.
- 902 KAR 47:070. Standards for flammable fabrics and flammable fabric products.

### **Controlled Substances**

- 902 KAR 55:010. Licensing of manufacturers and wholesalers.
- 902 KAR 55:070. Storage of controlled substances in an emergency medication kit in certain long-term care facilities.

### **Radiology**

- 902 KAR 100:040. General provisions for specific licenses.
- 902 KAR 100:170. Proceedings.

## **CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance**

### **Public Assistance**

- 904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.

### **Food Stamp Program**

- 904 KAR 3:042E. Food Stamp Employment and Training Program. (Deferred from June)

## **CABINET FOR HEALTH SERVICES Department for Medicaid Services**

### **Medicaid services**

- 907 KAR 1:013E. Payments for hospital inpatient services.
- 907 KAR 1:034E. Early and periodic screening, diagnosis, and treatment services.
- 907 KAR 1:035E. Payments for early and periodic screening, diagnosis, and treatment services.
- 907 KAR 1:060 & E. Medical transportation.
- 907 KAR 1:061 & E. Payments for Medical transportation.
- 907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities. (Deferred from June)

June)

- 907 KAR 1:715E. School-based health services.

### **Payment and Services**

- 907 KAR 3:005E. Physicians' services. (Deferred from June)
- 907 KAR 3:010E. Reimbursement for physicians' services. (Deferred from June)

### **Department for Mental Health and Mental Retardation Services**

### **Substance Abuse**

- 908 KAR 1:340 & E. Narcotic Treatment Programs.

## ADMINISTRATIVE REGISTER - 4

### ADMINISTRATIVE REGULATION REVIEW PROCEDURE (Also see KRS Chapter 13A)

#### Notice of Intent

Administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

#### Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those administrative regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

#### Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

#### Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

## ADMINISTRATIVE REGISTER - 5

### NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

UNIVERSITY OF KENTUCKY  
Division of Regulatory Services  
Kentucky Agricultural Experiment Station

Date: June 6, 1996  
Division of Regulatory Services  
Kentucky Agricultural Experiment Station  
University of Kentucky

- (1) Regulation Number and Title: **12 KAR 2:006**, Definitions.
- (2) The Division of Regulatory Services intends to amend the administrative regulation cited above to define quantity statement in accordance with the U.S. Fair Packaging and Labeling Act.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.
- (4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.
  - (b) The administrative regulation the division intends to promulgate amends an existing administrative regulation by defining the term "quantity statement."
  - (c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation a definition of quantity statement as defined in the Kentucky Commercial Feed Law.
  - (d) The benefits expected from administrative regulation are: To define in the administrative regulation an essential component for labeling commercial feed and to provide uniformity with the U. S. Fair Packaging and Labeling Act.
  - (e) The administrative regulation will be implemented as follows: Permits current expression of quantity statement as net weight and also permits expression of net volume or count on feed labels.

Date: June 6, 1996  
Division of Regulatory Services  
Kentucky Agricultural Experiment Station  
University of Kentucky

- (1) Regulation Number and Title: **12 KAR 2:011**, Label format.
- (2) The Division of Regulatory Services intends to amend the administrative regulation cited above to adopt the national uniform labeling format for commercial feed developed by the Association of American Feed Control Officials.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.
- (4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (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."

## ADMINISTRATIVE REGISTER - 6

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing administrative regulation to include as part of the label format a product purpose statement and quantity statement.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation the format for stating a product purpose statement and quantity statement on the feed label. The regulation also includes labeling requirements for customer formula feed as set forth in the Kentucky Commercial Feed Law.

(d) The benefits expected from administrative regulation are: The product purpose statement will more specifically advise the purchaser of the intended purpose of the feed and permit the expression of a quantity statement in terms of net contents which is consistent with the U. S. Fair Packaging and Labeling Act.

(e) The administrative regulation will be implemented as follows: Require labeling for commercial feeds, other than customer formula feeds, to state the purpose of the feed and quantity statement. Including the customer formula labeling format places the labeling requirement set forth in the feed law also in the administrative regulations. Revision will establish uniformity with current national recommendations adopted by the Association of American Feed Control Officials.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 2:016**, Brand and product names.

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to adopt national labeling recommendations relative to use of registered brand or trade names on the feed tag and use of digital numbers in the product name.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing administrative regulation by limiting the use of registered brand or trade names in the product name of a feed and prohibits misleading number in the product name.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation the use of trade names in the product name of feeds only by the firm holding rights to such name and to prohibit use of numbers in the product name that are misleading or confusing to the purchaser.

(d) The benefits expected from administrative regulation are: Strengthen prohibition of the improper use of trade names and misleading use of numbers in the product name. Changes create uniformity with national labeling recommendations of the Association of American Feed Control Officials.

(e) The administrative regulation will be implemented as follows: Requirements will prohibit labels from improper use of trade names in the product name of feeds and prohibit use of numbers in the product name that mislead or confuse the purchaser.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 2:017**, Product purpose statement.

(2) The Division of Regulatory Services intends to promulgate the administrative regulation cited above to establish requirement for a product purpose statement on the label of commercial feed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-

## ADMINISTRATIVE REGISTER - 7

0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate will not amend an existing administrative regulation. This regulation will establish the requirement for a product purpose statement for commercial feed.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation the labeling requirements for a product purpose statement as established by the Kentucky Commercial Feed Law.

(d) The benefits expected from administrative regulation are: To establish the requirement for a product purpose statement to clearly advise the purchaser of the intended use of the commercial feed.

(e) The administrative regulation will be implemented as follows: The regulation will establish requirement for product purpose statement.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 2:018**, Guaranteed analysis.

(2) The Division of Regulatory Services intends to promulgate the administrative regulation cited above to establish nutrient guarantee requirements.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate will not amend an existing administrative regulation. This regulation establishes required guaranteed analysis for commercial feed.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish uniform labeling format and nutritional guarantees required on the feed label to inform the purchaser.

(d) The benefits expected from administrative regulation are: Establishes guarantees by livestock specie to inform the purchaser of nutrient levels deemed critical for that specie.

(e) The administrative regulation will be implemented as follows: Establishes labeling requirements for commercial feeds sold in Kentucky.

## ADMINISTRATIVE REGISTER - 8

Date: June 6, 1996  
Division of Regulatory Services  
Kentucky Agricultural Experiment Station  
University of Kentucky

- (1) Regulation Number and Title: **12 KAR 2:021, Guarantees.**
- (2) The Division of Regulatory Services intends to amend the administrative regulation cited above to establish uniformity in the expression of guarantees.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.
- (4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.
  - (b) The administrative regulation the division intends to promulgate amends an existing administrative regulation by establishing that amino acids and acid detergent fiber and certain major mineral guarantees be expressed as percent, revises minimum and maximum calcium and salt ranges and includes sodium in this range, establishes that trace minerals be guaranteed as ppm when the content is below 1%, establishes name and unit to express vitamin guarantees, establishes labeling for nonruminant feeds containing nonprotein nitrogen and labeling for products supplementing microorganisms.
  - (c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation uniformity in the expression of guarantees for the feed purchaser.
  - (d) The benefits expected from administrative regulation are: Establishes uniform labeling requirements for the manufacturers of feed and provides the purchaser with uniform expression of nutrient content.
  - (e) The administrative regulation will be implemented as follows: Establishes uniform labeling requirements for the expression of nutrient guarantees.

Date: June 6, 1996  
Division of Regulatory Services  
Kentucky Agricultural Experiment Station  
University of Kentucky

- (1) Regulation Number and Title: **12 KAR 2:026, Ingredients.**
- (2) The Division of Regulatory Services intends to amend the administrative regulation cited above to establish a systematic nomenclature for feed ingredients.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.
- (4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (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 administration regulation governing a specific subject matter may 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 Regulatory Services at the address listed above.
- (7) Information relating to the proposed administrative regulation.

## ADMINISTRATIVE REGISTER - 9

- (a) The statutory authority for the promulgation of an administrative regulation relating to adoption of definitions is KRS 250.571.
- (b) The administrative regulation the division intends to promulgate amends an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is as follows: To establish uniformity in the listing of feed ingredients, enables the director, upon request, to obtain from the manufacturer a list of individual ingredients within a collective term, requires the listing of the percent rice hulls in formula feeds when the level exceeds 3%, establishes a minimum biological availability for magnesium ingredients mixed in high magnesium supplements for cattle.
- (d) The benefits expected from administrative regulation are: Enhances consumer protection by advising the purchaser when substantial levels of rice hulls are added to feed and prohibits use of low or unavailable sources of magnesium in magnesium supplements.
- (e) The administrative regulation will be implemented as follows: Establishes labeling requirements when rice hull content exceeds 3% and prohibits use of magnesium sources of low digestibility.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

- (1) Regulation Number and Title: **12 KAR 2:036**, Nonprotein nitrogen.
- (2) The Division of Regulatory Services intends to amend the administrative regulation cited above to permit limited use of feed ingredient containing nonprotein nitrogen in nonruminant feeds.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.
- (4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (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 Regulatory 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 adoption of definitions is KRS 250.571.
  - (b) The administrative regulation the division intends to promulgate amends an existing regulation.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Permits the limited use of ingredients containing nonprotein nitrogen in the feed of nonruminant animals when the ingredient is used to provide a source of other nutrients such as phosphorus.
  - (d) The benefits expected from administrative regulation are: Permits the use of ingredients that are approved as a source of essential nutrients in the diet of nonruminants.
  - (e) The administrative regulation will be implemented as follows: Regulation adopts currently approved national practice and implementation is through approved labeling.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

- (1) Regulation Number and Title: **12 KAR 2:041**, Additives.
- (2) The Division of Regulatory Services intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.
- (4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (b) On a request for public hearing, a person shall state:
  - 1. "I agree to attend the public hearing."; or

## ADMINISTRATIVE REGISTER - 10

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To adopt provision in the Kentucky administrative regulations recognizing as acceptable feed additives those products approved through the Federal Virus, Serum and Toxin Act and products approved by FDA under "informal review sanctioned" process. Establish approved use and labeling requirements for direct fed microbial products.

(d) The benefits expected from administrative regulation are: Establishes acceptance of feed additives approved by USDA and FDA.

(e) The administrative regulation will be implemented as follows: Provides regulatory criteria to allow marketing of additives approved by USDA and FDA.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 2:046**, Poisonous or deleterious substances.

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to adopt national guidelines for permissible fluorine levels in livestock feed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing administrative regulation by adopting national guidelines for permissible fluorine levels in livestock feed.

(c) The necessity and function of the proposed administrative regulation is as follows: Adopts guidelines to prohibit excessive fluorine in feed which is poisonous or deleterious to animals.

(d) The benefits expected from administrative regulation are: Adopt nationally recognized guidelines for permissible levels of fluorine in feed.

(e) The administrative regulation will be implemented as follows: Regulation will establish legally permissible fluorine levels.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 2:051**, Manufacturing conditions.

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to adopt revised terminology relative to FDA good manufacturing practice for feed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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.



## ADMINISTRATIVE REGISTER - 11

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: Incorporate revised terms and applicable Code of Federal Regulations reference numbers for good manufacturing practices.

(d) The benefits expected from administrative regulation are: Provide current terminology and references applicable to good manufacturing practices for medicated feeds and drug components.

(e) The administrative regulation will be implemented as follows: Regulations will have current terms and Code of Federal Regulation reference numbers.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 2:061**, Registration.

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to establish exemption for product registration.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing regulation by establishing a procedure that firms may obtain an exemption from registration of each feed prior to distribution.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish criteria for registration and exemption from registration of each commercial feed distributed in the state.

(d) The benefits expected from administrative regulation are: Eliminates product registration requirement for qualified firms with reduction in administrative cost. There should be time savings for the regulated industry and regulatory services.

(e) The administrative regulation will be implemented as follows: Regulation will permit exemption from product registration while retaining rights to review labels.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 2:066**, Suitability.

(2) The Division of Regulatory Services intends to promulgate an administrative regulation to establish suitability provision for commercial feed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-

## ADMINISTRATIVE REGISTER - 12

0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate does not amend an existing administrative regulation. It will establish that all feeds must be suitable for its intended purpose.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes that all feeds must be suitable for their intended purpose. Establishes specific suitability criteria for certain species feeds that feed manufacturers can utilize as the basis for demonstrating suitability.

(d) The benefits expected from administrative regulation are: Establishes clearly that marketed feeds must be suitable for their intended purpose thus affording the purchaser increased consumer protection.

(e) The administrative regulation will be implemented as follows: Regulations establishes that feeds must be suitable and provides criteria for demonstration suitability.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 3:012**, Uniform labeling format.

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to adopt the expression of a quantity statement in conformity with the U. S. Fair Packaging and Labeling Act and to specify the expression of crude protein, crude fat, crude fiber and moisture guarantees as a percent instead of amount on the pet food label. Revision will adopt reference to the AAFCO nutrient profiles as the basis of nutritional adequacy claims for dog and cat foods which are the currently recognized national standards.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing administrative regulation to permit expression of quantity statement in conformity with the U. S. Fair Packaging and Labeling Act, to specify that crude protein, crude fat, crude fiber and moisture guarantees be stated as percent and adopt the AAFCO nutrient profiles for dog and cats as the standard for nutritional adequacy.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation currently established procedure for labeling net contents, guarantees and recognized standards for nutritional adequacy of dog and cat foods.

(d) The benefits expected from administrative regulation are: Bring Kentucky regulations in conformity with current labeling recommendations employed nationwide by pet food manufacturers.

(e) The administrative regulation will be implemented as follows: Permits use of standards and labeling practices currently utilized

## ADMINISTRATIVE REGISTER - 13

nationally.

Date: June 6, 1996  
Division of Regulatory Services  
Kentucky Agricultural Experiment Station  
University of Kentucky

(1) Regulation Number and Title: **12 KAR 3:017**, Brand and product name.

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to change reference to "director" instead of "appropriate control official" and to adopt currently accepted nationwide labeling practices for pet foods relative to excluding water in calculating the percentage of ingredients and use of descriptive terms such as dinner and platter.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing administrative regulation to reference director and adopts current nationally utilized procedure for calculating the percentage of ingredients present excluding moisture and use of descriptive terms such as dinner or platter in the product name of pet foods.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation current nationally utilized labeling procedures and reference director in the regulations instead of appropriate control official.

(d) The benefits expected from administrative regulation are: Update Kentucky requirement to maintain uniformity with labeling procedures for pet food employed nationally.

(e) The administrative regulation will be implemented as follows: Minor changes to correct director designation and revised language conforms to currently recognized national labeling procedures.

Date: June 6, 1996  
Division of Regulatory Services  
Kentucky Agricultural Experiment Station  
University of Kentucky

(1) Regulation Number and Title: **12 KAR 3:022**, Guarantees.

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to establish the expression of mineral and vitamin guarantees on the label of pet food supplements consistent with the unit of measure utilized in the AAFCO nutrient profile for dogs and cats.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory Services at the address listed

## ADMINISTRATIVE REGISTER - 14

above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing administrative regulation to conform with nationally recognized labeling practices for the expression of guarantees on the label of pet food supplements.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation conformity with nationally accepted labeling practices for pet food supplements.

(d) The benefits expected from administrative regulation are: Provide uniformity in labeling requirements for pet foods consistent with current recognized nationwide procedures.

(e) The administrative regulation will be implemented as follows: Adopt nationwide labeling practices for pet food supplements to provide uniformity in requirements.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 3:027, Ingredients.**

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to allow milk replacers for pets to contain greater than 78% moisture and to permit designation of ingredient grade when the ingredient imparts a distinctive characteristic to the pet food.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing administrative regulation to permit milk replacer products to contain more than 78% moisture and allow grade or quality designation of an ingredient when it imparts a distinctive characteristic to the pet food.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation requirements that are consistent with nationally recognized practices for labeling ingredients in pet foods and maximum moisture content in milk replacers for pets.

(d) The benefits expected from administrative regulation are: Establishes uniformity in labeling procedures for pet foods which are currently employed nationally.

(e) The administrative regulation will be implemented as follows: Permits registration of pet food products with ingredient grade designation and pet milk replacers containing more than 78% moisture.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 3:037, Additives.**

(2) The Division of Regulatory Services intends to amend the administrative regulation cited above to adopt current reference for listing of FDA approved drugs; i.e., 21 USC 360(b).

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(4)(a) The public hearing will be held 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.

## ADMINISTRATIVE REGISTER - 15

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate amends an existing administrative regulation to provide current reference for FDA approved drugs.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation current reference to FDA approved drugs.

(d) The benefits expected from administrative regulation are: Correct reference to federal law.

(e) The administrative regulation will be implemented as follows: Requires no change in administrative procedures.

Date: June 6, 1996

Division of Regulatory Services

Kentucky Agricultural Experiment Station

University of Kentucky

(1) Regulation Number and Title: **12 KAR 3:042**, Statement of caloric content.

(2) The Division of Regulatory Services intends to promulgate the administrative regulation cited above to establish procedure for optional labeling of dog and cat food with statement of calorie content.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 26, 1996, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 July 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 administration regulation governing a specific subject matter may 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 Regulatory 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 adoption of definitions is KRS 250.571.

(b) The administrative regulation the division intends to promulgate does not amend an existing administrative regulation. It will establish standard procedure for determining the caloric content of a dog or cat food and labeling procedures to permit manufacturers to voluntarily provide a statement of caloric content for pet foods.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish in administrative regulation procedure to permit pet food manufacturers to voluntarily label products with caloric content statement.

(d) The benefits expected from administrative regulation are: Adopts procedure currently accepted nationwide for expression of calorie content on the label of dog and cat food. Permits the purchaser of dog and cat food to buy products of known energy content.

(e) The administrative regulation will be implemented as follows: Establishes regulation for labeling that is consistent with nationally accepted procedures.

## STATE BOARD OF ELECTIONS

May 28, 1996

General Government Cabinet

State Board of Elections

**31 KAR 4:040**. Special ballots cast in county clerk's office.

(1) The State Board of Elections intends to amend the administrative regulation cited above.

(2) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

## ADMINISTRATIVE REGISTER - 16

(3)(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 July 31, 1996, the public hearing will be canceled.

(4)(a) Persons wishing to request a public hearing should mail their written request to the following address: George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

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

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

(6) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to special ballots cast in the county clerk's office is KRS 117.015(1) and 117.086(5).

(b) The administrative regulation that the State Board intends to promulgate will amend 31 KAR 4:040 as follows: Section 1 will be amended to delete references to "special" ballots since this term is no longer recognized in the election statutes. Additionally, a provision that applied to prior law where a person could vote absentee in a clerk's office on paper absentee ballots will be deleted. Now all persons who vote absentee in the clerk's office must vote on a voting machine. KRS 117.086(2). Additionally, Section 7 will be amended to provide that no persons other than the voter, county clerk, county clerk's staff or persons transacting business normally conducted in the clerk's office shall be permitted inside the clerk's office while absentee voting is being conducted. Section 2 will be deleted.

(c) The necessity and function of the proposed administrative regulation is: The administrative regulation, as amended, will reflect current election law.

(d) The benefits expected from the proposed administrative regulation: The administrative regulation as amended will reflect current election law.

(e) The administrative regulation will be implemented as follows: The proposed amendment will merely make the administrative regulation consistent with current election law.

May 28, 1996

General Government Cabinet

State Board of Elections

**31 KAR 5:010, Absentee voting.**

(1) The State Board of Elections intends to promulgate an administrative regulation amending 31 KAR 5:010 to permit electronic transmission of absentee ballots for military and related personnel serving on active duty outside the United States in the November 5, 1996 general election.

(2) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

(3)(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 July 31, 1996, the public hearing will be canceled.

(4)(a) Persons wishing to request a public hearing should mail their written request to the following address: George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

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

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

(6) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation amending 31 KAR 5:010 is KRS 117.079.

(b) The administrative regulation that the State Board intends to promulgate will amend 31 KAR 5:010.

(c) The necessity and function of the proposed administrative regulation is to amend 31 KAR 5:010 to permit electronic transmission of absentee ballots for military and related personnel serving on active duty outside the United States in the November 5, 1996 general election.

(d) The benefits expected from the amendment of 31 KAR 5:010: To preserve absentee voting rights of residents of Kentucky who are military and related personnel serving on active duty outside the United States.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will amend 31 KAR 5:010.

## KENTUCKY PERSONNEL CABINET

Date: May 16, 1996

Kentucky Personnel Cabinet

(1) Regulation number and title: **101 KAR 2:100**. Leave administrative regulation.

(2) The Kentucky Personnel Cabinet intends to promulgate an administrative regulation governing the subject matter above.

## ADMINISTRATIVE REGISTER - 17

(3) A public hearing to receive oral and written comments has been scheduled for July 29, 1996 at 10 a. m. at the Personnel Cabinet's Conference Room, 200 Fair Oaks Lane, 5th Floor, Frankfort, 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 twenty days prior to July 29, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Daniel F. Egbers, Managing Attorney, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, 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 a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may 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 Personnel Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to leave is KRS 18A.110.

(b) The administrative regulation that the Kentucky Personnel Cabinet intends to promulgate will amend 101 KAR 2:100 to comply with the Federal Family and Medical Leave Act, 29 USC 2601 and the regulations promulgated pursuant to it, 29 CFR 2601, et seq.

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

1. The Kentucky Personnel Cabinet believes that agencies must have an effective means to discourage employees from leaving employment without appropriate notice and to have a means of sanctioning employees who are dismissed for cause. To this end, the cabinet proposes to authorize agencies to cause the forfeiture of annual leave of employees who have been dismissed for cause or who fail to give two weeks notice upon resignation. The cabinet's proposed administrative regulation would allow an exception for employees who, through the exercise of reasonable diligence and through no fault of their own are not able to give two weeks notice prior to resignation. State administered hospitals and prisons are under federal and state mandates to maintain a certain ratio of employees to patients and prisoners in the institutions it operates and this proposed amendment is necessary to maintain compliance with those standards. This proposed amendment is also necessary to the health and safety of employees, patients and prisoners in institutions who must be protected against unplanned staffing shortages. Family services workers and employees administering entitlement programs can cause the state to abrogate compliance with protective services and entitlement standards involving prompt first payment if they resign without notice sufficient to allow the redistribution of their case loads. The proposed amendment will also allow the Commonwealth to recoup costs and losses that are commonly incurred when an employee is dismissed for cause and especially when the reason for dismissal involves misappropriation of the Commonwealth's funds.

2. The administrative regulation governing family and medical leave should be amended to comply with federal regulations. This administrative regulation currently suggests that an employee must request family and medical leave whereas the federal regulations and guidelines merely state that an employee must "qualify" for this type of leave. The proposed administrative regulation would bring Kentucky's provisions into compliance with federal requirements.

3. The Kentucky Personnel Cabinet proposes to amend the regulation governing leave without pay to clarify the fact that unauthorized leave may involve both unauthorized and unreported leave.

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

1. The institution of a meaningful tool to discourage poor work performance, misconduct and unreasonable failure or refusal to give appropriate notice upon resignation with the collateral benefit that the safety and health of employees, patients and inmates may be better protected and state and federal standards governing staffing levels, provision of protective services and prompt payment of benefits may be met more effectively.

2. Compliance with federal regulations governing family and medical leave.

3. Clarification of the definition of leave without pay to prohibit both unreported and unauthorized absence.

(e) The administrative regulation will be implemented as follows: This regulation will be implemented by emergency on or about May 16, 1996 and replaced by an ordinary administrative regulation.

Date: May 16, 1996

Kentucky Personnel Cabinet

(1) Regulation number and title: **101 KAR 3:010. Leave administrative regulations.**

(2) The Kentucky Personnel Cabinet intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments has been scheduled for July 29, 1996 at 10 a. m. at the Personnel Cabinet's Conference Room, 200 Fair Oaks Lane, 5th Floor. Frankfort, 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 twenty days prior to July 29, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Daniel F. Egbers, Managing Attorney, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, 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 a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may 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 Personnel Cabinet at the address listed above.

## ADMINISTRATIVE REGISTER - 18

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to leave is KRS 18A.110.

(b) The administrative regulation that the Kentucky Personnel Cabinet intends to promulgate will amend 101 KAR 3:010 to comply with the Federal Family and Medical Leave Act, 29 USC 2601 and the regulations (29 CFR 825 et seq.) promulgated pursuant to it, 29 CFR 2601, et seq.

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

1. The Kentucky Personnel Cabinet believes that agencies must have an effective means to discourage employees from leaving employment without appropriate notice and to have a means of sanctioning employees who are dismissed for cause. To this end, the cabinet proposes to authorize agencies to cause the forfeiture of annual leave of employees who have been dismissed for cause or who fail to give two weeks notice upon resignation. The cabinet's proposed administrative regulation would allow an exception for employees who, through the exercise of reasonable diligence and through no fault of their own are not able to give two weeks notice prior to resignation. State administered hospitals and prisons are under federal and state mandates to maintain a certain ratio of employees to patients and prisoners in the institutions the state operates and this proposed amendment is necessary to maintain compliance with those standards. This proposed amendment is also necessary to the health and safety of employees, patients and prisoners in institutions who must be protected against unplanned staffing shortages. Family services workers and employees administering entitlement programs can cause the state to abrogate compliance with protective services and entitlement standards involving prompt first payment if they resign without notice sufficient to allow the redistribution of their case loads. The proposed amendment will also allow the Commonwealth to recoup costs and losses that are commonly incurred when an employee is dismissed for cause and especially when the reason for dismissal involves misappropriation of the Commonwealth's funds.

2. The administrative regulation governing family and medical leave should be amended to comply with federal regulations. This administrative regulation currently suggests that an employee must request family and medical leave whereas the federal regulations and guidelines merely state that an employee must "qualify" for this type of leave. The proposed administrative regulation would bring Kentucky's provisions into compliance with federal requirements. This notice is being given because 101 KAR 2:100 is being amended and is incorporated by this regulation.

3. The Kentucky Personnel Cabinet proposes to amend the regulation governing leave without pay to clarify the fact that unauthorized leave may involve both unauthorized and unreported leave.

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

1. The institution of a meaningful tool to discourage poor work performance, misconduct and unreasonable failure or refusal to give appropriate notice upon resignation with the collateral benefit that the safety and health of employees, patients and inmates may be better protected and state and federal standards governing staffing levels, provision of protective services and prompt payment of benefits may be met more effectively.

2. Compliance with federal regulations governing family and medical leave.

3. Clarification of the definition of leave without pay to prohibit both unreported and unauthorized absence.

(e) The administrative regulation will be implemented as follows: This regulation will be implemented by emergency on or about May 16, 1996 and replaced by an ordinary administrative regulation.

### KENTUCKY REVENUE CABINET Office of General Counsel Division of Tax Policy and Research

Date: June 14, 1996

Kentucky Revenue Cabinet

Office of General Counsel

Division of Tax Policy and Research

(1) The subject of the proposed amendment to administrative regulation **103 KAR 18:050** is to specify when magnetic media should be used to file Forms K-2 with the Kentucky Revenue Cabinet.

(2) The Kentucky Revenue Cabinet intends to amend administrative regulation 103 KAR 18:050 governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for 10 a.m. on July 26, 1996, at the Third Floor Training Room, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620.

(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 July 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: John R. Scott, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy and Research, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620.

(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 or amend an administrative regulation governing a specific subject matter may 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 Revenue Cabinet at the address listed above.

(7) Information relating to the proposed amendment to administrative regulation 103 KAR 18:050.

(a) The statutory authority for the promulgation or amendment of an administrative regulation relating to the submission of Forms K-2 is KRS 131.330 and 141.335.

(b) The Kentucky Revenue Cabinet intends to amend an existing administrative regulation. It will provide the following guidance for



## ADMINISTRATIVE REGISTER - 19

submission of Forms K-2:

1. Magnetic media filing is required for all withholding account holders who submit 250 or more Forms K-2 to the Kentucky Revenue Cabinet.

2. Magnetic media filing is recommended but not required for all withholding account holders who submit less than 250 Forms K-2 to the Kentucky Revenue Cabinet.

(c) The necessity and function of the proposed amendment is as follows: The proposed amendment will specify when magnetic media should be used to file Forms K-2.

(d) The benefits expected from the amendment to this administrative regulation are:

1. Improved ease of taxpayer filing since the acceptable methods will now more closely mirror federal methods of filing;

2. Fewer mistakes made by taxpayers when submitting Forms K-2; and

3. Simpler administration and processing of the Forms K-2 submitted on magnetic media.

(e) The amendment to administrative regulation 103 KAR 18:050 will be implemented as follows: Taxpayers will be instructed how and when to file Forms K-2 on magnetic media.

### KENTUCKY STATE BOARD OF ACCOUNTANCY

Date: May 13, 1996

Kentucky State Board of Accountancy:

(1) **201 KAR 1:045**, Examination subjects, grading and reexamination.

(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 July 29, 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 July 29, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority of the promulgation of an administrative regulation relating to examination subjects, grading and reexamination is KRS 325.240, 325.261 and 325.270.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:045, Examination subjects, grading and reexamination. It will eliminate the reference to first-time examination candidates and instead refer to them as examination candidates. The amendment will also eliminate a provision concerning the transfer of conditional credits received on exams taken prior to May 1994.

(c) The necessity and function of the proposed administrative regulation is as follows: To clarify the examination process.

(d) The benefits expected from administrative regulation are: Clarification of the examination process.

(e) The administrative regulation will be implemented as follows: The staff of the board will make the necessary changes to forms used for examination candidates.

Date: May 13, 1996

Kentucky State Board of Accountancy:

(1) **201 KAR 1:130**, Examination application procedure.

(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 July 29, 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 July 29, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority of the promulgation of an administrative regulation relating to the examination application procedure is KRS 325.240 and 325.270.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:130, Examination application procedure. It will require persons applying to sit for the Uniform Certified Public Accountant Examination in this state to provide a Kentucky street address or have approval from another state licensure board to sit for the exam in this state. The exam fee will be nonrefundable. The exam application must be received in the board office by new deadlines. Examination applicants who will complete the educational requirements to sit for the exam after the exam is given will be required to satisfy new deadlines to submit application materials. A candidate who applies but does not sit for two (2) successive administrations of the exam as opposed to the current requirement of six administrations, will have their exam application cancelled, lose any credit obtained from previous examinations and apply as a new exam candidate. Reexamination applicants will only have to advise the board if they are going to sit for an examination. Examination fees will not be deferred to another exam. Other state licensure boards that request the board to allow their candidate to sit for the exam in this state will be required to reimburse the board for additional expenses incurred by the board to comply with the Americans with Disabilities Act (ADA).

(c) The necessity and function of the proposed administrative regulation is as follows: To comply with changes required by the organization that prepares and grades the examination and to remedy problems the board has encountered regarding the process to apply for the examination.

(d) The benefits expected from administrative regulation are: To comply with changes requires by the organization that prepares and grades the examination and to eliminate problems that have arisen regarding the administration of the exam.

(e) The administrative regulation will be implemented as follows: The changes will become effective immediately with the filing of an emergency regulation.

### TOURISM DEVELOPMENT CABINET Office of the Secretary

Date: June 11, 1996

Tourism Development Cabinet

Office of the Secretary

(1) **300 KAR 2:010**, relating to a tourism development incentive program.

(2) The Kentucky Tourism Development Cabinet, Office of the Secretary, intends to promulgate an administrative regulation implementing the Kentucky Tourism Development Act.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1996, at 9 a.m., in Room G-2 of the Capital Plaza Tower.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sarah O. Hernandez, Assistant General Counsel, Room 1212, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from Sarah O. Hernandez, Assistant General Counsel, Room 1212, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(7) The following information relates to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation as it relates to a tourism development incentive program is HB No. 815 and KRS 13A.200 (administrative regulation in contemplation of a statute.)

(b) The Tourism Development Cabinet, Office of the Secretary, intends to promulgate a new administrative regulation relating to the Tourism Development Incentive Program contained in the Kentucky Tourism Development Act, codified in HB 815 which is effective July 15, 1996.

(c) The necessity and function of the proposed administrative regulation relating to HB No. 815 is as follows: HB 815 provides that the Tourism Development Cabinet shall be partially responsible (along with the Cabinet for Economic Development) for a tourism development program. HB 815 provides that the Tourism Development Cabinet shall promulgate administrative regulations to implement part of the process of approving a tourism development application. This proposed administrative regulation is the means used to establish this process.

(d) The benefits expected are adherence to statutory authority and increased efficiency in the application and procedural process for the tourism development incentive program.

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

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

## ADMINISTRATIVE REGISTER - 21

### DEPARTMENT OF AGRICULTURE

Date: June 5, 1996

Kentucky Department of Agriculture

- (1) Regulation number and title: **302 KAR 78:020**. Use, sale and distribution of tobacco products.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for July 31, 1996 at 2 p.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least twenty days prior to July 31, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing." or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may 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 Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The authority for the promulgation of an administrative regulation relating to tobacco sales to persons under the age of eighteen (18) is SB 137, EO 96-619, and KRS 438.340.
- (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is a new administrative regulation. It sets forth the type of identification for proof of age as it relates to sale, use and distribution of tobacco products and size and wording requirements for signs for any person who sells tobacco products at retail.
- (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
- (d) The benefits expected from the proposed administrative regulation are: To reduce the use, sale and distribution of tobacco products to minors.
- (e) The administrative regulation will be implemented as follows: This regulation will be implemented by emergency on or about June 5, 1996 and replaced by an ordinary administrative regulation.

### ECONOMIC DEVELOPMENT CABINET

Date: June 11, 1996

Cabinet for Economic Development

- (1) **307 KAR 2:020**, relating to a tourism development incentive program.
- (2) The Kentucky Cabinet for Economic Development intends to promulgate an administrative regulation implementing the Kentucky Tourism Development Act.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1996, at 9 a.m., in Room G-2 of the Capital Plaza Tower.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. A minimum of five persons, or the administrative body or association, agree (in writing) to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to July 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Lori H. Flanery, General Counsel, 500 Mero Street, Capital Plaza Tower, 24th Floor, 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 Lori H. Flanery, General Counsel, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601.
- (7) The following information relates to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation as it relates to a tourism development incentive program is HB No. 815 and KRS 13A.200 (administrative regulation in contemplation of a statute.)
  - (b) The Cabinet for Economic Development intends to promulgate a new administrative regulation relating to the Tourism Development Incentive Program contained in the Kentucky Tourism Development Act, codified in HB 815 which is effective July 15, 1996.
  - (c) The necessity and function of the proposed administrative regulation relating to HB No. 815 is as follows: HB 815 provides that the Cabinet for Economic Development shall be partially responsible (along with the Tourism Cabinet) for a tourism development program. HB 815 provides that the Cabinet for Economic Development shall promulgate administrative regulations to implement part of the process of approving a tourism development application. This proposed administrative regulation is the means used to establish this process.

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(d) The benefits expected are adherence to statutory authority and increased efficiency in the application and procedural process for the Tourism Development Incentive Program.

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

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

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

June 15, 1996

Natural Resources and Environmental Protection Cabinet  
Department for Environmental Protection  
Division for Air Quality

(1) **401 KAR 50:035**, Permits, will upon adoption, amend and replace the emergency administrative regulation filed and made effective on June 14, 1996. The subject matter of this amended administrative regulation will incorporate into the state permitting regulation changes contained in the U.S. EPA's July 10, 1995, guidance memoranda entitled "White Paper for Streamlined Development of Part 70 Permit Applications" and the U.S. EPA March 5, 1996, guidance memoranda entitled "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program". These amendments will remove or revise certain requirements for a complete application which the U.S. EPA has determined are more burdensome than necessary.

(2) The Division for Air Quality intends to promulgate one amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the amended administrative regulation has been scheduled for July 30, 1996, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The cabinet solicits comments from persons affected by 401 KAR 50:035 regarding any topic pertinent to the regulation. Comments regarding the following specific issues would be especially helpful:

(a) How, if at all, should permitting requirements differ for major and minor sources of air pollution? The present version of 401 KAR 50:035 contains separate provisions for the permitting of major and minor sources of air pollution. Some provisions relating to minor sources are less stringent than those relating to major sources. The cabinet considers having less stringent requirements for less significant air pollution sources to be both reasonable and consistent with the tiering requirements contained in KRS Chapter 13A. The cabinet will consider, and invites comments regarding, the broadening of differences between major and minor source permitting to reduce further the administrative burden of minor source permitting.

(b) How can permits be made more effective? The primary purpose of permitting is to ensure that sources of air pollution are constructed and are able to be operated in compliance with applicable air quality requirements. Permits that fail to identify applicable requirements or that contain requirements that cannot be achieved or enforced fail to accomplish that purpose. The cabinet invites interested persons to recommend changes to the proposed administrative regulation to improve the effectiveness with which permits ensure compliance.

(c) Should permits be used for purposes other than compliance, and if so how can that best be accomplished? Although the main purpose of permitting is to ensure that air pollution sources are constructed and are able to be operated in compliance with applicable air quality requirements, permits traditionally have served other purposes as well. For example, the permitting process in Kentucky has been an important mechanism for collecting emissions information. Permits also serve as a method of communication among the cabinet, the sources, and the public. The cabinet seeks input regarding whether permits should continue to serve these and other purposes and, if so, how the proposed regulation may be amended to accommodate those purposes.

(d) Have the proposed amendments effectively incorporated the provisions of the U.S. EPA white papers? The U.S. EPA issued the white papers relating to 40 CFR Part 70 (the federal regulation implementing Title V) as policies clarifying the meaning of that regulation. Additionally, the U.S. EPA encouraged state and local governments to use policies or other interpretive documents to accomplish clarification of their Title V regulations rather than actually amending the regulations. While the cabinet agrees with the U.S. EPA that amendments to the regulations upon which Title V program approval is based are not desirable, we do not believe the wording of 401 KAR 50:035 is sufficiently broad to allow white paper provisions to be implemented. Additionally, the cabinet is constrained by restrictions on the use of policies contained in KRS Chapter 13A. It is important to the cabinet, however, that 401 KAR 50:035 not be changed where existing language clearly allows the implementation of white paper provisions. Additionally, it is important that amendments to the regulation made to accommodate white paper provisions are effective in achieving their goal. The cabinet solicits comments directed toward the following specific questions:

1. Are there provisions of white paper 1 or white paper 2 that are not accommodated by the proposed regulation?

2. Do the proposed amendments to 401 KAR 50:035 contain changes to accommodate white paper provisions that are not necessary?

A complete copy of the white papers can be found on the U.S. EPA's TTN Bulletin Board, or by contacting Hank Wiseman at the Frankfort office of the Division for Air Quality, phone (502) 573-3382.

(e) How can 401 KAR 50:035 be better organized and better worded? The effectiveness of an administrative regulation is diminished significantly if it is difficult to read and comprehend. Several generations of amendments have been made to 401 KAR 50:035, each of which has made the regulation more complicated. The cabinet is anxious to improve the language and organizational structure of complex regulations to make them more comprehensible, and will welcome comments to accomplish that goal.

(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 an agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to this proposed amended administrative regulation.

(a) The statutory authority for the promulgation of this amended administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, and 42 USC 7661-7661f (Title V of the CAAA).

(b) The proposed regulation that the Division for Air Quality intends to promulgate will amend an existing emergency administrative regulation, 401 KAR 50:035E. A brief summary of the proposed amendments follows: provide emission descriptions, not emission estimates, for emissions not regulated at the source unless such estimates are needed for other purposes, such as for fee calculation; submit checklists, not emission descriptions, for insignificant activities based on size/production rate and for risk management plans submitted under Section 112(r); provide citations for applicable requirements, with qualitative descriptions for each emissions unit, and for prior new source review permits; exclude certain trivial and short-term activities from the application; provide group treatment for activities subject to certain generally-applicable requirements; certify compliance status without requiring reconsideration of previous applicability decisions; use the permitting process to identify environmentally significant terms of new source review (NSR) permits which should be incorporated into the Part 70 permit as federally-enforceable terms; and submit tons per year estimates only where meaningful to do so, i.e., not for Section 112(r)-only pollutants.

(c) The necessity and function of this proposed amended administrative regulation is as follows: 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. KRS 42 USC 7661-7661f requires the state to promulgate regulations which implement an operating permits program. KRS 224.20-120 requires that the cabinet, when promulgating standards, recognize all factors found to be proper and just, and give reasonable consideration to the interests of all parties concerned. The Division for Air Quality proposes this amendment to incorporate those changes contained in recent EPA "White Papers" into its Title V permitting process.

(d) The benefit expected from this proposed amendment will be to reduce the workload for sources in preparing applications and for the division when reviewing applications and issuing permits.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this amended administrative regulation, affected sources shall comply with the provisions of 401 KAR 50:035 as part of the existing regulatory program.

### JUSTICE CABINET Division of Charitable Gaming

Date: June 11, 1996

Justice Cabinet

Division of Charitable Gaming

**500 KAR 11:010**, Temporary licensure.

(1) The subject matter of this administrative regulation is the process under which a temporary license will be issued to an applicant.

(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 Monday, July 29, 1996, at 9 a.m., Holiday Inn Capital Plaza, Wilkinson Boulevard, Frankfort, Kentucky 40601. 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 Monday, July 29, 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), 238.525(4), 238.530(1), (2), 238.535(1), (11), 238.555(1).

(b) This administrative regulation will amend an existing administrative regulation. It will allow the division to give a temporary license to an applicant which has substantially complied with licensure requirements and incorporates new application forms for the various types of licenses.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming may issue temporary licenses to those qualifying charitable organizations, manufacturers, distributors and charitable gaming facilities who have substantially complied

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with the licensure requirements. In addition, the new application forms should be easier to complete and will incorporate statutory changes enacted by HB 5.

(d) The benefits expected from the administrative regulation are: The administrative regulation will comport with new changes to KRS Chapter 238, effected by HB 5, and should provide greater assistance to applicants seeking licensure.

(e) The administrative regulation will be implemented as follows: Appropriate division staff will be trained on the new application forms, and compliance with the licensing requirements will be enforced by the division's licensing staff.

Date: June 11, 1996

Justice Cabinet

Division of Charitable Gaming

**500 KAR 11:015, Permanent licensure.**

(1) The subject matter of this administrative regulation is the process under which a permanent license will be issued an applicant.

(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 Monday, July 29, 1996, at 9 a.m., at the Holiday Inn Capital Plaza Hotel, Wilkinson Boulevard, Frankfort, Kentucky 40601. 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 Monday, July 29, 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(2), (3), (9), 238.530(1), (2), 238.535(1), (11), 238.555(1).

(b) This administrative regulation will amend an existing administrative regulation. The regulation incorporates new application forms for the various types of licenses in accordance with changes enacted by HB 5.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to issue permanent licenses, set license fees, including renewal fees, and establish license years for all permanent licenses issued by the division. This administrative regulation establishes the above fees and procedures for permanent licensure.

(d) The benefits expected from the administrative regulation are: The administrative regulation will comport with new changes to KRS Chapter 238, effected by HB 5, and should provide greater assistance to applicants seeking licensure.

(e) The administrative regulation will be implemented as follows: Appropriate division staff will be trained on the new application forms, and compliance with the licensing requirements will be enforced by the division's licensing staff.

Date: June 11, 1996

Justice Cabinet

Division of Charitable Gaming

**500 KAR 11:025, Quarterly reports.**

(1) The subject matter of this administrative regulation is to establish required reporting of licensed charitable organizations, the times for reporting and specify applicable fees.

(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 Monday, July 29, 1996, at 9 a.m., at the Holiday Inn - Capital Plaza Hotel, Wilkinson Boulevard, Frankfort, Kentucky 40601. 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 Monday, July 29, 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.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the 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), 238.525(4).

(b) This administrative regulation will amend an existing administrative regulation by removing references to the division's start-up period and to subordinate organizations, which are no longer recognized by statute. In addition, the administrative regulation will impose a late fee for not timely remitting quarterly fees and incorporates new quarterly report forms.

(c) The necessity and function of this administrative regulation is as follows: All licensed charitable organizations are required to remit one-half (1/2) of one (1) percent of gross receipts derived from charitable gaming. Quarterly reports are required of all licensed charitable organizations. This administrative regulation establishes the method and time of filing the quarterly reports and remitting payment of the quarterly fees due.

(d) The benefits expected from the administrative regulation are: This administrative regulation will conform to certain changes under HB 5, will provide for a late fee to ensure timely filings, and the new reporting forms will provide greater information to the division and be easier for organizations to accurately report their activities.

(e) The administrative regulation will be implemented as follows: Appropriate division staff will be notified of these changes, and compliance of this regulation will be enforced by the division's Fiscal Branch.

Date: June 11, 1996

Justice Cabinet

Division of Charitable Gaming

500 KAR 11:060, Tipping prohibited.

(1) The subject matter of this administrative regulation is the enforcement of KRS 238.540(4) and its prohibition on tipping. Additional limited noncash items are allowed to be given to volunteers of certain raffles.

(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 Monday, July 29, 1996, at 9 a.m., at the Holiday Inn Capital Plaza Hotel, Wilkinson Boulevard, Frankfort, Kentucky 40601. 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 Monday, July 29, 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 238.515(9), 238.525(4).

(b) This administrative regulation will amend an existing administrative regulation to require certain measures to inform the public of the no-tipping rule and to allow limited noncash items to be awarded to volunteers in connection with certain raffles.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming. Charitable gaming is to be conducted and administered only by the charitable organization using volunteer personnel. No person engaged in the conduct and administration of charitable gaming is to receive compensation of any kind. This administrative regulation prohibits tips or other gratuitous conduct and prescribes measures to inform the public of this rule.

(d) The benefits expected from the administrative regulation are: Advise gaming patrons that volunteers are prohibited from receiving tips or other gratuities. The regulation does provide for items of appreciation of limited value to be given to certain volunteers.

(e) The administrative regulation will be implemented as follows: Appropriate division staff will be informed of the regulation, and the division's inspectors will be utilized to enforce the prohibition on tipping. Accounting staff will process reports showing allowed expenditures.

Date: June 11, 1996

Justice Cabinet

Division of Charitable Gaming

500 KAR 11:070, Exempt activities.

(1) The subject matter of this administrative regulation is the reporting method and form by which exemption notices are filed and



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processed by the division.

(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 Monday, July 29, 1996, at 9 a.m., at the Holiday Inn Capital Plaza Hotel, Wilkinson Boulevard, Frankfort, Kentucky 40601. 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 Monday, July 29, 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, First Floor, Frankfort, Kentucky 40601-2690, (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), 238.535(1), (2).

(b) This administrative regulation will amend an existing administrative regulation. The regulation will incorporate a new form by which the division is notified of exempt activities.

(c) The necessity and function of this administrative regulation is as follows: Any organization exempt from licensure requirements under KRS 238.535(1) is to notify the Division of Charitable Gaming in writing of its intent to engage in exempt charitable gaming. This administrative regulation establishes a reporting method and form by which exemption notices are to be filed with and processed by the division.

(d) The benefits expected from the administrative regulation are: To assist the division in monitoring exempt activities, to ensure that such activities truly are exempt by statute and to aid the organizations in notifying the division of such activities. The new form should be more informative and easier to complete for organizations which have exempt activities.

(e) The administrative regulation will be implemented as follows: All division staff will be notified of this regulation, and the division's Licensing Section shall be responsible for the review of filed forms.

Date: June 11, 1996

Justice Cabinet

Division of Charitable Gaming

**500 KAR 11:080**, Special charity fundraising event.

(1) The subject matter of this administrative regulation is the definition of a special charity fundraising event and establishing prize amounts, duration and frequency.

(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 Monday, July 29, 1996, at 9 a.m., at the Holiday Inn Capital Plaza Hotel, Wilkinson Boulevard, Frankfort, Kentucky 40601. 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 Monday, July 29, 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), 238.525(4).

(b) This administrative regulation will amend an existing administrative regulation to make a technical correction that the application form has changed.

(c) The necessity and function of this administrative regulation is as follows: KRS 238.505(9) authorizes a special charity fundraising



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event, such as a fair, carnival, bazaar or festival, that is of short, definite and limited duration and requires licensure by the Division of Charitable Gaming. This administrative regulation further defines a special charity fundraising event, and establishes prize amounts, duration and frequency. Finally, the regulation is amended to reflect the new application form for the special event license.

(d) The benefits expected from the administrative regulation are: The new regulation makes the technical correction that the application form has changed in 500 KAR 11:010 and 500 KAR 11:015, and it is believed the new form will be more informative and easier to complete.

(e) The administrative regulation will be implemented as follows: division staff will be informed of the regulation, and the division's licensing section shall be responsible for processing fundraising event applications.

Date: June 11, 1996

Justice Cabinet

Division of Charitable Gaming

**500 KAR 11:090**, Special limited charitable games.

(1) The subject matter of this administrative regulation is to establish an additional 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 Monday, July 29, 1996, at 9 a.m., at the Holiday Inn Capital Plaza Hotel, Wilkinson Boulevard, Frankfort, Kentucky 40601. 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 Monday, July 29, 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 238.515(9), 238.525(4).

(b) This administrative regulation will amend an existing administrative regulation to make clear that a special limited charitable games license is necessary for any wheel game where the cost for each chance exceeds two (2) dollars or the value of any noncash prize exceeds \$100 dollars.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to identify, define and approve any games of chance to be included among those classified as a "special limited charitable game", to establish circumstances under which such game will be conducted, and to establish reporting requirements. In addition, this regulation will conform to recently enacted HB 5.

(d) The benefits expected from the administrative regulation are: To clarify current regulation regarding types of wheel games requiring a special limited license and to make a technical amendment required by enactment of HB 5.

(e) The administrative regulation will be implemented as follows: All division staff will be informed of this regulation, and the division's licensing section shall be utilized to review special limited charitable gaming applications.

### Department of Corrections

Date: June 13, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: use of force, inmate grievance procedure, offenses and penalties, classification document, community center program, and administrative release of inmates.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996 at 9 a.m., in the Fifth Floor Conference Room, in the State Office Building, Frankfort, Kentucky 40601.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet,

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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. Offenses and penalties (15.2) shall be amended to reflect a new offense and penalty.

4. Classification document (18.6) delete policy.

5. Community center program (25.6) shall be amended to:

- a. Comply with drafting rules in KRS Chapter 13A;
- b. Correct grammar and punctuation;
- c. Permit denial by judge of furloughs for inmates sentenced in his jurisdiction;
- d. Allow program residents to be considered for furlough once a quarter if classified minimum or community custody for six months;
- e. Limit furloughs to eight days each calendar year, with a minimum of sixty days between furloughs;
- f. Permit the addition of travel time to approved furlough time;
- g. Restrict furloughs involving violators;
- h. Clarify need for notification of officials in case of emergency furlough; and
- i. Permits issuance of warrant by Community Center Program Manager if inmate escapes from halfway house or jail prior to serving sentence.

6. Administrative release of inmates (25.10) shall be amended to bring policy in compliance with Corrections Policies and Procedures 25.2.

(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.

## TRANSPORTATION CABINET

Date: June 15, 1996

Transportation Cabinet

(1) **601 KAR 1:005** relating to the federal motor carrier safety regulations.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation updating the adopted federal regulations governing the safe operation of commercial motor vehicles in Kentucky. The remainder of the administrative regulation will be reviewed at the same time to insure continued compliance with state and federal laws.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1996 at 3 p.m. local prevailing time, at 501 High Street, Room 1003, 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 July 30, 1996, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the safety of commercial motor vehicles and their operators is KRS 138.665, 281.600, 281.730, 281.750, and Title 49 CFR Parts 40, 382-383, 390-397.

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

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. Further, these safety requirements are imposed by US DOT on commercial vehicles operating in interstate commerce and most commercial vehicles operating in intrastate commerce. By promulgating these federal regulations in a state administrative regulation, the Transportation Cabinet's motor vehicle enforcement officers can enforce the federal regulations as required by federal mandate.

(d) The benefits expected are increased safety on the public highways of Kentucky and uniformity with the federal government and other states' motor carrier safety requirements.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra G. Pullen at the above-mentioned address no later than July 15, 1996.

### EDUCATION PROFESSIONAL STANDARDS BOARD

June 13, 1996

Education Professional Standards Board

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, at 9:30 a.m. in the local district room, first floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

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

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

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by the Division of Certification. The applications for Junior ROTC certification shall be accompanied by a form DD214 which will reflect the retirement from the military. The Division of Certification staff will inform the applicant of the curriculum requirements to be completed. No changes to procedures for salary determination will be made.

### KENTUCKY BOARD OF EDUCATION

June 10, 1996

Kentucky Board of Education

(1) **701 KAR 5:020**, Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association

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having at least 5 members; and a minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education is KRS 156.070.

(b) The administrative regulation that the Kentucky Board of Education (KBE) intends to amend is 701 KAR 5:020.

(c) The necessity and function of the proposed administrative regulation is to establish appeal procedures to provide for appeals from decisions of the Kentucky High School Athletic Association.

(d) The benefits expected from this administrative regulation are to amend the appeal/review procedures utilized by the Kentucky Board of Education when reviewing athletic eligibility decisions of the KHSAA. The KHSAA is required to conduct its hearings in accordance with KRS Chapter 13B, pursuant to SB 292, as enacted by the 1996 General Assembly.

(e) The administrative regulation will be implemented as follows: The KBE and its review officer will comply with the amended regulation provisions when reviewing KHSAA appeals.

June 10, 1996

Kentucky Board of Education

(1) **701 KAR 5:051**, Summary hearing procedures, repeal of 701 KAR 5:050.

(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 July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the summary hearing procedures, repeal of 701 KAR 5:055, is KRS 156.070 and 156.132.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 701 KAR 5:051.

(c) The necessity and function of the proposed administrative regulation: SB 292, as enacted by the 1996 General Assembly, deletes the requirement that the Kentucky Board of Education promulgate an administrative regulation on this subject. SB 292, Section 12, which creates a new section of KRS Chapter 13B, establishes an emergency hearing procedure that supersedes and negates the need for 701 KAR 5:050, relating to summary hearing procedures for suspension of local school officials.

(d) The benefits expected from this administrative regulation are repeal of a now unnecessary regulation.

(e) The administrative regulation will be implemented as follows: Upon repeal of 701 KAR 5:050, emergency hearings under KRS 156.132 shall comply with the emergency procedures established in SB 292, Section 12, effective July 15, 1996.

June 10, 1996

Kentucky Board of Education

(1) **701 KAR 5:055**, Removal hearing procedures.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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public hearing.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to removal hearing procedures is KRS 156.070.

(b) The administrative regulation that the Kentucky Board of Education (KBE) intends to amend is 701 KAR 5:055.

(c) The necessity and function of the proposed administrative regulation is to establish procedures to be followed prior to and during the evidentiary hearing regarding the charges brought for removal of local board of education members, superintendents, and public school officers upon a finding of misconduct or certain other offenses. The amendments are to conform the hearing procedures to KRS Chapter 13B, which applies beginning July 15, 1996.

(d) The benefits expected from this administrative regulation are to conform the regulation to the uniform hearing procedures required by KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: The hearing procedures will be utilized by the KBE and the parties to a hearing conducted under KRS 156.132.

June 10, 1996

Kentucky Board of Education

(1) **701 KAR 5:086**, Hearing process for school-based decision-making complaints (repeal of).

(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 July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the hearing process for school-based decision-making complaints (repeal of) is KRS 156.070.

(b) The administrative regulation that the Kentucky Board of Education (KBE) intends to promulgate is 701 KAR 5:086.

(c) The necessity and function of the proposed administrative regulation: SB 292 of the 1996 General Assembly deletes the requirement that the Kentucky Board of Education promulgate an administrative regulation establishing a hearing process for complaints referred by the Office of Education Accountability regarding an alleged intentional pattern of practice in violation of KRS 160.345, the school-based decision-making statute. SB 292, Section 52, mandates that the hearing be conducted in accordance with KRS Chapter 13B. As a result, there is no longer a need for 701 KAR 5:085, and thus it is being repealed.

(d) The benefits expected from this administrative regulation are to repeal a now unnecessary regulation.

(e) The administrative regulation will be implemented as follows: Upon repeal of 701 KAR 5:085 hearings conducted under KRS 160.345(9) shall comply with the procedure required by KRS Chapter 13B.

June 10, 1996

Kentucky Board of Education

(1) **701 KAR 5:090**, Teacher disciplinary hearings.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association

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having at least 5 members; and a minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to teacher disciplinary hearings is KRS 156.070 and 161.790.

(b) The administrative regulation that the Kentucky Board of Education (KBE) intends to amend is 701 KAR 5:090.

(c) The necessity and function of the proposed administrative regulation is to implement KRS 161.790, which requires the chief state school officer to appoint an impartial three member tribunal to hear appeals and make the final administrative determination whenever a local school district disciplines or places on involuntary leave a certificated employee. This administrative regulation establishes necessary administrative and hearing procedures with respect to the tribunal process, and is being amended to conform to KRS Chapter 13B and SB 292, which was enacted by the 1996 Kentucky General Assembly.

(d) The benefits expected from this administrative regulation are to conform the tribunal hearing procedures to KRS Chapter 13B, as amended by SB 292, which provides for a uniform administrative hearing procedure.

(e) The administrative regulation will be implemented as follows: The Department of Education will inform tribunals and their hearing officers of the regulation.

June 10, 1996

Kentucky Board of Education

(1) **702 KAR 1:080**, Transfer of annexed property; hearing.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to transfer of annexed property; hearing is KRS 156.070, 156.160, and 160.045.

(b) The administrative regulation that the Kentucky Board of Education (KBE) intends to amend is 702 KAR 1:080.

(c) The necessity and function of the proposed administrative regulation is to provide procedures for an orderly hearing to resolve differences between local boards of education with regard to the transfer or annexation of property. The amendments are to conform to the uniform hearing procedures required by KRS Chapter 13B and effective July 15, 1996.

(d) The benefits expected from this administrative regulation are to conform the hearing procedures relative to school district property annexation appeals to KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: The hearing procedures will be followed by the KBE when conducting these hearings.

June 12, 1996

Kentucky Board of Education

(1) **702 KAR 3:100**, Data form, professional staff. The proposed amended administrative regulation sets forth guidelines for the local school district submission of certified staff salary information. The proposed amendment requires an end of year update to include salary information for staff that have been added or terminated since the original September 15 submission date.

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

## ADMINISTRATIVE REGISTER - 33

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to the professional staff data form is KRS 156.070 and 157.320.

(b) The administrative regulation that the Kentucky Board of Education intends to amend sets forth the guidelines for the submission of teacher salary and assignment information.

(c) The necessity and function of the proposed administrative regulation sets forth the guidelines for the submission of certified staff salary information and ensures teacher salaries are based on categories of experience.

(d) The benefits expected from this administrative regulation is to provide the Department of Education guidance on collection of certified staff information. This will also eliminate a report that some local districts must file with the Department of Education.

June 12, 1996

Kentucky Board of Education

(1) **702 KAR 3:270**, SEEK funding formula. The proposed amended administrative regulation sets forth the guidelines for the calculations to distribute funds to local school districts through the Support Education Excellence in Kentucky (SEEK) Program. In accordance with HB 101 as enacted by the 1996 General Assembly, the proposed amendment requires prior year average daily attendance rather than current year average daily attendance be used in the formula allotting program funds for home and hospital instruction and this amendment also makes technical corrections in two other sections.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to the SEEK funding formula is KRS 157.360 and 157.440.

(b) The administrative regulation that the Department of Education intends to amend sets forth the guidelines for the calculations to distribute funds to local school districts through the Support Education Excellence in Kentucky (SEEK) Program. The change provides the ability to use prior year average daily attendance data for calculation of home and hospital funding, and makes technical corrections in two other sections.

(c) The necessity and function of the proposed administrative regulation is to eliminate calculating home and hospital funding on split fiscal years and to make technical corrections in two other sections.

(d) The benefits expected from this administrative regulation is to provide the Department of Education the capability to calculate all components of the SEEK formula on prior year data exclusively, which will result in funding information on this program being available to local school districts earlier in the fiscal year.

## ADMINISTRATIVE REGISTER - 34

June 10, 1996

Kentucky Board of Education

(1) Administrative Regulation Number and Title: **702 KAR 3:345**, Evaluation guidelines.

(2) The Kentucky Board of Education intends to promulgate an amendment to 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 Wednesday, July 31, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the revision of an administrative regulation relating to evaluation is KRS 156.101.

(b) The administrative regulation that the Kentucky Board Education intends to revise will comply with revisions made to KRS 156.101 by the 1996 General Assembly in HB 97.

(c) The necessity and function of the proposed administrative regulation revision is as follows: KRS 156.101 has been changed to make the review of evaluation plans contingent upon the adoption of revisions, instead of annually. This proposed administrative regulation revision brings the regulation in line with that language.

(d) The benefits expected from the revision to the administrative regulation are: Less paperwork for the school districts; save time annually through not reviewing the plan.

July 31, 1996

Kentucky Board of Education

(1) **702 KAR 5:130**, Vehicles designed to carry nine (9) passengers or less, standards for.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to vehicles used to transport students is KRS 156.070 and 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 5:130.

(c) The necessity and function of the proposed administrative regulation is to ensure that all local school districts are in compliance with standards for vehicles that transport nine (9) passengers or less, and to amend the regulation to conform to HB 610 enacted by the 1996 General Assembly.

(d) The benefits expected from this administrative regulation are to implement understanding of statutory requirements and ensure the safety in the transportation of students in vehicles designed to transport fewer than ten (10) passengers.

(e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents and directors of transportation with direction that it be forwarded to each school principal. The administrative regulation will also be discussed at the annual summer conference with driver training instructors.



## ADMINISTRATIVE REGISTER - 35

June 11, 1996

Kentucky Board of Education

- (1) **702 KAR 7:065**, Designation of agent to manage high school interscholastic athletics.
- (2) The Kentucky Board of Education intends to amend an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 5 days prior to July 31, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority to amend the administrative regulation relating to the designation of the agent to manage high school interscholastic athletics is KRS 156.070.
  - (b) The administrative regulation that the Department of Education intends to amend is 702 KAR 7:065.
  - (c) The necessity and function of the proposed amended administrative regulation is to incorporate changes in the Kentucky High School Athletic Association (KHSAA) Bylaws and Due Process Procedure.
  - (d) The benefits expected from the amended administrative regulation are to correct and initiate changes in both Bylaw 25 (Limitation of Seasons) and the Due Process Procedure.
  - (e) The administrative regulation will be implemented as follows: Copies of the revised Bylaws and Due Process Procedure will be disseminated to all KHSAA member schools' principals and athletic directors. The amendments will also be distributed/discussed at the annual Delegate Assembly of the KHSAA membership.

June 10, 1996

Kentucky Board of Education

- (1) **703 KAR 3:205**, Management Improvement Program.
- (2) The Kentucky Board of Education intends to amend an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If five persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 31, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the amendment of an existing administrative regulation relating to management improvement program is KRS 156.070, 156.160, 158.780, and 158.785.
  - (b) The administrative regulation that the Kentucky Board of Education (KBE) intends to amend is 703 KAR 3:205.
  - (c) The necessity and function of the proposed administrative regulation: it outlines the operational procedures for the management improvement program established by the Kentucky Board of Education. The management improvement program provides services for school districts which demonstrate such a critical lack of efficiency or effectiveness in governance or administration that state mandated corrective action or state control of the district is required. The amendments are to conform the hearing procedure to the requirements of KRS Chapter 13B, which applies beginning July 15, 1996.
  - (d) The benefits expected from this administrative regulation are to conform the hearing procedures to newly applicable law KRS Chapter 13B which hearing procedures apply beginning July 15, 1996.
  - (e) The administrative regulation will be implemented as follows: The hearing procedures will be utilized by the KBE when conducting hearings under KRS 158.785.

## ADMINISTRATIVE REGISTER - 36

June 10, 1996

Kentucky Board of Education

- (1) **707 KAR 1:180**, Due process procedures.
- (2) The Kentucky Board of Education intends to amend an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
  - (b) If five persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
  - (c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 31, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
  - (b) On a request for a public hearing, a person shall state:
    1. "I agree to attend the public hearing."; or
    2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
  - (b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the amendment of an existing administrative regulation relating to due process procedures is KRS 156.070, 156.160, 156.210, 157.220, 157.260, and 167.015.
  - (b) The administrative regulation that the Kentucky Board of Education intends to amend is 707 KAR 1:180.
  - (c) The necessity and function of the proposed administrative regulation is to establish requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the federal Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended. The amendments are to conform the hearing procedures to those required by KRS Chapter 13B, as amended by SB 292, 1996 General Assembly.
  - (d) The benefits expected from this administrative regulation are to conform to the uniform hearing procedures required by KRS Chapter 13B.
  - (e) The administrative regulation will be implemented as follows: Due process hearing officers are being trained to utilize the amended hearing procedures required by KRS Chapter 13B.

### KENTUCKY COMMISSION ON THE DEAF AND HARD OF HEARING

Date: June 13, 1996

Kentucky Commission on the Deaf and Hard of Hearing  
Education, Arts, and Humanities Cabinet

- (1) **735 KAR 1:010**, Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing and speech impaired. **735 KAR 1:020**, Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.
- (2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to amend the existing administrative regulations governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendments to the administrative regulations has been scheduled for July 29, 1996 at the KCDHH Conference Room from 9 a.m. - 10:30 a.m. The KCDHH Offices and Conference Room are located at 632 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of the 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 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 twenty (20) days prior to July 29, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 632 Versailles 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 administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.
  - (b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.
- (7) Information relating to the proposed amendment to the administrative regulations.
  - (a) The statutory authority for the promulgation and amendment of the existing administrative regulations in relation to the TDD

## ADMINISTRATIVE REGISTER - 37

Distribution Program is KRS 163.525(5).

(b) The administrative regulations the KCDHH intends to promulgate will amend existing administrative regulations. They will define the necessary supporting documentation the applicant must submit to verify Kentucky residency and subscription to a telecommunications access line; identify a hearing instrument specialist as a certified professional who may verify an applicant's hearing loss; eliminates the voucher system which is a duplication of the provisions of KRS Chapter 45A; modifies and updates the application form for the TDD Distribution Program; and minor changes to ensure consistency in language.

(c) The necessity and function of the proposed amendments to the existing administrative regulations are as follows: The amendment is necessary to ensure streamlined, nonduplicative, and efficient operations of the program which was established, according to the mandate of KRS 163.525(5), to distribute specialized telecommunications equipment to persons who are deaf, hard of hearing or speech impaired, at no additional cost beyond a single party residence line.

(d) The benefits expected from the proposed amendments to the existing administrative regulations are: The TDD Distribution Program will obtain all necessary supporting documentation from applicants, which will make the administration of the program more efficient; applicants may utilize the services of a hearing instrument specialist to verify their disability; and deaf, hard of hearing, and speech impaired individuals will have equal access to the telecommunications system of the Commonwealth, including the use of the Kentucky Telecommunications Relay Service. For many individuals, it will provide access for the first time to the telecommunications network. The telecommunications industry will benefit from an increased customer base, increased toll revenue, and enhanced public relations image.

(e) The administrative regulations will be implemented as follows: The KCDHH will continue to administer the TDD Distribution Program as outlined in the existing administrative regulations until the amendments take effect. Once the amendments take effect, the KCDHH shall begin distributing the revised application form, and requiring submission of the supporting documentation. All ownership rights and responsibilities with the exception for maintenance and repair, will continue to belong solely to the recipient.

### LABOR CABINET Kentucky Department of Workers' Claims

April 14, 1996

Labor Cabinet

Kentucky Department of Workers' Claims

(1) **803 KAR 25:012**. Resolution of medical fee disputes.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 26, 1996, at 10 a.m. at the Farnham Dudgeon Civic Center, 405 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Marcy D. Ches, Staff Attorney.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to workers' compensation medical fee disputes is KRS 342.735.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:012, Resolution of medical fee disputes, as follows: It will more specifically define the procedures whereby medical fee disputes are processed by the administrative law judges and the Department of Workers Claims. It will more specifically define filing procedures for medical fee disputes and the interaction of this regulation with other provisions under KRS Chapter 342 relating to the payment of medical bills in workers compensation cases.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.260 requires the Commissioner of the Department of Workers Claims to prepare such administrative regulations as he considers necessary to carry on his work and the work of the administrative law judges under KRS Chapter 342. KRS 342.325 requires that questions arising under KRS Chapter 342 which are not settled by agreement of the parties shall be determined by an administrative law judge and KRS 342.735 requires the commissioner to establish regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate the resolution of medical fee disputes before the administrative law judges and to increase consistency with other provisions under KRS Chapter 342 relating to payment of medical bills in workers compensation cases.

(d) The benefits expected from this administrative regulation are: More efficient resolution of medical fee disputes before the administrative law judges; Increased guidance to persons filing requests for medical fee dispute resolution concerning the filing process; and, a decreased number of medical fee disputes requiring a decision of an administrative law judge.

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

## ADMINISTRATIVE REGISTER - 38

June 14, 1996

Kentucky Department of Workers' Claims

(1) **803 KAR 25:035**, Computation of apportionment and attorneys' fees.

(2) The Commissioner of the Department of Workers' Claims intends to amend the administrative regulation governing the computation of apportionment and attorneys fees.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 26, 1996, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 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 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 July 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Valerie L. Salven, General Counsel.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the computation of apportionment and attorneys' fees in workers' compensation claims is KRS 342.260.

(b) The administrative regulation that the Commissioner of the Department of Workers' Claims intends to promulgate will be an amendment to the existing administrative regulation, and will substitute the designation of a specific life expectancy table for the current provisions that require use of "the most recent available edition" of a table.

(c) The necessity and function of this amendment to 803 KAR 25:035 is the adoption of a specific life expectancy table pursuant to an amendment of KRS 342.260 approved in SB 161 enacted by the 1996 regular session of the Kentucky General Assembly. The Commissioner of the Department of Workers' Claims may adopt life tables published by the U. S. Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. The life tables designated by the commissioner through administrative regulations in effect as of the date of an opinion, award, or settlement in a workers' compensation claim shall apply to computations concerning that opinion, award, or settlement.

(d) The benefits expected from the amendment of this administrative regulation will be greater uniformity and certainty in the computation of benefits, and attorneys' fees, in workers' compensation claims.

(e) The administrative regulation will be implemented as follows: The Commissioner of the Department of Workers' Claims intends to adopt the male and female "all races" life tables published by the U. S. Department of Health and Human Services in Volume II, Section 6, Page 12, Table 6-3, of the "Vital Statistics of the United States, 1992, Life Tables."

April 11, 1996

Labor Cabinet

Kentucky Department of Workers' Claims

(1) **803 KAR 25:096**. Selection of physicians and treatment plans.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 26, 1996, at 10 a.m. at the Farnham Dudgeon Civic Center, 405 Mero Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Marcy D. Ches, Staff Attorney.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to a workers' compensation selection of physicians and treatment plans is KRS 342.735.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:096, Selection of physicians and treatment plans, as follows: It will more specifically define the procedures whereby physicians are selected in workers compensation cases

## ADMINISTRATIVE REGISTER - 39

and the instances in which treatment plans must be filed by a physician. It will more specifically define the interaction between this regulation and other statutes and regulations under KRS Chapter 342 relating to the payment of medical bills in workers compensation cases.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.260 requires the Commissioner of the Department of Workers Claims to prepare such administrative regulations as he considers necessary to carry on his work and the work of the administrative law judges under KRS Chapter 342. KRS 342.735 requires the commissioner to establish regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

(d) The benefits expected from this administrative regulation are: More specifically defined procedures for selecting physicians and filing treatment plans.

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

### **CABINET FOR HEALTH SERVICES Department for Health Services Division of Environmental Health and Community Safety**

Date: June 7, 1996

Cabinet for Health Services

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 47:080**, Training and certification requirements for persons who perform lead-hazard detection and abatement. **902 KAR 47:090**, Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard and detection and abatement. **902 KAR 47:100**, Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement in target housing and child-occupied facilities.

(2) The Cabinet for Health Services, Department for Health Services, Division of Environmental Health and Community Safety, intends to promulgate three "new" administrative regulations governing the subject matters cited above.

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

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 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 July 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr, Acting General Counsel, Cabinet for Health Services, 275 East Main Street, 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 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 these administrative regulations relating to 902 KAR 47:080, 902 KAR 47:090, 902 KAR 47:100 is 1996 Ky. Acts ch. 168.

(b) The "new" administrative regulations that the Cabinet for Health Services, Department for Health Services, intends to promulgate, concern requirements for training and certification of persons who perform lead-hazard detection and abatement; training programs and providers of educational programs to those individuals who perform lead-hazard and detection, etc.; designation of permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement in target housing and child-occupied facilities.

(c) The necessity and function of the proposed administrative regulations are as follows: Establish requirements for training and certification for persons who perform lead-hazard detection and abatement; accreditation of training programs and providers of educational programs for individuals who perform lead-hazard and detection and abatement; permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement in target housing and child-occupied facilities.

(d) The benefits expected from the administrative regulation are: Competent and effective training requirements, accreditation requirements and surveillance and abatement standards and methodology, under these regulation also concern appropriate training to ensure reduction in potential lead poisoning, and accompanying potential for lasting harmful effects to children and adults.

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### Office of Radiation and Toxic Agents

Date: June 14, 1996  
Cabinet for Health Services  
Department for Health Services  
Office of Radiation and Toxic Agents

(1) **902 KAR 105:070.** Violations and enforcements.

(2) The Cabinet for Health Services intends to amend 902 KAR 105:070 which establishes uniform enforcement procedures applicable to the cabinet's regulations relating to the certification of operators of sources of radiation.

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

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

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

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Health Services, 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 211.870 provides the statutory authority for the promulgation of administrative regulations relating to operators of sources of radiation. KRS 194.050 and 211.090 establish enforcement requirements and public health and safety responsibilities, respectively of the secretary. KRS Chapter 13B establishes the requirements for administrative hearings whereas EO 95-79 reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services.

(b) The administrative regulation the Cabinet for Health Services intends to promulgate will amend 902 KAR 105:070E. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

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

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

### Division of Maternal and Child Health

Date: June 14, 1996  
Cabinet for Health Services  
Department for Health Services  
Division of Maternal and Child Health

(1) **902 KAR 115:020.** Enforcement of Water Fluoridation Program.

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

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

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

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

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulations Coordinator, Department for Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for 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 902 KAR 115:020 is KRS 211.190(11), 194.050, 211.180, KRS Chapter 13B and EO 95-79.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 115:020. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

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

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

### CABINET FOR FAMILIES AND CHILDREN

#### Department for Social Services

#### Division of Family Services

Date: June 15, 1996

Cabinet for Families and Children

Department for Social Services

Division of Family Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation the Department for Social Services intends to promulgate will not amend an existing administrative regulation. It will establish a private child care level of care reimbursement system with four (4) levels that will include a rate based on the needs of the child. Providers will receive a set rate for each child, based on the level of care needed, and will provide services consistent with individual treatment plans. Providers must agree to provide services under the levels of care system which will include a "no reject, no eject" clause. Additionally the regulation will establish procedures for a "gatekeeper" who will be responsible for assigning levels of treatment needed by children, conducting utilization review and monitoring for quality assurance of the placements.

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

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

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

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

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

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

## ADMINISTRATIVE REGISTER - 42

### CABINET FOR HEALTH SERVICES Department for Medicaid Services

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

(1) **907 KAR 1:022**, Nursing facility and intermediate care facility for the mentally retarded services; and **907 KAR 1:025**, Payments for nursing facility and intermediate care facility for the mentally retarded services.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate administrative regulations governing the subject matters listed above.

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to services and payments for nursing facility and intermediate care facility for the mentally retarded by the Medicaid Program are: KRS 194.050, 42 CFR Parts 430, 431, 432, 433, 435, 440, 441, 442, 47, 455, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s, and EO 95-79.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:022 and 907 KAR 1:025 to provide for additional ventilator facility beds and to revise the incorporated by reference manuals accordingly.

(c) The necessity and function of the proposed administrative regulation is as follows: 907 KAR 1:022 sets forth the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid Program. 907 KAR 1:025 sets forth the method for determining amounts payable by the Medicaid Program for nursing facility services and intermediate care facility for the mentally retarded services.

(d) The benefits expected from administrative regulation are: Additional ventilator facility beds will be available for the treatment of ventilator dependent Medicaid eligible recipients.

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

(1) **907 KAR 1:026**, Dental 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 July 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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



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(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for 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 dental services are KRS 194.050 and 42 USC 1396a-d.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:026 to correspond with policy in the Dental Manual, to update current policy, to comply with KRS Chapter 13A and EO 95-79, to make policy clarifications, to remove obsolete policy, and to incorporate by reference a new Dental Manual which has been streamlined and contains updated information on: Current Dental Terminology (CDT) codes, billing agent, termination of provider participation, freedom of choice, KenPAC, and Lock-in.

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

(d) The benefits expected from administrative regulation are: To furnish participating Medicaid providers with the most updated policy and procedures and to comply with KRS Chapter 13A relating to incorporated by reference materials.

Date: June 15, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:028**, Other laboratory and X-ray 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 July 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to other laboratory and x-ray services are KRS 194.050, 42 CFR 440.30, 493, and 42 USC 1396(d).

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:028, Other laboratory and X-ray services to incorporate by reference the Independent Laboratory and Other Laboratory and X-Ray Services Manual, to repeal 907 KAR 1:404, to reference 907 KAR 1:575, to comply with KRS Chapter 13A, to make minor policy clarifications, and to comply with EO 95-79. The incorporated by reference contains the following changes:

1. To include other laboratory and x-ray services policy and reimbursement information;
2. To reflect the Clinical Laboratory Improvement Amendments of 1988;
3. To update the Current Procedural Terminology (CPT) codes;
4. To update the billing agent information;
5. To reflect minor policy clarifications;
6. To update the information relating to termination of provider participation;
7. To update the information on freedom of choice;
8. To streamline the manual; and
9. To comply with KRS Chapter 13A and EO 95-79.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to other laboratory and x-ray services for which payment shall be made by the Medicaid Program.

(d) The benefits expected from administrative regulation are: To furnish participating Medicaid providers with an updated Independent Laboratory Services and Other Lab and X-Ray Services Manual which contains all the necessary information they will need as a provider. and to comply with KRS Chapter 13A incorporation by reference requirements.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY  
31 KAR 4:040E

This emergency administrative regulation amends an existing administrative regulation relating to absentee ballots cast in the clerk's office so as to prevent unlawful activity. This emergency administrative regulation is needed in order to ensure the proper conduct of absentee voting conducted in the clerk's office for the November, 1996, general election and, therefore, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
JOHN Y. BROWN III, Chairman

GENERAL GOVERNMENT CABINET  
State Board of Elections

**31 KAR 4:040E. Absentee [Special] ballots cast in county clerk's office.**

RELATES TO: KRS 117.086(2)  
STATUTORY AUTHORITY: KRS 117.015(1), 117.086(5) [(3)]  
EFFECTIVE: June 13, 1996

NECESSITY AND FUNCTION: This administrative regulation is necessitated by KRS 117.086(5) [(3)] which requires the State Board of Elections to issue administrative regulations to provide for casting ballots as provided in KRS 117.086(4) [(2)] which requires the county clerks in each county to designate a location within their office where the absentee [special] ballots may be cast secretly. This administrative regulation provides guidelines as to the establishment of a voting place within the clerk's office [prohibits certain activities by the clerk and their deputies when special ballots are being voted in the office].

Section 1. Not less than thirty (30) days prior to any general, special, or regular election, the clerk of each county shall establish within their office a special area to be used solely for the purpose of allowing those voters to cast absentee [special] ballots pursuant to KRS 117.086(2) within the clerk's office. The area so designated and established shall afford such voters the opportunity to cast their ballots in secret. [The area designated may or may not utilize a special booth for the casting of such ballot.] In those counties in which the clerk's office does not have sufficient physical space in which to designate and place a special area away, and apart, from the normal activities of the clerk's office, the booth or area may be located outside the physical limitations of the clerk's office in an area such as a hallway or other office as long as such area is capable of direct supervision by the clerk or his deputies at such time as that area is being utilized for the purpose of casting absentee [special] ballots. In such cases, the clerk shall insure that while any person is casting an absentee [special] ballot the area shall remain free and clear of any other persons, except any person assisting the voter pursuant to KRS 117.255. No person other than the county clerk, the county clerk's staff and other persons transacting business normally conducted in the clerk's office shall be permitted in the clerk's office or area outside the clerk's office where absentee voting is being handled while absentee voting is being conducted, except for the purpose of voting.

[Section 2. At such time as the clerk establishes and begins to utilize a special area of his office, or elsewhere, such area shall become a polling place within the meaning of KRS 117.235, and the provisions of KRS 117.235(3) prohibiting electioneering at the polling place or within a distance of 500 feet from any entrance to a polling place shall be applicable. Electioneering as defined by KRS 117.235(3) shall include the displaying of signs, the distribution of campaign literature, cards or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any candidate or question on the ballot in any manner. This prohibition shall not be construed to prohibit the clerk, or his deputies, from answering any questions concerning any issue or item on the ballot or the manner of voting the same. Any clerk, or any deputy, shall be prohibited, however, from assisting any voter requesting assistance pursuant to the provisions of KRS 117.255.]

JOHN Y. BROWN III, Chairman  
APPROVED BY AGENCY: May 28, 1996  
FILED WITH LRC: June 13, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: George Russell

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

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

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

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

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

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

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

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

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administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic effect on the Commonwealth of Kentucky.

(b) Kentucky:

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

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 120 county boards of elections which are charged with administering the election laws within their counties.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to county boards of elections administering the election laws.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation will have no effect on the expenditures and revenues of a local government.

Revenues (+/-):

Expenditures (+/-):

Other explanation:

### STATEMENT OF EMERGENCY

31 KAR 5:010E

This emergency administrative regulation amends an existing administrative regulation to permit electronic transmission of absentee ballots for military and related personnel serving on active duty outside the United States in the November 5, 1996 general election. This emergency administrative regulation is needed in order to preserve the absentee voting rights of residents of Kentucky who are military and related personnel serving on active duty outside the United States for the November, 1996, general election and, therefore, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

JOHN Y. BROWN III, Chairman

### GENERAL GOVERNMENT CABINET Board of Elections

#### 31 KAR 5:010E. Absentee voting.

RELATES TO: KRS Chapter 117

STATUTORY AUTHORITY: KRS 117.079 [~~SB-8, 1991 Special Session of the General Assembly~~]

EFFECTIVE: June 13, 1996

NECESSITY AND FUNCTION: This administrative regulation is necessitated by KRS 117.079 [~~447.085~~] which requires the State Board of Elections to issue administrative regulations to preserve absentee voting rights of residents of Kentucky who are military and related personnel serving on active duty outside the United States.

Section 1. Electronic transmission of absentee ballots for military and related personnel serving on active duty outside the United States shall be permitted in the November 5, 1996 general [~~May 28, 1994 Primary~~] election.

Section 2. (1) Electronic transmission of an absentee ballot and application to persons authorized by Section 1 of this administrative regulation shall include transmission of the:

(a) Federal post card application to the county clerk from the voter; and

(b) Absentee ballot from the county clerk to the voter.

(2) The voter shall return the absentee ballot by mailing it to the county clerk in an official federal write-in absentee ballot security envelope, which contains an inner envelope.

(3) If security envelopes are not available, the absentee ballot may be returned in two (2) plain envelopes which contain all of the information on the official federal write-in absentee security envelope.

Section 3. The transmission of the absentee ballots by the county clerk shall be accomplished by using the facsimile number provided to the State Board of Elections by the presidential designee pursuant to the Uniform and Overseas Absentee Voting Act 42 USC 1973ff.

JOHN Y. BROWN III, Chairman

APPROVED BY AGENCY: May 28, 1996

FILED WITH LRC: June 13, 1996 at 4 p.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: George Russell

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

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition). Experience indicates that there will be minimal, if any, costs or savings to the county board of elections as a result of this administrative regulation.

1. First year following implementation:

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2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

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

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

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

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic effect on the Commonwealth of Kentucky.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This method was selected because it had been utilized in the past with a minimal amount of expense and problems for the county clerks.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 120 county boards of elections which are charged with administering the election laws within their counties.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to county boards of elections administering the election laws.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Experience indicates that this administrative regulation will have minimal impact, if any, on the expenditures of

local government.

Revenues (+1):

Expenditures (+/-):

Other explanation:

### STATEMENT OF EMERGENCY

101 KAR 2:100E

Pursuant to KRS 13A.190, the Governor of the Commonwealth does hereby declare that proposed administrative regulation 101 KAR 2:100 should be enacted on an emergency basis in order to comply with the requirements of KRS Chapter 18A that the Department of Personnel provide administrative regulations governing leave and overtime for state employees. KRS 18A.110 provides that the Department of Personnel shall adopt rules with regard to the administration of benefits for state employees, including leave and overtime. Section 1 governing forfeiture of annual leave in the event of a dismissal for cause or untimely notice of resignation is being restored to provide agencies with a tool to discourage employees from abandoning positions without appropriate notice. This change is necessary to public health and safety because resignation without notice could create critical staffing shortages in state hospitals and prisons, result in adults and children left without protective services and cause delays for recipients in state and federal entitlement programs. Recent changes to federal regulations governing the administration of the Family and Medical Leave Act and recent court decisions on the application of compensatory leave require immediate changes to this administrative regulation to bring it into compliance with federal mandates. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

ROBERT S. PETERS, Secretary

### PERSONNEL CABINET

#### 101 KAR 2:100E. Leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, PL 103-3

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, PL 103-3

EFFECTIVE: May 23, 1996

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes policies governing these subject matters.

Section 1. Annual Leave. (1)(a) Each full-time employee in the state service, except a seasonal, temporary, per diem, and emergency employee, and a part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(b) A full-time employee shall have worked more than half of the workdays in a month to qualify for annual leave. An employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned.

(c) In computing months of total service for the purpose of earning annual leave, only the months:

1. For which a full-time employee earned annual leave shall be counted; or

2. In which a part-time employee worked at least 100 hours shall be counted.

(d) If an employee is changed from part time to full time, the months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.

(e) Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, unless the dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) If an employee is changed from full time to part time, the months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service.

(g) A part-time employee who works less than 100 hours a month shall not be entitled to annual leave.

(2)(a) Annual leave may be accumulated and carried forward from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(b) Leave in excess of the amounts specified in paragraph (a) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(c) The amount of annual leave that may be accumulated, and the amount of annual leave that may be converted to sick leave, shall be determined by computing months of service as provided by subsection (1)(a) of this section.

(3) Absence due to sickness, injury, or disability in excess of the amount authorized for such purposes may, at the request of the employee be charged against annual leave.

(4)(a) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with an employee's request.

(b) An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) An employee shall be charged with annual leave for absence only on days on which he would otherwise work and receive pay.

(6)(a) Annual leave shall accrue if an employee is working or on authorized leave with pay.

(b) Annual leave shall not accrue if an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise moved from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he shall have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid

leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) An employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month, shall remain eligible for state contribution for life insurance and health benefits in the following month.

(10)(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2) of this section.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next day, shall retain his accumulated leave in the receiving agency.

(d) The effective date of a separation shall be the last work day.

(e) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation, unless in the exercise of due diligence, the employee was unable to give the required notice through no fault of his own, shall not be paid [in a lump sum] for accumulated annual leave [not to exceed the maximum amounts set forth in Section 2(2) of this administrative regulation].

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1)(a) An employee in the state service, except an emergency, per diem and part-time employee who works less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service.

(b) An employee shall have worked more than half of the workdays in a month to qualify for sick leave with pay.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A part-time employee who works at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service.

(e) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave was earned.

(2)(a) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(b) In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only the months for which an employee earned sick leave shall be used.

(c) If an employee is changed from part time to full time, the months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service.

(d) A part-time employee who works at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service.

(e) In computing months of total service for a part-time employee who works at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only the months in which the employee worked at least 100 hours shall be used.

(f) If an employee is changed from full time to part time, the months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who is rehired after having been dismissed for cause from state service shall receive credit for service prior to the dismissal, if the dismissal was not due to a violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4)(a) Sick leave shall accrue if an employee is working or on authorized leave with pay.

(b) Sick leave shall not accrue if an employee is on educational leave with pay.

(5) An appointing authority shall grant or require the use of accrued sick leave with pay if an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph shall be limited to three (3) days, and may be extended for good cause at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7)(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by sickness, or illness, or pregnancy, if the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(c) If an employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(d) If the reasonable accommodation is necessary, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(e) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay; and

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

3. Is unable to return to work; or

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

5. The appointing authority has been unable to place him in such a vacant position.

(f) An employee who has been resigned under this subsection shall retain reinstatement privileges that were accrued during his service in the classified system.

(8) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) An employee shall utilize his paid leave days consecutively if he:

1. Is unable to work; and

2. Has elected to use paid leave to qualify for state contribution for life insurance and health benefits.

(c) An employee who has exhausted paid leave shall qualify for state contribution for life insurance and health benefits if he works for more than half of the workdays in a month.

(d) If an employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(e) An employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise moved from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11)(a) An employee shall be credited for accumulated sick leave if he is:

1. Separated by proper resignation, layoff, retirement; or

2. Granted leave without pay.

(b) A former employee who is reinstated or reemployed shall be credited with the unused sick leave balance credited to him upon separation.

(12)(a) If an absence is due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used, Workers' Compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that Workers Compensation Benefits were assigned.

(13) Application for sick leave.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examina-

tion, and for sick leave without pay.

(c) If he is ill, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. (1)(a) An employee in state service shall qualify for twelve (12) weeks of family leave if he has:

1. Completed twelve (12) months of service; and
2. Worked at least 1,250 hours in the preceding year.

(b) Unused family leave shall not be carried over from year to year. This section shall be construed in a manner consistent with the Family and Medical Leave Act of 1993, 20 USC 2601, et seq. and 29 CFR Part 825.

(2)(a) A week of family leave shall be the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family leave shall be used for calculating the employee's normal work week.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family leave), the hours worked under the new schedule shall be used for calculating the employee's normal work week.

(3) An employee who has qualified for ~~requested~~ family leave shall be notified of the family leave designation, in writing, within two (2) business days of the date on which the request was made.

(b) An employee shall request family leave as far in advance as reasonable.

(c) The appointing authority shall require the employee to utilize accumulated sick and annual leave prior to granting unpaid family leave, provided that the employee may request to reserve ten (10) days of paid sick leave and annual. The amount of available family leave shall be reduced by the amount of paid leave used.

(d) An appointing authority shall grant family leave because of:

1. A serious health condition, of the employee, that makes the employee temporarily unable to perform the essential functions of his position;

2. The birth of a child of an employee, adoption of a child by an employee, or the placement of a foster child under an agreement with an agency of the Commonwealth or other state government;

3. The care of a newborn child of the employee, adoption of a child by the employee, or placement of a foster child with the employee, within one (1) year of the birth, adoption or placement;

4. The care of an employee's spouse, parent, child, or other family member who has:

a. Resided with the employee for not less than thirty (30) days prior to the request; and

b. A serious medical condition.

(e) A medical condition shall be deemed a serious medical condition if it:

1. Requires the employee to receive inpatient care or continuing treatment by a health provider; and

2. Renders the employee incapable of performing the duties of his

position.

(f) A child shall include a person who is:

1. Under eighteen (18) years old; or

2. Is incapable of self-care because of a mental or physical disability.

(4)(a) An employee who requests family leave for a serious medical condition shall supply a certification on "Family And Medical Leave Request Form" from a health care provider that states that the:

1. Employee is in need of care; or

2. Employee is needed to care for a family member; or

3. Presence of the employee would be beneficial to the family member in need of care.

(b) If an employee requests intermittent leave, or leave on a reduced leave schedule due to a serious medical condition of the employee or family member, he shall supply a certification from a licensed health care provider that states:

1. That leave is medically necessary; and

2. Specifies the expected duration and schedule of the leave.

(c) A licensed health care provider shall be a:

1. Doctor of medicine;

2. Doctor of osteopathy;

3. Podiatrist;

4. Dentist;

5. Clinical psychologist;

6. Optometrist;

7. Chiropractor;

8. Nurse practitioner;

9. Nurse midwife; or

10. Certified Christian Science practitioner.

(d) If an employee submits a complete certification signed by the health care provider, the appointing authority shall not request additional information from the employee's health care provider. If the appointing authority has reason to doubt the validity of a medical certification the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(e) If the opinions of the employee's health provider and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider. An appointing authority may require recertification of the need for family leave every thirty (30) working days.

(f) All documents relating to family leave shall be maintained separate from the personnel file and shall be confidential.

(5) An appointing authority may temporarily reassign an employee to an available alternative position with equivalent pay and benefits, if the:

(a) Employee requests intermittent leave, or a reduced work schedule to care for a seriously ill family member or because of his own serious medical condition;

(b) Need for the leave is reasonably based on planned medical treatment;

(c) Employee is qualified for the position; and

(d) Temporary assignment better accommodates recurring periods of leave than the employee's regular job.

(6) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave or shall have been on family leave during the previous month subject to the following conditions:



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(a) Any combination of work days, paid leave and family leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) An employee shall utilize his paid leave days consecutively if he:

1. Is unable to work; and
2. Elects to use paid leave to qualify for state contributions for life insurance and health benefits.

(c) An employee shall utilize his family leave days consecutively if he:

1. Is unable to work; and
2. Elects to use family leave as the sole qualification for state contributions for life insurance and health benefits.

(d) An employee who has exhausted paid leave and family leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(e) Except as provided by paragraph (f) of this subsection, an employee shall reimburse the Commonwealth for state contributions paid on his behalf if he:

1. Uses family leave as the sole qualification for state contributions for life insurance and health benefits; and
2. Fails to return to work for thirty (30) calendar days after his family leave is exhausted.

(f) The employee shall not be required to reimburse the Commonwealth if the reason the employee does not return is:

1. Due to the continuation, recurrence or onset of a serious health condition which would entitle the employee to family leave under this administrative regulation; or
2. Other circumstances beyond the employee's control, such as:
  - a. A relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; or

b. The employee is laid off while on leave.

(g) Circumstances are not beyond the employee's control if:

1. An employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or
2. A parent decides not to return to work to stay with a newborn child.

(h) An employee on family leave shall be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make an employee contribution for life insurance and health benefits and shall be notified by the agency, in writing, fifteen (15) calendar days before benefits expire.

(i) If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. Life insurance and health benefits shall be restored thirty (30) calendar days after his return to work. Effective the first day of the employee's return, benefits shall be restored to the same level of coverage that existed when leave commenced.

(7) At the conclusion of the family leave, an employee shall be restored to the same job that the employee held before going on leave. The employee shall be returned to the same shift or equivalent schedule. If special qualifications are required for a position and said qualifications have lapsed during the employee's leave, the employee may be reassigned to different duties and given a reasonable opportunity to fulfill the requirements after returning to work.

Section 4. Court Leave. (1) An employee shall be entitled to leave of absence from duties during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with subpoenas by a court, or administrative agency or body of the federal or state government or any political subdivision thereof;

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1)(a) Appointing authorities shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA).

(b) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments.

(d) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(2) An employee who is transferred or otherwise moved from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

- (a) Regular hourly rate of pay; or
- (b) Average regular rate of pay for the final three (3) years of employment.

(4) An appointing authority shall permit an employee who has accrued compensatory leave to take compensatory leave if it will not unduly disrupt the operations of the agency.

(5) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by paragraphs (a) to (c) of this subsection.

(a) An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

(b) The election to receive compensatory leave in lieu of paid overtime shall be in writing and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

(c) An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(6) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(7)(a) An employee except one who is in a policy making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay.

(b) If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(8)(a) An employee who is not in a policy making positions, shall be paid for fifty (50) hours at his regular hourly rate of pay upon accumulating at the end of the pay period, 240 hours of compensatory leave.

(b) The employee's leave balance shall be reduced accordingly.

(9) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave



for the number of hours worked that:

- (a) Exceed the number of normally prescribed hours of duty; and
- (b) Do not exceed:

- 1. The maximum amount of compensatory time that is permitted; and
- 2. Forty (40) hours.

(10) Compensatory leave used during the workweek in which it is earned shall not constitute hours worked for computing paid overtime or time and one-half (1 1/2) compensatory time.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds ten (10) working days in a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee, upon receiving this leave.

Section 7. Voting Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) The absence shall not be charged against leave.

(3) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) An appointing authority may grant special leave for education or training.

(2)(a) If approved by the commissioner, an appointing authority may grant a leave of absence for continuing education or training.

(b) Leave may be granted for a period not to exceed twenty-four (24) months.

(c) Leave may be granted with or without pay.

(d) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that:

- 1. Relate to the employee's work; and
- 2. Will benefit the state.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(4)(a) If approved by the commissioner, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(b) Leave shall not exceed thirty (30) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee:

- 1. He shall be made whole for the period of the leave; and
- 2. Records relating to the investigation shall be purged from agency and department files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) An employee shall utilize his paid leave days consecutively if he:

- 1. Is unable to work; and
- 2. Has elected to use paid leave to qualify for state contribution for life insurance and health benefits.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized and unreported absence shall be considered absence:

- (a) Without leave; and
- (b) Absence may constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Certification of Health Care Provider (1996)";
- (b) "Letter for Designation of FMLA (1996)"; and
- (c) "Application for Family Leave (1996)".

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT S. PETERS, Secretary

PAUL E. PATTON, Governor

APPROVED BY AGENCY: May 17, 1996

FILED WITH LRC: May 23, 1996 at 8 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All classified employees in the executive branch of state government.

(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: Minor variations on current reporting.

1. First year following implementation: No significant change.

2. Second and subsequent years: No significant change.

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings: None

1. First Year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No significant change.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No change from current sources.

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

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: None available since the regulation is amended to conform to federal mandates.

(8) Assessment of expected benefits: Protection from potential liability associated with noncompliance with federal regulations. Ability to discourage health, safety and problems with federal mandates on prompt first payment by forfeiting annual leave of employees who are dismissed for cause or who create staff shortages by failing to give notice of resignation.

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

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None once the amendments are implemented.

(a) Necessity of proposed regulation in conflict: None

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

(10) Any additional information or comments: These regulations are necessary to conform to federal regulations and rulings on the Family and Medical Leave Act and the Fair Labor Standards Act.

(11) TIERING? Is tiering applied? Yes. This regulation governs the unclassified service. 101 KAR 2:100 is being amended to provide parallel changes for the classified service.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regula-

tions on June 4, 1993 (2 CER Par 825).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

#### STATEMENT OF EMERGENCY

101 KAR 3:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth does hereby declare that proposed administrative regulation 101 KAR 3:010 should be enacted on an emergency basis in order to comply with the requirements of KRS Chapter 18A that the Department of Personnel provide administrative regulations governing leave and overtime for state employees. KRS 18A.110 provides that the Department of Personnel shall adopt rules with regard to the administration of benefits for state employees, including leave and overtime. Section 1 governing forfeiture of annual leave in the event of a dismissal for cause or untimely notice of resignation is being restored to provide agencies with a tool to discourage employees from abandoning positions without appropriate notice. This change is necessary to public health and safety because resignation without notice could create critical staffing shortages in state hospitals and

prisons, result in adults and children left without protective services and cause delays for recipients in state and federal entitlement programs. Recent changes to federal regulations governing the administration of the Family and Medical Leave Act and recent court decisions on the application of compensatory leave require immediate changes to this regulation to bring it into compliance with federal mandates. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
ROBERT S. PETERS, Secretary

**PERSONNEL CABINET**

**101 KAR 3:010E. Leave administrative regulations for unclassified service.**

RELATES TO: KRS 18A.155, 61.394, PL 103-3

STATUTORY AUTHORITY: KRS 18A.155, 18A.195, PL 103-3

EFFECTIVE: May 23, 1996

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these administrative regulations shall be approved by the Governor. This administrative regulation adopts and applies 101 KAR 2:100 governing leave policies to the unclassified service.

Section 1. Annual leave. (1)(a) Each full-time employee in the state service, except a seasonal, temporary, per diem, and emergency employee, or a part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(b) A full-time employee shall have worked more than half of the workdays in a month to qualify for annual leave. An employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned.

(c) In computing months of total service for the purpose of earning annual leave, only the months:

1. For which a full-time employee earned annual leave shall be counted; or

2. In which a part-time employee worked at least 100 hours shall be counted.

(d) If an employee is changed from part time to full time, the months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.

(e) Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, unless the dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) If an employee is changed from full time to part time, the months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service.

(g) A part-time employee who works less than 100 hours a month shall not be entitled to annual leave.

(2)(a) Annual leave may be accumulated and carried forward from one (1) calendar year to the next as provided in this paragraph.

**Months of Service**

0-59 months  
60-119 months  
120-179 months  
180-239 months  
240 months and over

**Maximum Amount**

Thirty (30) workdays  
Thirty-seven (37) workdays  
Forty-five (45) workdays  
Fifty-two (52) workdays  
Sixty (60) workdays

(b) Leave in excess of the amounts specified in paragraph (a) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(c) The amount of annual leave that may be accumulated, and the amount of annual leave that may be converted to sick leave, shall be determined by computing months of service as provided by subsection (1)(a) of this section.

(3) Absence due to sickness, injury, or disability in excess of the amount authorized for such purposes may, at the request of the employee be charged against annual leave.

(4)(a) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with an employee's request.

(b) An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) An employee shall be charged with annual leave for absence only on days on which he would otherwise work and receive pay.

(6)(a) Annual leave shall accrue if an employee is working or on authorized leave with pay.

(b) Annual leave shall not accrue if an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he shall have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) An employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month, shall remain eligible for state contribution for life insurance and health benefits in the following month.

(10)(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2) of this section.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the

classified service, or resigns one (1) day and is employed the next day, shall retain his accumulated leave in the receiving agency.

(d) The effective date of a separation shall be the last work day.

(e) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation, unless in the exercise of due diligence, the employee was unable to give the required notice through no fault of his own, shall not be paid [in a lump sum] for accumulated annual leave [not to exceed the maximum amount set forth in Section 1(2) of this administrative regulation].

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1)(a) An employee in the state service, except an emergency, per diem and part-time employee who works less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service.

(b) An employee shall have worked more than half of the workdays in a month to qualify for sick leave with pay.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A part-time employee who works at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service.

(e) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave was earned.

(2)(a) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(b) In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only the months for which an employee earned sick leave shall be used.

(c) If an employee is changed from part time to full time, the months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service.

(d) A part-time employee who works at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service.

(e) In computing months of total service for a part-time employee who works at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only the months in which the employee worked at least 100 hours shall be used.

(f) If an employee is changed from full time to part time, the months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who is rehired after having been dismissed for cause from state service shall receive credit for service prior to the dismissal, if the dismissal was not due to a violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on

accumulation.

(4)(a) Sick leave shall accrue if an employee is working or on authorized leave with pay.

(b) Sick leave shall not accrue if an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay if the employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph shall be limited to three (3) days, and may be extended for good cause at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7)(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by sickness, or illness, or pregnancy, if the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(c) If an employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(d) If the reasonable accommodation is necessary, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(e) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay; and

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

3. Is unable to return to work; or

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

5. The appointing authority has been unable to place him in such a vacant position.

(f) An employee who has been resigned under this subsection shall retain reinstatement privileges that were accrued during his service in the classified system.

(8) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

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(b) An employee shall utilize his paid leave days consecutively if he:

1. Is unable to work; and
2. Has elected to use paid leave to qualify for state contribution for life insurance and health benefits.

(c) An employee who has exhausted paid leave shall qualify for state contribution for life insurance and health benefits if he works for more than half of the workdays in a month.

(d) If an employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(e) An employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise moved from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11)(a) An employee shall be credited for accumulated sick leave if he is:

1. Separated by proper resignation, layoff, retirement; or
2. Granted leave without pay in excess of thirty (30) working days.

(b) A former employee who is reinstated or reemployed shall be credited with the unused sick leave balance credited to him upon separation.

(12)(a) If an absence is due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used, Workers' Compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that Workers' Compensation Benefits were assigned.

(13) Application for sick leave.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay.

(c) If he is ill, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. It shall be the responsibility of the appointing authority to administer family leave in compliance with the Federal Family and Medical Leave Act of 1993 and regulations

promulgated thereunder found in 29 CFR Part 825. Each employee in a nonexempt, nonpolicy making position shall be entitled to family leave as set out in 101 KAR 2:100, Section 3.

Section 4. Court Leave. (1) An employee shall be entitled to leave of absence from duties during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with subpoenas by a court, or administrative agency or body of the federal or state government or any political subdivision thereof;

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1)(a) Appointing authorities shall comply with the overtime and compensatory leave provisions of this section and the Fair Labor Standards Act (FLSA).

(b) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments.

(d) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(2) An employee who is transferred or otherwise moved from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

(a) Regular hourly rate of pay; or

(b) Average regular rate of pay for the final three (3) years employment.

(4) An appointing authority shall permit an employee who has accrued compensatory leave to take compensatory leave if it will not unduly disrupt the operations of the agency.

(5) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for all hours worked in excess of forty (40) per week as provided by paragraphs (a) to (c) of this subsection.

(a) An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

(b) The election to receive compensatory leave in lieu of paid overtime shall be in writing and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

(c) An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(6) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(7) An employee except one who is in a policy making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay.

(b) If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(8)(a) An employee who is not in a policy making positions, shall be paid for fifty (50) hours at his regular hourly rate of pay upon accumulating, at the end of the pay period, 240 hours of compensatory

ry leave.

(b) The employee's leave balance shall be reduced accordingly.

(c) An employee in a policy making position shall be paid for all accrued compensatory leave, not to exceed 240 hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory leave in the receiving agency.

(9) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

(a) Exceed the number of normally prescribed hours of duty; and

(b) Do not exceed:

1. The maximum amount of compensatory time that is permitted; and

2. Forty (40) hours.

(10) Compensatory leave used during the work week in which it is earned shall not constitute hours worked for computing paid overtime or time and one-half (1 1/2) compensatory time.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds ten (10) working days in a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee, upon receiving this leave.

Section 7. Voting Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) The absence shall not be charged against leave.

(3) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) An appointing authority may grant special leave for education or training.

(2)(a) If approved by the commissioner, an appointing authority may grant a leave of absence for continuing education or training.

(b) Leave may be granted for a period not to exceed twenty-four (24) months.

(c) Leave may be granted with or without pay.

(d) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that:

1. Relate to the employee's work; and

2. Will benefit the state.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period

not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(4)(a) If approved by the commissioner, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(b) Leave shall not exceed thirty (30) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee:

1. He shall be made whole for the period of the leave; and

2. Records relating to the investigation shall be purged from agency and department files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) An employee shall utilize his paid leave days consecutively if he:

1. Is unable to work; and

2. Has elected to use paid leave to qualify for state contribution for life insurance and health benefits.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized and unreported absence shall be considered absence:

(a) Without leave; and

(b) Absence may constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certification of Health Care Provider (1996)";

(b) "Letter for Designation of FMLA (1996)"; and

(c) "Application for Family Leave (1996)".

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.



## ADMINISTRATIVE REGISTER - 57

ROBERT S. PETERS, Secretary

PAUL E. PATTON, Governor

APPROVED BY AGENCY: May 17, 1996

FILED WITH LRC: May 23, 1996 at 8 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All classified employees in the executive branch of state government.

(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: Minor variations on current reporting.

1. First year following implementation: No significant change.

2. Second and subsequent years: No significant change.

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings: None

1. First Year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No significant change.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No change from current sources.

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

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: None available since the regulation is amended to conform to federal mandates.

(8) Assessment of expected benefits: Protection from potential liability associated with noncompliance with federal regulations. Ability to discourage health, safety and problems with federal mandates on prompt first payment for forfeiting annual leave of employees who are dismissed for cause or who create staff shortages by failing to give notice of resignation.

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

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None once the amendments are implemented.

(a) Necessity of proposed regulation in conflict: None

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

(10) Any additional information or comments: These regulations are necessary to conform to federal regulations and rulings on the Family and Medical Leave Act and the Fair Labor Standards Act.

(11) TIERING? Is tiering applied? Yes. This regulation governs the unclassified service. 101 KAR 2:100 is being amended to provide parallel changes for the classified service.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CER Par 825).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

### STATEMENT OF EMERGENCY

201 KAR 1:045E

The Kentucky State Board of Accountancy was recently advised by the organization that prepares and grades the Uniform Certified Public Accountant Examination of changes to the titles given to some

of the examination subjects. The administrative regulation needs to be amended to reflect these changes. An emergency administrative regulation is necessary since the board was just recently made aware of these changes by the testing organization regarding the examination given on May 8-9, 1996, and for subsequent examinations. The normal time period required for this change to this administrative regulation to go into effect would be long after the administration of the examination on May 8-9, 1996 and possibly the November examination. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
ASA L. HORD, CPA, President

**GENERAL GOVERNMENT CABINET  
State Board of Accountancy**

**201 KAR 1:045E. Examination subjects, grading and reexamination.**

RELATES TO: KRS 325.261, 325.270  
STATUTORY AUTHORITY: KRS 325.240  
EFFECTIVE: May 22, 1996

NECESSITY AND FUNCTION: This administrative regulation governs examination subjects, grading and reexamination.

Section 1. Examination Subjects. Examinations shall include questions or problems in:

- (1) Accounting & Reporting - Taxation, Managerial, and Governmental and Not-for-Profit Organizations (ARE);
- (2) Financial Accounting & Reporting [~~Business Enterprises~~] (FARE);
- (3) Auditing (AUDIT); and
- (4) Business Law & Professional Responsibilities (LPR).

Section 2. Grading and Reexamination Procedures. (1) A candidate shall pass all subjects of the examination to be considered for a certificate.

- (2) The passing score shall be seventy-five (75) on each subject.
- (3) If during one (1) examination administration a candidate receives a passing score on two (2) or more subjects and grade of fifty (50) or more on each subject not passed, he shall receive conditional credit for those subjects passed.
- (4) A conditioned candidate may add conditional credits at subsequent examinations if he receives a passing grade on one (1) of the subjects reexamined and a grade of fifty (50) or more on the subject not passed. Previously attained conditional credits shall not be affected by the failure to receive a grade of fifty (50).
- (5)(a) A candidate awarded conditional credit shall pass the subjects he failed within the next six (6) examinations following the examination at which the first conditional credit was earned.
- (b) An additional number of examinations may be granted at the discretion of the board for good cause.
- (c)1. If a candidate fails to pass all of the examination subjects within the prescribed period, he shall be considered to have failed the examination.
2. He may make a new application as an examination ~~(first time)~~ candidate.
- (6) At any examination, the candidate shall take all subjects for which he has not yet received a passing grade.
- (7) The failure of a candidate to submit an answer paper for any subject of an examination shall disqualify all papers submitted by him at that examination, unless the board, in its discretion, finds good cause not to disqualify the papers submitted.
- (8) A person who took the same examination given by the board in a state other than Kentucky may have conditional credits obtained in the other state accepted by the board if:

- (a) The standards under which the conditional credits were obtained are the same as those required by this administrative regulation; and
- (b) He meets all other standards required for approval as an examination candidate in Kentucky.

~~[Section 3. Transfer of Credit. (1) Current candidates who received conditional credit for some sections of the examination prior to May 1994 shall have the credit transferred to the new sections as follows:~~

- ~~(a) Accounting Practice to Accounting & Reporting - Taxation, Managerial, and Governmental and Not for Profit Organizations, (ARE);~~
- ~~(b) Theory of Accounts to Financial Accounting & Reporting - Business Enterprises, (FARE);~~
- ~~(c) Auditing to Auditing (AUDIT); and~~
- ~~(d) Business Law to Business Law & Professional Responsibilities (LPR).~~
- ~~(2) A licensed attorney who previously obtained an exemption from the business law portion of the examination may retain the exemption if he maintains his current examination candidacy.]~~

ASA L. HORD, CPA, President  
APPROVED BY AGENCY: May 15, 1996  
FILED WITH LRC: May 22, 1996 at 9 a.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 November 6-7, 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: Since this administrative regulation only affects the full title of the exam session and previous transition session titles, there are no expenses.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no changes.

(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: Since there are no costs, revenue is not an issue.

(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: Not a public health or environment issue.

(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 examination candidates.

STATEMENT OF EMERGENCY

201 KAR 1:130E

This emergency administrative regulation amends numerous provisions of the existing administrative regulation which governs the procedure to sit for the Uniform Certified Public Accountant Examination. These amendments will alter the requirements to sit for the examination, make the examination fee nonrefundable, alter deadlines to submit applications to sit for the examination, reduce the number of times an exam candidate can apply but not sit for the exam, and cover costs incurred for complying with the Americans with Disabilities Act (ADA). These amendments are necessary to comply with recent changes to the examination procedures required by the organization that prepares and grades the exam and growing problems the board has experienced with the application process. An emergency administrative regulation is necessary to implement the changes mandated by the organization that prepares and grades the exam for the examination to be administered in November 1996. An ordinary administrative regulation will not go into effect prior to the application deadline being established in this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
ASA L. HORD, CPA, President

GENERAL GOVERNMENT CABINET  
State Board of Accountancy

201 KAR 1:130E. Examination application procedure.

RELATES TO: KRS 325.261, 325.270

STATUTORY AUTHORITY: KRS 325.240, 325.270

EFFECTIVE: May 22, 1996

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to apply for admission to the Uniform Certified Public Accountant Examination.

Section 1. Definitions. (1) "Official transcript" means an official statement from a college or university which indicates the college course work completed, degrees awarded and contains an authorizing signature or seal.

(2) "Quarter hour" means [equal to] 66/100ths of a semester hour.

(3) "Major or concentration" in accounting means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting subjects.

(4) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(5) "Accounting course" means a course that contains in the course prefix, or title, the word accounting or some variation.

Section 2. ~~[First Time]~~ Examination Applicants. The applicant shall have a Kentucky street address and submit:

(1) A completed "Application for Admission to the CPA Examination" that has been signed and acknowledged before a notary public;

(2) An official transcript which evidences completion of the educational requirements specified in KRS 325.261 which includes a major or concentration in accounting as defined in this administrative regulation. The educational requirements shall have been completed at a:

(a) College or university:

1. Within the United States; and

2. Whose course credits are accorded full recognition by a Kentucky state-funded four (4) year institution of higher education; or

(b) A postsecondary educational institution:

1. Outside the United States; and

2. Whose course credits are certified by the Foreign Academics Credentialing Service (FACS) or another credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc.;

(c) The certification required by paragraph (b) of this subsection shall state that the:

1. Foreign degree is equivalent to a baccalaureate degree earned in an accredited United States college or university; and

2. Applicant had a major or concentration in accounting;

(d) A FACS application is incorporated by reference and may be inspected or obtained at the board office, 332 West Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday; and

(3) A nonrefundable fee of \$140, in the form of a check or money order made payable to the "Kentucky State Board of Accountancy".

Section 3. ~~[An]~~ Applications and all required documents to sit for the May examination shall be received in [filed with] the board's office [or postmarked] no later than March 1st. Applications and all required documents to sit for the November examination shall be received in [filed with] the board's office [or postmarked] no later than September 1st.

Section 4. Provisional Examination Applicants. A person currently enrolled in courses which, if completed and documented prior to the time periods set forth below, shall [who expects to] satisfy the educational requirements of KRS 325.261 and this administrative regulation may [within ninety (90) days following an administration of the examination shall be eligible to] submit an application for the examination if he:

(1) Satisfies the requirements of Sections 2 and 3 of this administrative regulation;

(2) Submits an official transcript of college courses completed;

(3) ~~[(a)] Submits [an official statement from his college or university stating that the applicant will complete the course of study required by KRS 325.261 and this administrative regulation within ninety days following the examination;~~

~~[(b)] The statement shall include~~ a list of all course titles, numbers and credit hours in which the applicant is currently enrolled; and

~~[(4)] Agrees to [(a)] submit[s] a final official transcript showing completion of all educational requirements no later than June 15 following the administration of the May examination and January 15~~

following the administration of the November examination, ~~within ninety (90) days following the administration of the examination.~~

(d) If a provisional examination candidate fails to submit the information specified in this section, the results of his examination shall not be released and for any future examinations he shall apply as a new examination ~~[first-time]~~ candidate.

Section 5. Upon approval by the board of the application, the applicant shall be considered an examination candidate.

Section 6. Reexamination Application. ~~[Letter of Intent to Attend the Examination.]~~ (1) The board shall mail a reexamination application ~~[letter of intent]~~ with information about the dates, times and location of the next scheduled examination to examination candidates who fail to pass the examination and conditioned candidates. The reexamination application ~~[letter of intent]~~ shall be mailed to the most recent address provided by the candidate. The board shall not be responsible if the reexamination application is not delivered by the postal service.

(2)(a) To sit for an examination the candidate shall return the reexamination application ~~[letter of intent]~~ to the board stating if ~~[whether or not]~~ he shall ~~[intends to]~~ sit for the next scheduled examination.

(b) The reexamination application ~~[letter of intent]~~ shall be received in ~~[postmarked or filed with]~~ the board's office no later than:

1. March 1 [45], for the May examination; and
2. September 1 [45], for the November examination.

(3)(a) ~~[Except as provided in paragraph (b) of this subsection,]~~ The candidate shall return the completed reexamination application ~~[letter of intent]~~ with the reexamination fee.

(b) ~~[A candidate who is taking the examination for the first time shall submit the examination fee with his application.]~~

(c) The reexamination fee shall be thirty-five (35) dollars per subject.

(c) ~~(d)~~ The reexamination fee shall be paid by check or money order made payable to the Kentucky State Board of Accountancy.

(4) A reexamination candidate who fails to comply with the requirements of this section shall not be permitted to sit for reexamination.

~~[(a) A conditional examination candidate who fails to file a letter of intent with regard to the examination shall:~~

- ~~1. Remain a conditional examination candidate;~~
- ~~2. Not be permitted to sit for the examination; and~~
- ~~3. Forfeit deferred examination fees.~~

~~(b) The examination, for which the conditional examination candidate fails to file a letter of intent, shall count as one (1) of the six (6) additional sittings.~~

~~(5)(a) A nonconditional candidate who fails to comply with the deadlines specified in this administrative regulation shall:~~

- ~~1. Not be permitted to sit for the examination;~~
- ~~2. Forfeit fees paid; and~~
- ~~3. Have his application cancelled.~~

~~(b) If an application has been cancelled under the provisions of this section, a subsequent application shall be filed as a first-time application under Section 2 of this administrative regulation.]~~

(5) The reexamination application shall not be accepted from a person who has failed to sit for two (2) consecutive examination administrations. This person is allowed to file a new examination application. This requirement shall not apply to a person who has received conditional credit as described in 201 KAR 1:045.

Section 7. ~~[(1) Except as provided by subsections (2) and (3) of this section, an]~~ Examination and reexamination fees shall not be deferred to another ~~[the next scheduled]~~ examination. ~~[if:~~

~~(a) The candidate has filed a:~~  
~~1. Letter of intent within the period specified in Section 5 of this administrative regulation; and~~

~~2. Written request to defer the fee; and~~

~~(b) No later than five (5) days following the examination, the request specified in paragraph (a)(2) of this section has been:~~

~~1. Received by the board; or~~

~~2. Postmarked.~~

~~(2) A candidate shall be granted one (1) deferral.~~

~~(3) A candidate shall not be entitled to the refund of a deferred fee, if he fails to attend the next scheduled examination after deferral.]~~

Section 8. (1) The state board of accountancy of another state may request that one (1) of their candidates be proctored in Kentucky. The board may grant the request if a seat is available and the requesting board:

(a) Agrees to be responsible for the costs incurred by the board for all accommodations required by the Americans with Disabilities Act; and

(b) Submits [A person, who is registered with another state to sit for the Uniform CPA Examination, may request to sit for the examination in Kentucky if:

(a) A seat is available; and

(b) He has submitted] the items specified in subsection (2) of this section on or before:

1. March 15, for the May examination; or
2. September 15, for the November examination.

(2) Items required by subsection (1) of this section are:

(a) A written request from the other state board of accountancy [of the state in which he intends to be licensed]; and

(b) A check or money order in the amount of \$100 made payable to the Kentucky State Board of Accountancy; and

(c) The letter of intent required by Section 6 of this administrative regulation].

Section 9. Candidates shall display during the examination a state driver's license or a picture identification card issued by a state motor vehicle licensing agency or a passport.

(1) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(2) Failure to bring this document to the examination shall prohibit the candidate from sitting for the examination.

Section 10. Incorporation by Reference. (1) "Application Uniform ~~[for Admission to the]~~ CPA Examination" (1996 ~~[1994]~~) and "Reexamination Application" (1996) are ~~[is]~~ incorporated by reference.

(2) ~~These [This] documents~~ may be inspected, copied, or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

ASA L. HORD, CPA, President

APPROVED BY AGENCY: May 15, 1996

FILED WITH LRC: May 22, 1996 at 9 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected: The type of entities affected are people applying to sit for the Uniform Certified Public Accountant Examination on November, 1996 and thereafter. Involves approximately 700 people per examination 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

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competition) for the:

1. First year following implementation: This regulation will reduce paperwork for repeat examinees. If not sitting for the exam, a response to the board is not required. This regulation will increase candidate cost if they do not show up for the examination. The fee is nonrefundable and can not be deferred.

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: None

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will reduce filings for repeat candidates not sitting and will reduce phone calls by standardizing deadlines for new and repeat candidates.

(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: Board 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: Current system was reviewed. This is the least cumbersome process.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies in conflict with this 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 is unnecessary because this regulation applies uniformly to all CPA examination candidates.

### STATEMENT OF EMERGENCY

302 KAR 78:020E

302 KAR 78:020E should be enacted as an emergency administrative regulation to implement the provisions of Sections 2 and 3 of SB 137 which define "proof of age" and require signage in retail establishments selling tobacco products. This administrative regulation defines proof of age and establishes the size and wording requirements for signs for a person who sells tobacco products at retail. Time is of the essence because SB 137 contained an emergency clause and became effective upon the Governor's signature on March 5, 1996, and administrative regulations are required immediately to implement SB 137, protect the health and safety of minors, to notify sellers of tobacco products of conduct required or prohibited by SB 137, and to prevent a loss of federal funds that would occur if implementation of this administrative regulation is delayed. Therefore, this administrative regulation should be approved on an emergency basis so that SB 137 can be implemented without delay. This emergency regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

BILLY RAY SMITH, Commissioner

### DEPARTMENT OF AGRICULTURE Division of Regulation and Inspection

**302 KAR 78:020E. Use, sale and distribution of tobacco products.**

RELATES TO: SB 137, 1996 Ky. Acts ch. 38, secs. 2, 3, EO 96-619

STATUTORY AUTHORITY: KRS 438.340, SB 137, 1996 Ky. Acts ch. 38, secs. 2, 3, EO 96-619

EFFECTIVE: June 5, 1996

NECESSITY AND FUNCTION: SB 137, enacted by the 1996 General Assembly, became effective March 5, 1996. SB 137 requires a seller of tobacco products to obtain proof of the age of a prospective buyer or recipient of tobacco products if he has reason to believe the prospective buyer or recipient is under eighteen (18) years old; requires the establishment of the types of documentation accepted as proof of age; and notification of the employees of a seller of tobacco products and of the public of the requirements of SB 137. An ordinary administrative regulation is not sufficient because SB 137 is in effect and requires immediate implementation; and administrative regulations are required immediately to implement SB 137, protect the health and safety of minors, to notify sellers of tobacco products of conduct required or prohibited by SB 137, and to prevent a loss of federal funds that would occur if implementation of this administrative regulation is delayed. An ordinary administrative regulation will be filed to replace this emergency administrative regulation.

Section 1. Proof of age shall be by a drivers license or nondrivers license identification card issued by a Kentucky circuit clerk.

Section 2. (1) A retail establishment selling tobacco products shall post a sign no smaller than five and one-half (5 1/2) inches in width by eight and one-half (8 1/2) inches in length, in a conspicuous place in the establishment.

(2) The sign shall contain the following wording: "WARNING: THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO ANY PERSON UNDER AGE EIGHTEEN IS PROHIBITED BY KENTUCKY LAW. KRS CHAPTER 438.310(1)".

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: June 5, 1996

FILED WITH LRC: June 5, 1996 at noon

### REGULATORY IMPACT ANALYSIS

Contact Person: Mark Farrow, General Counsel

(1) Type and number of entities affected: All persons under the age of 18 years of age that attempt to purchase tobacco products and all retail establishments selling tobacco products.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

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

1. First year following implementation: No additional requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

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(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Identification requirement will assist in identifying all persons under the age of 18 attempting to purchase tobacco products and sign will advise public that purchase of tobacco products by persons under 18 is illegal.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes. Adverse health impact on minors; economic losses from such.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Proof of age will require drivers license or nondrivers license identification and all persons selling tobacco products at retail must post sign. Uniform requirement because same requirement must be applied to the one class, sellers, governed by this administrative regulation. Disparate treatment would be unconstitutional.

### STATEMENT OF EMERGENCY 401 KAR 50:035E

Title V of the Clean Air Act Amendments of 1990, created a new program, implemented and enforced by state and local air quality agencies, requiring that all major sources of air pollution apply for a permit to operate meeting Title V requirements within one (1) year after approval of the state program in which the sources are located. The Kentucky Division for Air Quality Title V Permitting Program was approved by the U.S. EPA and became effective December 14, 1995. All major sources of air pollution in Kentucky therefore must apply for a Title V permit from the Division for Air Quality no later than December 14, 1996. New guidance issued by the U.S. EPA significantly reduces the burden of preparing permit applications, but the approved Kentucky administrative regulation, 401 KAR 50:035, must be amended to allow sources to take advantage of the new guidance. The relaxed regulatory provisions must be made effective in time for them to be useful during the preparation of permit applications. Use of the normal administrative regulation adoption procedures would not allow the regulatory changes to be completed in time for them to be used by Kentucky industries already preparing Title V permit applications. It is the intent of the Natural Resources and Environmental Protection Cabinet that this emergency administrative regulation shall be replaced by an amendment to the ordinary administrative regulation, 401 KAR 50:035, Permits, in accordance with KRS Chapter 13A, so that the provisions of the emergency

administrative regulation shall continue. The emergency administrative regulation and the Notice of Intent to promulgate the amendment to the ordinary administrative regulation will be filed with the Regulations Compiler on June 14, 1996.

PAUL E. PATTON, Governor

JAMES E. BICKFORD, Secretary

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

#### 401 KAR 50:035E. Permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.10-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 51, 52, 60, 61, 63, 70, 72, 73, 74, 75, 76, 77, 78, 42 USC 7401-7671q, July 21, 1993 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

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 [~~combines construction and operating permits into one (1) permit and~~] provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given [~~to them~~] in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o (Title IV of the Act) and 40 CFR Parts 72, 73, 74, 75, 76, 77, and 78. 40 CFR Parts 72 through 78 [~~73, 76, 77, and 78~~] are incorporated by reference in Section 11 of this administrative regulation.

(2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by PL 101-549 (November 15, 1990) and PL 102-187 (December 4, 1991).

(3) "Administrative permit amendment" means a revision to a permit that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for the relocation of a source within the Commonwealth of Kentucky, or a change in ownership or operational control of a source, if the cabinet determines that no other change in the permit is necessary [~~and if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the cabinet~~]; or

(e) Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those prescribed in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in Section 4(3) of this administrative regulation.

(4) "Affected source" means a source that includes one (1) or more affected units.

(5) "Affected states" means those states:

(a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to

the federally enforceable requirements of this administrative regulation; or

(b) That are within fifty (50) miles of the proposed permitted source.

(6) "Affected unit" means a unit that is subject to the acid rain program.

(7) "Applicable requirement" means a federally enforceable requirement or a state-origin requirement or standard.

(8) ~~["Classification date" means the date on which the U.S. EPA publishes a final rule granting full or interim approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661 through 7661f (Title V of the Act).]~~

(9) "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3~~[(4)(b)]~~ of this administrative regulation.

(9) "Conditional major permit" means a federally-enforceable permit issued to the owner or operator of a source that limits the source's PTE below the major source thresholds in subsection (24) of this section.

(10) "Conditional major source" means a source that has a conditional major permit. ~~[accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in this administrative regulation, if the limit is not a federally enforceable requirement.]~~

(11) "Designated representative" means a ~~[responsible]~~ person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the acid rain program, means the "designated representative."

(12) "Draft permit" means the version of a permit which the cabinet offers for ~~[the applicable]~~ public participation and affected state review, if applicable, as prescribed in Sections 7 and 8 of this administrative regulation.

(13) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(14) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038, made effective April 12, 1995 ~~[November 29, 1993]~~.

(15) "Emissions unit" means an affected facility, or a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the acid rain program.

(16) "Enforceable as a practical matter" means that the emission limitations and workplace standards contained in a permit or compliance schedule include:

(a) Technically accurate limitations, and the portions of the source that are subject to the limitations and workplace standards;

(b) A time period adequate to demonstrate compliance with the limitations; and

(c) The method the source will use to achieve and demonstrate compliance with the limitations and workplace standards, including appropriate reporting, recordkeeping, and monitoring.

(17) "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to November 29, 1993 or a source ~~[that is]~~ authorized by the cabinet to

operate on or before the effective date of this administrative regulation.

(18) ~~[(47)]~~ "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable. This includes:

(a) Part 70 permits;

(b) New source review permits issued pursuant to Title I of the Act, including:

1. Prevention of significant deterioration (PSD) permits issued to owners or operators of major sources in attainment areas pursuant to 401 KAR 51:017; and

2. New source review (NSR) permits issued to owners or operators of major sources in nonattainment areas pursuant to 401 KAR 51:052; and

(c) FESOPS or federally enforceable state operating permits, including conditional major permits issued to owners or operators of sources, and synthetic minor permits issued to owners or operators of sources or affected facilities at a source.

(19) ~~[(48)]~~ "Federally enforceable requirement" means all of the following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 through 7515 (Title I of the Act);

(c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7429 (Section 129 of the Act) governing solid waste incineration;

(d) A standard or other requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act);

(e) Standards or requirements of the acid rain program;

(f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act);

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.

(20) ~~[(49)]~~ "Final permit" means:

(a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the applicable review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.

(b) For a state-origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(21) ~~[(20)]~~ "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

(22) ~~[(24)]~~ "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(23) "HAP" or "hazardous air pollutant" means a pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act).

(24) ~~[(22)]~~ "Major source" means a stationary source, or a group of stationary sources, ~~[that are]~~ located on one (1) property or two (2)

or more contiguous or adjacent properties under common control of the same person, or persons under common control, and belonging [that belong] to a single major industrial grouping (i.e., all have the same two (2) digit code as described in the 1987 Standard Industrial Classification Manual, which is incorporated by reference in 401 KAR 51:017, Section 21), emitting [which emits] a regulated air pollutant and [which is] described in paragraphs (a), (b), or (c) of this subsection.

(a) ~~[On or after the classification date,]~~ A stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a HAP [hazardous air pollutant listed in 401 KAR 57:061, made effective November 29, 1993], or twenty-five (25) tons per year or more of a combination of HAPs [hazardous air pollutants listed in 401 KAR 57:061], or a lesser quantity which the U.S. EPA has established by rule. All fugitive emissions of HAPS shall be considered in determining if the source is major. [established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57.] Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources.

(b) A stationary source of air pollutants that directly emits or has the potential to emit 100 tons per year or more of an air pollutant. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one (1) of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plant;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
27. All other stationary source categories subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7412 (Section 112 of the Act) and for which the U.S. EPA has made an affirmative determination pursuant to 42 USC 7602(i) (Section 302(i) of the Act. [All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants

~~(NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).]~~

(c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:

1. For ozone nonattainment areas, sources that emit or have [with] the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"

2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources that emit or have [with] the potential to emit fifty (50) tons per year or more of carbon monoxide; and

3. For particulate matter (PM<sub>10</sub>) nonattainment areas classified as "serious," sources that emit or have [with] the potential to emit seventy (70) tons per year or more of PM<sub>10</sub>.

(25) [(23)] "Minor source" means a stationary source whose PTE is less than the thresholds for a major source in subsection (24) of this section [that is required to obtain a permit pursuant to this administrative regulation and that is not a major source].

(26) "Part 70 permit" means a permit issued to the owner or operator of a source pursuant to 40 CFR Part 70 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.

(27) [(24)] "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.

(28) [(25)] "Phase II" means the acid rain program period beginning January 1, 2000, and continuing thereafter.

(29) "PTE" or [(26)] "potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. This definition [term] does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the acid rain program.

(30) [(27)] "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(31) [(28)] "Regulated air pollutant" means the following:

(a) For sources subject to 40 CFR Part 70:

1. Nitrogen oxides;
2. Volatile organic compounds;
3. A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);
4. [A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);

5.] A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act); and

5. A pollutant, other than total suspended particulates (TSP), subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act);

6. A pollutant subject to a standard or other requirement established pursuant to 42 USC 7412 (Section 112 of the Act), as provided below:

a. A pollutant listed pursuant to 42 USC 7412(r) (Section 112(r) of the Act) shall be considered regulated upon promulgation of the list;

b. A HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to 42 USC 7412(d) (Section 112(d) of the Act) or adopted by the cabinet pursuant to 42 USC 7412(g) and (i) (Section 112(g) and (i) of the Act) shall be considered regulated for all sources or categories of sources upon promulgation of the standard



or requirement, or eighteen (18) months after the standard or requirement was scheduled to be promulgated pursuant to 42 USC 7412(e)(3) (Section 112(e)(3) of the Act), whichever date is sooner; and

c. A HAP for which the cabinet has made a case-by-case emission limitation determination pursuant to 42 USC 7412(g)(2) (Section 112(g)(2) of the Act) shall be considered regulated, but only for the source for which the determination was made.

(b) For state origin requirements:

1. A pollutant for which a state ambient air quality standard has been promulgated in 401 KAR 53:010; and

2. A pollutant listed in 401 KAR 63:021, made effective November 11, 1986, or 401 KAR 63:022, made effective November 11, 1986.

(32) ~~[(29)]~~ "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5(7) of this administrative regulation.

(33) ~~[(30)]~~ "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet.

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA). ~~[(c)]~~

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(34) ~~[(31)]~~ "Section 502(b)(10) changes" means changes that contravene an express permit term. These changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(35) ~~[(32)]~~ "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.

(36) "SIP" or ~~[(33)]~~ "state implementation plan ~~[(SIP)]~~" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been ~~submitted by the cabinet and~~ approved by the U.S. EPA.

(37) "Source-wide permit" means an operating permit issued to the owner or operator of a source pursuant to a version of this administrative regulation promulgated on or after November 29, 1993, and which contains all the applicable requirements to which the source is subject.

(38) ~~[(34)]~~ "State-origin permit" means a permit that contains only state-origin requirements, or that contains federally enforceable requirements but is not required by the U.S. EPA to be a federally enforceable permit.

(39) ~~[(35)]~~ "State-origin requirement" means a an applicable requirement contained in 401 KAR Chapters 50 through 65 that is not mandated by 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.

(40) ~~[(36)]~~ "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated air pollutant.

(41) "Synthetic minor permit" means a federally enforceable permit issued to the owner or operator of a source which limits the PTE of the source or an affected facility at the source below the major source thresholds required for PSD review pursuant to 401 KAR 51:017, or NSR review pursuant to 401 KAR 51:052.

(42) "Synthetic minor source" means a source that has a synthetic minor permit.

~~[(37)]~~ "Synthetic minor source" means a source that accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in either 401 KAR 51:017 or 401 KAR 51:052, if the limit is not a federally enforceable requirement.

(43) ~~[(38)]~~ "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, and to all activities and affected facilities at a source, except as follows:

(1) Source exemptions.

(a) A source shall be exempt from this administrative regulation if:

1. ~~[(a)]~~ The source is a minor source ~~[pursuant to 40 CFR Part 70]~~ and is not subject to an applicable requirement; or

2. ~~[(b)]~~ The source is a minor source that:

a. ~~1. Emits or~~ Has the potential to emit less than twenty-five (25) tons per year (TPY) of any non-HAP regulated air pollutant subject to an applicable requirement, ~~[except as provided in subparagraphs 2 and 3 of this paragraph]~~; or a lesser amount if specified in an applicable requirement;

b. ~~and~~

2. Has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 ~~or a lesser amount specified in an applicable requirement; and~~

3. Is not subject to a reasonably available control technology (RACT) requirement pursuant to 401 KAR 63:021, or a best available control technology (BACT) requirement pursuant to 401 KAR 63:022; ~~[requirement in 40 CFR Parts 60, 61, or 63; 401 KAR 63:021; or 401 KAR 63:022; and]~~

c. Is not subject to a technology-based standard, such as RACT, BACT, or MACT, unless the method of control is specified in the standard;

d. Is not a medical waste incinerator; and

e. ~~[(4)]~~ Is not required by the U.S. EPA to obtain a permit.

(2) Other exemptions. The exemptions contained in this subsection apply only to permitting requirements, or to the amount of information required in a permit or permit application. These exemptions do not relieve a source from the obligation to comply with all requirements contained in any state or federal regulation that is applicable to the source. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements.

(a) The following sources, or activities and affected facilities at a source, shall be exempt from the permitting requirements of ~~[requirement to obtain a permit pursuant to]~~ this administrative regulation. ~~[These exemptions shall not relieve a source from the requirements of any other applicable requirement. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements.]~~

1. ~~[(a)]~~ An asbestos demolition or renovation operation subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042, made effective November 6, 1987;

2. ~~[(b)]~~ An activity subject only to the provisions of 40 CFR Part 60, Subpart AAA;

3. ~~[(c)]~~ An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement;

4. ~~[(d)]~~ Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984;

5. [(e)] Vehicles used for the transport of passengers or freight; [and]

6. [(f)] Publicly owned roads;

7. The installation and use of air pollution control equipment that is not required to meet an applicable requirement, if it does not cause an increase in the potential to emit of a regulated air pollutant;

8. Sawmills which produce only rough-cut or dimensional lumber from logs and which have a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to a requirement in 401 KAR Chapters 59, 60, or 61; and

9. An activity or affected facility contained in the "List of Trivial Activities" which is incorporated by reference in Section 11 of this administrative regulation, including activities or affected facilities which the cabinet later determines should be added to this list.

(b) When applying for a permit or permit revision, a source shall not be required to provide detailed descriptions or estimates of emissions for insignificant activities or affected facilities if the emissions meet the conditions specified in subparagraphs 1 through 6 of this paragraph. Other insignificant activities or affected facilities which meet these conditions and which a source proposes after a permit or permit revision is issued shall be added as an administrative amendment pursuant to Section 6(1) of this administrative regulation, pending review by the cabinet. The cabinet shall maintain a list, subject to approval by the U.S. EPA, of "Approved Insignificant Activities" and shall make this list available upon request to the public.

1. The emissions shall not lower the PTE of a major source below the major source thresholds;

2. The emissions shall not be subject to a federally enforceable requirement other than generally applicable requirements that apply to all activities and affected facilities, including the requirements contained in 401 KAR 59:010, 61:020, 63:010, and others deemed generally applicable by the cabinet;

3. The potential to emit of a regulated air pollutant from the activity or affected facility shall not exceed five (5) tpy;

4. The potential to emit of a HAP from the activity or affected facility shall not exceed 1000 pounds per year or the de minimis level established under Section 112(g) of the Act, whichever is less;

5. The potential to emit of all insignificant activities and affected facilities shall not subject the source to a reasonably available control technology (RACT) pursuant to 401 KAR 63:021, or a best available control technology (BACT) pursuant to 401 KAR 63:022; and

6. The activity or affected facility shall be included in the permit application together with all generally applicable and state origin requirements that apply.

(c) The construction, reconstruction, alteration or modification of an affected facility at a source shall be exempt from the permitting requirements of this administrative regulation if it meets the conditions in subparagraphs 1 through 3 of this paragraph. This exemption shall not apply to sources required to obtain a Part 70 permit after the initial draft permit has been issued:

1. The total increase in potential to emit resulting from the change shall not exceed two (2) tpy of any regulated air pollutant, regardless of any emission decreases that result from the change;

2. The increase in potential to emit shall not subject the source to a RACT requirement pursuant to 401 KAR 63:021, or a BACT requirement pursuant to 401 KAR 63:022; and

3. The increase in potential to emit shall not cause the source to exceed a major source threshold, or subject the source to PSD review pursuant to 401 KAR 51:017, or NSR review pursuant to 401 KAR 51:052.

[(3) Insignificant activities shall be exempt from permitting requirements pursuant to the following criteria:

(a) The activity shall be included in the permit application with a request that the activity be exempt from permitting;

(b) The activity shall not be subject to an applicable requirement;

~~(e) The potential or actual emissions from the activity shall not cause the source to be subject to an applicable requirement to which the source would not otherwise be subject;~~

~~(d) The activity shall have a potential to emit of less five (5) tpy of any regulated air pollutant, not including a hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) or a toxic pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.~~

~~(e) The potential to emit of all activities exempted pursuant to this subsection shall be less than two (2) tpy of any hazardous air pollutant and less than five (5) tpy of any combination of hazardous air pollutants, or a lesser amount if specified by the U.S. EPA;~~

~~(f) The potential to emit of all activities exempted pursuant to this subsection shall be less than the significance level of any toxic air pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.~~

~~(g) The activity shall not be the incineration of medical waste.~~

~~(4) The cabinet shall maintain an updated list of those activities submitted and approved pursuant to subsection (3) of this section and shall provide this list to any person upon request.~~

~~(5) The following de minimis changes shall be exempted from the requirement to obtain a permit or permit revision:~~

~~(a) Affected facilities which are part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of a pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010, if the increase does not subject the source to an applicable requirement.~~

~~1. The owner or operator shall notify the cabinet in writing of the increases and construction projects thirty (30) days prior to commencing construction.~~

~~2. This exemption shall not apply to affected facilities which are subject to a regulation promulgated pursuant to 40 CFR Parts 60, 61, or 63; 401 KAR 63:021 or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for the pollutants in 401 KAR 51:010; or to incinerators.~~

~~(b) After the issuance of a draft permit, the exemption in paragraph (a) of this subsection shall not apply to sources that are required to obtain a federally enforceable permit pursuant to 40 CFR Part 70.]~~

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet shall allow applications to be submitted electronically when methods are available. ~~[may provide methods for electronic transmission of the completed application.]~~

(a) Timely applications.

1. Existing major sources.

a. Sources proposing to accept permit limitations to become ~~[synthetic minor or]~~ conditional major sources shall obtain a conditional major permit, or file a complete application pursuant to subsection (3) of this section, by December 14, 1996. ~~[to obtain a permit.]~~ The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(a) of this administrative regulation.

b. Sources that qualify for deferral pursuant to 401 KAR 50:031 and who elect to apply for coverage under this rule shall submit an application using Form DEP 7008, which is incorporated by reference in Section 11 of this administrative regulation, to the cabinet by August 14, 1996.

c. All other existing major sources shall file a complete application for a Part 70 permit by December 14, 1996, ~~[within twelve (12) months after the classification date]~~ or within twelve (12) months after the source is required to obtain a ~~[federally enforceable permit pursuant to 40 CFR]~~ Part 70 permit, whichever date is earlier. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(b) of this administrative regulation.

2. Existing minor sources required to obtain a ~~[federally enforceable]~~



~~able permit pursuant to 40 CFR] Part 70 permit.~~ An existing minor source shall file a complete application for a permit within twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit or by December 14, 2000, [within five (5) years after the classification date,] whichever date is earlier. These applications shall be processed as federally enforceable permits pursuant to Section 5(1)(b) ~~[and (2)(b)]~~ of this administrative regulation.

3. Existing minor sources required to have a state origin permit. An existing source that is required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by December 14 [November 15], 2000, whichever date is earlier. The cabinet shall process these applications as state origin permits pursuant to Section 5(1)(c) of this administrative regulation.

4. Any existing source that proposes to construct[s], reconstruct[s], or alter, or modify an affected facility at the source [an affected facility, alters, or modifies] prior to the date the source receives a source-wide permit ~~[for the entire source, if a timely and complete application is filed,]~~ shall file an application using Form DEP 7007 and [to] obtain a permit for the proposed change prior to commencing construction or modification. ~~[The]~~ Applications for these sources shall be processed by the cabinet pursuant to Section 5(2) of this administrative regulation.

5. Any existing source that has a source-wide permit, and that proposes to construct, reconstruct, or alter or modify an affected facility at the source, shall file an application using Form DEP 7007 and shall obtain a permit for the proposed change prior to commencing construction or modification. ~~[A source constructing, reconstructing, altering or modifying after November 29, 1993, shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, alteration, or modification, except as provided in subparagraph 4 of this paragraph and Section 6 of this administrative regulation.]~~ The cabinet shall process these applications pursuant to Section 5(3) of this administrative regulation.

6. A source that is required to open an existing permit pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.

7. For permit renewal, an application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5(7) of this administrative regulation.

8. Applications for initial Phase II acid rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(b) Complete application.

1. To be deemed complete, an application shall provide all information required pursuant to subsections (3) and (4) of this section, except that applications for a permit revision shall supply the information only if it is related to the proposed change. This information shall be sufficient to evaluate the source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information pursuant to subsection (5) [(4)] of this section.

2. The cabinet shall promptly provide notice to the applicant if the application is not complete. Unless the cabinet mails a request for additional information or a notice of incompleteness to the applicant within sixty (60) days of receipt of an application, the application shall be deemed complete.

3. If, while processing an application that has been ~~[determined or]~~ deemed ~~[to be]~~ complete, the cabinet determines that additional information is necessary, it may require the information in writing and set a reasonable deadline for response.

4. For permit revisions processed through minor permit revision procedures, pursuant to Section 6(2)(a) of this administrative

regulation, a completeness determination shall not be required.

(c) Confidential information. A source that submits to the cabinet an application for a federally enforceable permit containing a claim of confidential information shall authorize the cabinet to submit the information to the U.S. EPA, or shall submit a copy of the information directly to the U.S. EPA.

(2) Duty to supplement or correct application. An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it filed a complete application but prior to issuance of a draft permit. Failure to supplement or correct the application shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

(3) Information required on applications. Except as provided in subsection (4) of this section, applications for permits shall contain the information in paragraphs (a) through (i) of this subsection. ~~[Standard application form and required information.]~~

~~(a) Applications for required permits shall be made on Form DEP 7007 which is incorporated by reference in 401 KAR 50:034. The applicant may submit the application using computer software if the cabinet has provided for the electronic preparation of applications.]~~

~~(a) The [(b)-An] application shall include all information needed to determine [the applicability of or to impose an] applicable requirement and to evaluate the required emission fee [amount pursuant to 401 KAR 50:038].~~

~~(b) [(e)]~~ The application and attachments shall include the company name and address and [or], if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products, including any alternate operating scenarios identified by the source, and the appropriate [(b)] Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017, ~~[including any associated with alternate scenarios identified by the source; and all of the elements specified in paragraphs (d) through (i) below:]~~

~~(c) [(e)]~~ The application shall provide the following emissions-related information:

1. ~~[All emissions for which the source is major and all emissions of regulated air pollutants.]~~ A permit application shall describe all emissions of regulated air pollutants emitted from ~~[an]~~ emissions units, unless the units are exempted as trivial activities pursuant to [(a)] Section 2 of this administrative regulation. The application [applicant] shall also provide any additional information related to the emissions of air pollutants necessary to verify which requirements are applicable to the source, ~~[and other information necessary to collect permit fees owed under the fee schedule approved pursuant to 401 KAR 50:038.]~~

a. For major sources, the applicable requirements for all emissions units shall be identified in the permit application.

b. For minor sources required to obtain a permit, all applicable requirements for the emissions units that cause the source to be subject to 40 CFR Part 70 shall be identified in the permit application. The cabinet may identify the applicable requirements for other minor sources prior to determining completeness of the application pursuant to subsection (1)(b) of this section.

c. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(24) ~~[(22)]~~(b) of this administrative regulation.

2. Identification and description of all points of emissions described in subparagraph 1 of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.

3. Emissions rates in tons per year or other terms as necessary to determine compliance with applicable requirements. ~~(and in terms necessary to establish compliance consistent with the applicable standard reference test method. These methods are incorporated by reference in 401 KAR 50:015 or in the applicable administrative regulations.)~~

4. Fuels, fuel use, raw materials, production rates, and operating schedules, to the extent needed to determine or, if applicable, to limit emissions.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants at the source.

7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042.

8. Calculations, if applicable, on which the information in subparagraphs 1 through 7 of this paragraph is based.

(d) [(e)] The application shall identify the following air pollution control requirements, except as provided in paragraph (c) [(d)]1b of this subsection:

1. Citation and description of all applicable requirements; and

2. Description of, or reference to, the applicable test method for determining compliance with each applicable requirement.

(e) [(f)] The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.

(f) [(g)] The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.

(g) [(h)] The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)(j) of this administrative regulation.

(h) [(i)] The application shall provide a compliance plan containing the following:

1. A description of the compliance status of the source for all applicable requirements as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.

b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.

2. A compliance schedule as follows:

a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

4. In Phase II of the acid rain program, the compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as provided in the acid rain program for the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.

(i) [(f)] The application shall identify requirements for compliance certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (5) [(4)] of this section;

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(4)(a) Major sources applying for a Part 70 permit for the first time which were notified by the cabinet that their permits would not be issued until December 14, 1998, or later, shall submit an application containing the following information by December 14, 1996:

1. The application and attachments shall include the company name and address and, if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products, including any alternate operating scenarios identified by the source, and the appropriate Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017.

2. The application shall provide the following emissions-related information:

a. The application shall identify all emissions of regulated air pollutants emitted from the source, unless the units are exempted as trivial activities pursuant to Section 2 of this administrative regulation. Emissions shall be quantified if necessary to determine the applicability of, or compliance with, an applicable requirement.

b. The applicable requirements for all emissions units shall be identified in the permit application.

c. Fugitive emissions shall be included in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(24)(b) of this administrative regulation.

3. Identification and description of compliance monitoring devices or activities.

a. The application shall identify the following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of, or reference to, the applicable test method for determining compliance with each applicable requirement.

4. The application shall provide other specific information necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.

5. The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)(j) of this administrative regulation.

6. The application shall provide a compliance plan containing the following:

a. A description of the compliance status of the source for all applicable requirements as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.

(ii) For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.

b. A compliance schedule as follows:

(i) For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

(ii) For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

c. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

7. The application shall identify requirements for compliance certification, including the following:

a. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (5) of this section;

b. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

c. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

d. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(b) The sources described in paragraph (a) of this subsection shall update and resubmit the information contained in paragraph (a) 1 through 7 of this subsection, together with all other information required in subsection (3) of this section, one (1) year prior to the date the permit is scheduled to be issued, unless otherwise directed by the cabinet.

(5) Certification by responsible official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(33) [(29)] of this administrative regulation, of truth, accuracy, and completeness. The certifications [required in this administrative regulation] shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content. (1) Standard permit requirements. A permit issued pursuant to this administrative regulation shall include the following elements:

(a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:

1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;

2. A statement that the source shall comply with all applicable requirements;

3. If the state implementation plan (SIP) allows the determination of an alternative emission limit that is equivalent to the limit contained

in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be permanent, quantifiable, accountable, enforceable, and based on replicable procedures. The cabinet shall not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise federally enforceable;

4. For major sources, all applicable requirements for emissions units;

5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and

6. Fugitive emissions from a source applying for a Part 70 permit [subject to 40 CFR part 70] shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(24) [(22)](b) of this administrative regulation; and [-]

7. The permit shall state that if an applicable requirement of 42 USC 7401 through 7671q (the Act) is more stringent than an applicable requirement promulgated pursuant to 42 USC 7651 through 7651o (Title IV of the Act), both provisions shall be placed in the permit and shall be federally enforceable.

(b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(7) of this administrative regulation.

(c) Monitoring and related recordkeeping and reporting requirements.

1. Each permit shall contain the following monitoring requirements:

a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements including those specified in 42 USC 7414(a)(3) or 7661c(b) (Sections 114(a)(3) or 504(b) of the Act);

b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, the permit shall contain which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3 of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this clause [sentence]; and

c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.

2. Each permit shall incorporate the following recordkeeping requirements, if applicable:

a. Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The dates analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

(vi) The operating conditions at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

3. Each permit shall incorporate the following reporting requirements, if applicable:

a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly

identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(5) [(4)] of this administrative regulation.

b. Prompt reporting of deviations from permit requirements, including those attributed to upset conditions, the probable cause of the deviations, and corrective actions or preventive measures taken. The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.

(d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the acid rain program.

1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the acid rain program if the increases do not require a permit revision in another applicable requirement.

2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.

3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section 11 of this administrative regulation.

(e) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.

(f) Provisions stating the following:

1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and, for federally enforceable permits, shall [is] also be a violation of 42 USC 7401 through 7671q (the Act) and shall be [is] grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.

3. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

4. The permit shall not convey property rights or exclusive privileges.

5. The permittee shall furnish to the cabinet information that the cabinet may request [in writing] to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.

(g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 50:038.

(h) Emissions trading. A provision stating that a permit revision shall not be required in approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit.

(i) Terms and conditions for reasonably anticipated alternate operating scenarios identified by the source in its application as approved by the cabinet. The terms and conditions:

1. Shall require the source, contemporaneously with making a change from one (1) operating scenario to another, to record in a log at the permitted facility a record of the scenario in which it is operating;

2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions in each operating scenario; and

3. Shall ensure that the terms and conditions of each alternate operating [alternative] scenario meet all applicable requirements.

(j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of other applicable requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The cabinet shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades. The terms and conditions:

1. Shall include all terms required in subsections (1) and (3) of this section to determine compliance;

2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions that allow increases and decreases in emissions; and

3. Shall meet all applicable requirements and the requirements of this administrative regulation; and [-]

4. Shall require written notification to the cabinet and the U.S. EPA seven (7) days in advance of the proposed change. The source, cabinet and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(2) Enforceability [Federally enforceable] requirements.

(a) All permits issued by the cabinet shall be enforceable as a practical matter.

(b) The cabinet shall include a notification in a federally enforceable permit that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin requirements, shall be enforceable by the U.S. EPA and citizens.

(3) Compliance requirements. All permits shall contain the following elements for compliance:

(a) Pursuant to subsection (1)(c) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to Section 3(5) [(4)] of this administrative regulation.

(b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:

1. Enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;

2. Have access to and copy, at reasonable times, any records required by the permit:

a. During normal office hours; and

b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet; and

3. Inspect, at reasonable times, any facilities, equipment, (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

(c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.

(d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance requirements were achieved; and

2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the following:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. Whether compliance was continuous or intermittent;

d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and

e. Other facts ~~as~~ the cabinet may require to determine the compliance status of the source;

4. A requirement that all compliance certifications be submitted to the U.S. EPA for sources required to obtain a Part 70 permit ~~pursuant to 40 CFR Part 70~~, as well as to the cabinet; and

5. Additional requirements for monitoring and compliance certification, consistent with 42 USC 7414(a)(3) and 7661c(b) ~~[7604(b)]~~ (Sections 114(a)(3) and 504(b) of the Act).

(f) A specific condition, for ~~a~~ constructing, reconstructing, altering, or modifying a source, that the source shall not be allowed to commence operation until it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) of this administrative regulation, or until the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

(a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the acid rain program.

(b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the

general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to ~~the requirements of~~ Section 3 of this administrative regulation.

(5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this administrative regulation.

(6) Permit shield.

(a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:

1. The applicable requirements are included and are specifically identified in the permit; or

2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(c) Nothing in this subsection or in a permit shall alter or affect the following:

1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the acid rain program; or

4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).

(7) Emergency provision.

(a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations contained in the permit if the conditions in paragraph (b) of this subsection are met.

(b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An emergency occurred and the permittee can identify the cause of the emergency;

2. The permitted facility was at the time being properly operated;

3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the technology-based emission limits ~~[standards]~~, or other requirements in the permit; and

4. The permittee notified the cabinet as promptly as possible and submitted written notice of the emergency to the cabinet within two (2) working days of the time when the technology-based emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3b of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.

(c) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(d) This provision shall be ~~[is]~~ in addition to any emergency or

upset provision contained in an applicable requirement.

Section 5. Permit Issuance and Renewal. A person shall not construct, reconstruct, alter, modify, or operate a source without a permit issued pursuant to this administrative regulation. A permit application submitted by an existing source which is deemed complete prior to November 29, 1993, may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.

(1) Processing applications from existing sources for a source-wide permit [permits covering the entire source].

(a) Applications from [An] existing major sources proposing to accept permit limitations to become a synthetic minor or conditional major source [Applications received from sources submitted pursuant to Section 3(1)(a)1a of this administrative regulation] shall be processed as follows:

1. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete pursuant to Section 3(1)(b) of this administrative regulation. The cabinet shall submit the draft permit to the U.S. EPA and provide notice of the draft permit:

a. For public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70; or

b. For public review pursuant to Section 7 if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

2. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public and affected state review requirements in Sections 7 and 8 of this administrative regulation are [is] complete. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

3. [If a proposed permit is issued:

a. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

b. The proposed permit shall be the final permit, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

4. [Final permit. The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.

4. [5.] The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.

[6. An existing source shall follow the applicable procedures in subparagraphs 1 through 4 of this paragraph unless the existing permit limits are deemed federally enforceable by the U.S. EPA.]

(b) All other existing sources required to obtain a Part 70 permit [federally enforceable permit pursuant to 40 CFR Part 70]. Timely applications received from existing sources pursuant to Section 3(1)(a)1c [b] and 2 of this administrative regulation shall be processed as follows:

1. Draft permit. The cabinet shall issue or deny a draft permit:

a. By December 14, 1998, [During the first two (2) years after the classification date] for sixty (60) percent of the initial round of applications from existing sources that emit at least eighty (80) percent of the emissions as reported in the Kentucky Emissions Inventory System (KyEIS), and for one-half (1/2) of the remaining forty (40) percent of initial round applications each year for two (2) years after December 14, 1998.

b. Within sixty (60) days after the application is deemed complete for all other sources (those required to apply for a Part 70 permit after December 14, 1996). [minor sources, permit renewals, and for sources that become subject to a requirement to obtain a federally enforceable permit after the classification date.]

2. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this

administrative regulation.

3. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

4. Final permit. The cabinet shall issue or deny a final permit:

a. [For one fifth (1/5) of the initial round of applications from existing major sources each year for five (5) years after the classification date.]

b. Within eighteen (18) months after the application is deemed complete, except for the initial round of applications received on or before December 14, 1996. [for minor sources and for sources becoming subject to a requirement to obtain a federally enforceable permit after the classification date.]

b. [e.] Within six (6) months after receiving a complete application, for permit renewals.

5. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.

(c) Existing minor sources required to obtain a state origin permit. Applications received from sources submitted pursuant to Section 3(1)(a)3 shall be processed as follows:

1. The cabinet shall issue or deny a final permit within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

2. The source shall operate in compliance with the existing permit, authorization to operate, or order of the cabinet until a final permit is issued or denied.

(2) Processing applications from existing sources proposing to construct, reconstruct, alter, or modify an affected facility at the source, submitted pursuant to Section 3(1)(a)4 of this administrative regulation.

(a) Proposed changes that are subject to PSD review pursuant to 401 KAR 51:017, or NSR review pursuant to 401 KAR 51:052. [new source review for major sources or prevention of significant deterioration requirements.]

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to PSD review pursuant to 401 KAR 51:017, or NSR review pursuant to 401 KAR 51:052 [40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017] prior to the date the source submits an application for a source-wide [federally enforceable] permit [for the entire source] shall be processed as follows:

a. Preliminary determination. The cabinet shall make a preliminary determination within sixty (60) days after the application is deemed complete if the change should be approved, approved with conditions or disapproved. The cabinet shall submit the preliminary determination to the U.S. EPA and shall provide notice for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

b. Final determination. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA, public, and affected state review is completed. The cabinet shall notify the applicant in writing of the final determination. If a permit is issued, the cabinet shall make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

c. The source shall construct and operate in compliance with the permit issued in subparagraph 1b of this paragraph until a final source-wide permit [for the entire source] is issued or denied; except that the owner or operator shall not construct a change that is subject to 40 CFR 51.166 and 401 KAR 51:017 until thirty (30) days after receiving notice of the final determination).

d. The permit issued pursuant to subparagraph 1b of this paragraph shall be incorporated into the source-wide [application or] permit [for the entire source] as an administrative amendment.



2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to PSD review pursuant to 401 KAR 51:017, or NSR review pursuant to 401 KAR 51:052 ~~[40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017]~~ after the source submits an application for a source-wide ~~[federally enforceable]~~ permit ~~[for the entire source]~~ shall be processed as follows:

a. The cabinet shall continue to process the application for the source-wide permit ~~[entire source]~~ independently from the application for the proposed change.

b. The application for the proposed change shall be processed pursuant subparagraph 1 of this paragraph.

(b) Sources proposing changes that are not subject to PSD review pursuant to 401 KAR 51:017 or NSR review pursuant to 401 KAR 51:052, ~~[new source review for major sources or prevention of significant deterioration requirements.]~~

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility prior to the date the source submits an application for a source-wide permit ~~[covering the entire source]~~ shall be processed as follows:

a. The cabinet shall issue or deny a state origin permit within sixty (60) days after the application is deemed complete. If the source proposes to except permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection (1)(a) of this section.

b. The source shall construct and operate in compliance with the permit issued pursuant to this subparagraph until a source-wide permit ~~[for the entire source]~~ is issued or denied.

c. A permit issued pursuant to this subparagraph shall be incorporated into the source's application for a source-wide permit ~~[for the entire source]~~.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility after the source submits an application for a source-wide permit ~~[covering the entire source]~~ shall be processed as follows:

a. The cabinet shall continue to process the application for the source-wide permit ~~[entire source]~~ independent of the application for the proposed change. The cabinet shall issue or deny a state origin permit within sixty (60) days after the application is deemed complete.

b. Draft permit. The cabinet shall issue or deny a draft permit for the proposed change within sixty (60) days after the application for the change is deemed complete. The source shall construct in compliance with the draft permit. If the source proposes to accept permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection (1)(a) of this section.

c. The cabinet shall process a draft permit issued pursuant to subparagraph 2b of this paragraph and revise the source-wide permit ~~[for the entire source]~~ pursuant to the applicable provisions of Section 6 of this administrative regulation.

(3) Processing applications received after November 29, 1993 ~~(pursuant to Section 3(1)(a)5 of this administrative regulation)~~ for the proposed construction of new sources, reconstruction of existing sources, and for the alteration or modification of sources that have ~~[with] a source-wide permit [for the entire source]. [Applications received after November 29, 1993, pursuant to Section 3(1)(a)5 of this administrative regulation shall be processed as follows:]~~

(a) Applications for the proposed construction of new sources or reconstruction of existing sources, ~~[shall be processed as follows:]~~

1. Applications received from constructing or reconstructing sources that are subject to PSD review pursuant to 401 KAR 51:017 or NSR review pursuant to 401 KAR 51:052, [new source review for major sources or prevention of significant deterioration requirements] or who propose to accept permit limitations to become ~~[which cause the source to be]~~ a synthetic minor source, ~~[Applications received for the proposed construction or reconstruction of a source that is subject to, or would otherwise be subject to, 40 CFR 51.165, 40 CFR 51.166,~~

~~401 KAR 51:052, or 401 KAR 51:017 source]~~ shall be processed as follows:

a. Preliminary determination and ~~[a]~~ draft permit. The cabinet shall make a preliminary determination if the source should be approved, approved with conditions or disapproved, and issue or deny a draft permit within sixty (60) days after the application is deemed complete.

b. Public and affected state review. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice for public review pursuant to Section 7 of this administrative regulation. The cabinet shall also provide the draft permit for affected state review pursuant to Section 8 of this administrative regulation, if the source is required to obtain a Part 70 permit ~~[pursuant to 40 CFR Part 70]~~.

c. Final determination and ~~[a]~~ proposed permit. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA and public review is completed. The cabinet shall notify the applicant in writing of the final determination, issue or deny a proposed permit, and make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

d. If the source is a not required to obtain a Part 70 permit ~~[pursuant to 40 CFR Part 70]~~, the source shall construct and operate in compliance with the proposed permit. The proposed permit shall be submitted to the U.S. EPA and shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The source shall construct and operate in compliance with the proposed permit until a final source-wide permit ~~[for the entire source]~~ is issued or denied; ~~[except that the owner or operator of a source that is subject to 40 CFR 51.166 and 401 KAR 51:017 shall not construct until thirty (30) days after receiving notice of the final determination.]~~

(ii) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation; and

(iii) The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

2. Applications received for the proposed construction or reconstruction of all other sources required to have a Part 70 permit ~~[pursuant to 40 CFR Part 70]~~ or who propose to accept permit limitations which cause the source to be a conditional major source, shall be processed as follows:

a. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. The source shall construct and operate in compliance with the draft permit until a final permit is issued or denied.

b. Public, EPA, and affected state review.

(i) The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a Part 70 permit ~~[pursuant to 40 CFR Part 70]~~.

(ii) The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice of the draft permit for public review pursuant to Section 7 of this administrative regulation, if the source is not required to obtain a Part 70 permit ~~[pursuant to 40 CFR Part 70]~~.

c. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public, U.S. EPA, and affected state review required in Sections 7 and 8 of this administrative regulation is completed.

d. If the source is not required to have a Part 70 permit ~~[pursuant to 40 CFR Part 70]~~, the proposed permit shall be submitted to the U.S. EPA and the proposed permit shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(ii) Final permit. The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

~~[3. Processing applications for the proposed construction, reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.]~~

~~(b) Applications for a [the] proposed [construction, reconstruction, alteration,] or modification at a source after a source-wide permit [for the entire source] has been issued shall be processed pursuant to this paragraph. [The cabinet shall follow the applicable preconstruction review procedures of paragraph (a) of this subsection and the applicable permit revision procedures in Section 6 of this administrative regulation for sources who have been issued a permit for the entire source.]~~

1. Preliminary determination. The cabinet shall make a preliminary determination within sixty (60) days after the application is deemed complete if the change should be approved, approved with conditions, or disapproved. The cabinet shall submit the preliminary determination to the U.S. EPA and shall provide notice for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

2. Final determination. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA, public, and affected state review is completed. The cabinet shall notify the applicant in writing of the final determination. If a permit is issued, the cabinet shall make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

3. The source shall construct and operate in compliance with the permit issued in subparagraph 1b of this paragraph until a final source-wide permit is issued or denied.

4. The permit issued pursuant to subparagraph 2 of this paragraph shall be incorporated into the source-wide permit as an administrative amendment.

(c) Processing applications for the proposed construction, reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

(4) Compliance demonstration. A source that is constructing, reconstructing, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Section 6 of this administrative regulation.

(a) A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

(b) If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.

(5) If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation until the cabinet makes a final determination to approve or deny the permit or permit revision. The source's authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information requested pursuant to Section 3(1)(b)3 of this administrative regulation.

(6) General requirements.

(a) For a source that is constructing, reconstructing, altering, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18)

months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(b) Permits issued by the cabinet shall not be transferred by the permittee. If a source changes ownership, the new owners or operators shall obtain a revised permit from the cabinet. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee shall be submitted to the cabinet prior to the transfer. If proper notice is given and no other change is required in the permit, the revised permit shall be processed as an administrative amendment pursuant to Section 6(1) of this administrative regulation.

(7) Permit duration and renewal.

(a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years.

(b) Permit renewal.

1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a)7 [6] of this administrative regulation.

2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.

3. If a timely and complete application for a permit renewal is submitted pursuant to Section 3(1)(a)7 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

4. If the cabinet fails to act promptly on a federally enforceable permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661d(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings. (1) Administrative permit amendment procedures. ~~(A) Administrative permit amendments shall [may]~~ be made by the cabinet pursuant to the following:

(a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.

(b) For federally enforceable permits the cabinet shall submit a copy of the revised permit to the U.S. EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.

(e) Administrative permit amendments for the acid rain portion of the permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651q (Title IV of the Act).

(2) Permit revisions. Except as provided in the acid rain program, the procedures for revising a permit shall be as follows:



(a) Minor permit revision procedures.

1. Minor permit revision procedures shall be used for permit revisions that:

- a. Do not violate an applicable requirement;
- b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- c. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:

- (i) A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of 42 USC 7401 through ~~7515 [7514a]~~ (Title I of the Act); and

- (ii) An alternative emissions limit approved pursuant to 42 USC 7412(i)(5) (Section 112(i)(5) of the Act);

- e. Are not modifications in a provision of 42 USC 7401 through ~~7515 [7514a]~~ (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and

- f. Are not required to be processed as a significant permit revision.

2. Notwithstanding this paragraph and paragraph (b)1 of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.

3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

- a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;

- b. The source's suggested draft permit;

- c. Certification by a responsible official, pursuant to Section 3(5) ~~[(4)]~~ of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and

- d. For federally enforceable permits, completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.

4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete application for a federally enforceable permit revision, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.

5. Timetable for issuance.

- a. The cabinet shall not issue a final minor permit revision to a federally enforceable permit until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

- (i) Issue the minor permit revision as proposed;

- (ii) Deny the minor permit revision application;

- (iii) Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or

- (iv) Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this

administrative regulation.

- b. For state-origin permits, the cabinet shall, within ninety (90) days of receipt of an application for a minor permit revision:

- (i) Issue the minor permit revision as proposed; or

- (ii) Deny the minor permit revision application; ~~or~~

- ~~(iii) Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures].~~

6. The source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5[a through e] of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

- (b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

- 1. Criteria. Group processing shall be used only for permit revisions that:

- a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and

- b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(24) ~~[(22)]~~ of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

- a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

- b. The source's suggested draft permit revision.

- c. Certification by a responsible official, pursuant to Section 3(5) ~~[(4)]~~ of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.

- d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

- e. Certification, for federally enforceable permits, pursuant to Section 3(5) ~~[(4)]~~ of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

- f. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3. U.S. EPA and affected state notification for federally enforceable permit revisions. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this

administrative regulation.

4. Timetable for issuance for federally enforceable permits. Subsection (2)(a)5 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5. The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures. These procedures shall apply only to sources that have submitted an application for or received a Part 70 permit. Revisions to all other permits [become effective after the classification date for sources that have filed an application for a permit pursuant to 40 CFR Part 70 or that have permits issued pursuant to 40 CFR Part 70. Revisions that do not cause the source to have a federally enforceable permit] shall be processed as minor permit revisions pursuant to paragraphs (a) and (b) of this subsection.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if:

1. The changes are not modifications pursuant to any provision of 42 USC 7401 through 7515 (Title I of the Act) or subject to 42 USC 7651 through 7651o (Title IV of the Act).

2. The changes do not result in emissions which exceed the emissions allowed by the permit, whether expressed as a rate of emissions or in terms of total emissions.

3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:

- a. A brief description of the change within the permitted facility;
- b. The date on which the change will occur;
- c. Any change in emissions; and
- d. Any permit term or condition that is no longer applicable as a result of the change.

4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.

5. The change shall be incorporated into the permit at renewal.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any the

following circumstances:

1. Additional ~~[applicable]~~ requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(7)(b)3 of this administrative regulation.

2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the acid rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit.

3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit. ~~[or]~~

4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

(c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.

(4) Reopenings for cause by the U.S. EPA.

(a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.

(b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.

(c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.

(d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

(e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. These procedures shall apply only to federally enforceable permits and to state-origin permits that become federally enforceable as a result of the permit action to be taken.

(1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:

- (a) Issuance of a draft permit;
- (b) Intended denial of a permit application;
- (c) Issuance of a draft significant permit revision;

- (d) Issuance of a draft general permit;
- (e) Issuance of a permit renewal; and
- (f) Scheduling of a public hearing pursuant to subsection (7) of this section.

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:

- (a) The applicant;
- (b) The administrator of the U.S. EPA through the appropriate regional office;

(c) For sources subject to 401 KAR 51:017 or 401 KAR 51:052, officials and agencies having authority over the locations where the source will be located, as follows:

- 1. ~~The administrator of the U.S. EPA through the appropriate regional office;~~

2. Local air pollution control agencies;

3. ~~3.~~ The chief executive of the city and county;

4. ~~4.~~ Any comprehensive regional land use planning agency; and

5. ~~5.~~ Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;

(d) ~~(e)~~ Affected states; and

(e) ~~(d)~~ Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.

(4) Public notice and the notice for those on the mailing list shall include the following minimum information:

(a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity involved in the permit action;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:

1. Copies of the draft permit;

2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and

3. All other materials available to the cabinet that are relevant to the permit decision;

(e) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

(f) A description of the emission change involved in a ~~any~~ permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.

(5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the

cabinet.

(6) Public comment.

(a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.

(b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.

(c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.

(7) Public hearings.

(a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. A request shall not require the extension of the comment period associated with the notice.

(b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts shall ~~are~~ also be made available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the comments and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.

(10) The following actions shall be exempt from this section:

(a) Permit revisions qualifying for minor permit revision procedures, including group processing; and

(b) Administrative permit amendments.

Section 8. Notice to Affected States. The provisions of this section shall apply only to federally enforceable permits, and to state-origin permits that will become federally enforceable as a result of the action to be taken.

(1) The cabinet shall give notice of draft permits to affected states on or before the time that the cabinet provides the draft permit or draft permit revision notice to the public pursuant to Section 7 of this administrative regulation, unless Section 6(2)(a) or (b) requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, as part of the submittal of the proposed permit to the U.S. EPA (or for a minor permit revision, as soon as possible after the submittal), pursuant to Section 9 of this administrative regulation, shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet shall ~~is~~ not be required to accept recommendations based on requirements that are not applicable to the proposed permit, or that are not based on requirements of this administrative regulation.

Section 9. U.S. EPA Review. (1) Prohibition on default issuance of permits.

(a) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and Section 8 of this administrative regulation; and

(b) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal if it has failed to take action on the application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application, proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 3(1)(c) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit, for a federally enforceable permit, a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA may ~~will~~ object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

~~(b) [The cabinet shall not issue a federally enforceable permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.]~~

~~(e)~~ The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(c) The cabinet shall not issue a federally-enforceable permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(d) If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f, (Title V of the Act).

(e) If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 7 of this administrative regulation, unless the petitioner demonstrates that it was impracticable to raise the objections within the comment period, or unless the grounds for the objection arose after the comment period. If the U.S. EPA objects to the proposed permit as a result of a petition filed pursuant to this subsection, the cabinet shall not issue the permit until the U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to a U.S. EPA objection.

(f) If the cabinet has issued a permit prior to receipt of a U.S. EPA objection pursuant to this section, the U.S. EPA may modify, terminate, or revoke the permit pursuant to Sections 4 through 6 of this administrative regulation, and the cabinet shall thereafter issue a revised permit that satisfies the U.S. EPA objection. The source shall not be in violation of the requirement to have submitted a timely and complete application.

(4) Recordkeeping and sharing of information. The cabinet shall keep records of the information required in subsection (2) of this section for at least five (5) years. The cabinet shall submit, upon request from the U.S. EPA and in a form specified by the U.S. EPA, including computer-readable files to the extent practicable, information which may reasonably be required to determine if the permitting program complies with the requirements of 42 USC 7401 through 7671q (the Act) ~~[7664q]~~, or 40 CFR Part 70. If the information has been submitted to the cabinet under a claim of confidentiality, the cabinet may require the source to submit this information to the U.S. EPA directly. If the cabinet is authorized by a source to submit information to the U.S. EPA under a claim of confidentiality, the cabinet shall submit the confidentiality claim to the U.S. EPA together with the information to which it applies.

Section 10. Emissions Statement Certification. The cabinet shall provide annually to each source subject to this administrative regulation a written copy of the KyEIS report containing the most recent information appropriate to that source.

(1) Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its actual emissions. Failure of the cabinet to notify a source pursuant to this subsection shall not relieve the source from the obligation to submit an emissions statement.

(2) The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.

(3) Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the actual emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

Section 11. Materials Incorporated by Reference. (1) The following documents are required for use by sources submitting permit applications, and are hereby incorporated by reference:

(a) DEP7008, Application for Coverage under 401 KAR 50:031.

(b) List of Trivial Activities.

(2) The following documents relating to affected sources subject to the acid rain program, are hereby incorporated by reference:

(a) 40 CFR Part 72, Permits Regulation, as published in the Code of Federal Regulations, July 1, 1995, as amended. [Federal Register, January 11, 1993 (58 FR 3660-3687), and as amended at 58 FR 46647-46650 (March 23, 1993).]

(b) 40 CFR Part 73, Allowance System, as published in the Code of Federal Regulations, July 1, 1995, as amended. [Federal Register, January 11, 1993 (58 FR 3687-3701), and as amended at 58 FR 15650-15716 (March 23, 1993).]

(c) 40 CFR Part 74, Sulfur Dioxide Opt-Ins, as published in the Code of Federal Regulations, July 1, 1995, as amended.

(d) 40 CFR Part 75, Continuous Emission Monitoring, as published in the Code of Federal Regulations, July 1, 1995, as amended. [Federal Register, January 11, 1993 (58 FR 3701-3757), and as amended at 58 FR 15716-15717 (March 23, 1993).]

(e) [(4)] 40 CFR Part 76, Acid Rain Nitrogen Oxides Emissions Reduction Program, as published in the Code of Federal Regulations, July 1, 1995, as amended. [Federal Register, March 22, 1994 (59 FR 13564-13580).]

(f) [(e)] 40 CFR Part 77, Excess Emissions, as published in the Code of Federal Regulations, July 1, 1995, as amended. [Federal Register, January 11, 1993 (58 FR 3757-3760).]

(g) [(f)] 40 CFR Part 78, Appeal Procedures for acid rain program, as published in the Code of Federal Regulations, July 1, 1995, as amended. [Federal Register, January 11, 1993 (58 FR 3760-3766).]

(3) [(2)] Copies of the documents incorporated by reference in subsections (1) and (2) of this section shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices of the Division for Air Quality:

(a) Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, [P.O. Box 1507,] 3700 Thirteenth Street, Ashland, Kentucky, 41105-1507, (606) 920-2067 [325-8569];

(c) Bowling Green Regional Office, 1508 Western Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475 [843-5475];

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 435-6022 [439-2394];

(f) London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-9008, (606) 878-057.

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304 [686-3304];

(h) [(g)] Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 11, 1996

FILED WITH LRC: June 14, 1996 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The proposed amendments to this emergency administrative regulation revise 401 KAR 50:035, which became effective September 28, 1994. The Regulatory Impact Analysis for that regulation contains a detailed explanation of how the state air permitting program is being revised to meet the Title V requirements of the Clean Air Act Amendments, and how this administrative regulation plays a major role in that task. This emergency administrative regulation will reduce the cost and administrative burden of preparing an application to construct or operate an air pollution source in Kentucky by:

1. Revising current criteria for insignificant activities to be consistent with less stringent federal criteria;

2. Creating a category of trivial activities not required to be permitted; and

3. Reducing the information relating to emissions required in permit applications.

This administrative regulation contains the permitting requirements for all air pollution sources in Kentucky. There are currently over 2500 sources listed in the Kentucky Emissions Inventory System

(KyEIS).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There will be no direct impact on the cost of living or employment in Kentucky as a result of this emergency administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. The cost of doing business will be reduced throughout Kentucky by the adoption of this emergency administrative regulation.

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

1. First year following implementation: Reporting and paperwork requirements will be reduced by adoption of the emergency administrative regulation for sources required to apply for permits to operate major air pollution sources by December 14, 1996, and for all other air pollution sources required to apply for air quality permits.

2. Second and subsequent years: There shall be a continuing reduction in the amount of reporting and paperwork required from sources seeking and holding permits from the Division for Air Quality as a result of this emergency administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no significant costs or savings that will accrue to the division as a result of these amendments.

1. First year: There are no significant costs or savings.

2. Continuing costs or savings: There are no significant costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings.

(b) Reporting and paperwork requirements: There will be a decrease in the reporting and paperwork requirements as a result of these amendments.

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

(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 emergency administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There will be no significant economic impact in Kentucky from the implementation of this emergency administrative regulation, although some slight benefit will occur as a result of cost savings noted above.

(b) Kentucky: Please see (6)(a), above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The provisions of this administrative regulation are mandated by Title V of the Clean Air Act Amendments of 1990, by the State Implementation Plan, and by the U.S. EPA, and these amendments are consistent with the federal mandate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no significant effect on public health or environmental welfare from the implementation of this emergency administrative regulation, although some benefit to environmental welfare will occur by allowing permit review personnel to direct more of their attention to the most serious environmental aspects of permit applications.

(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: See (8)(b), above.

(8) Identify any statute, rule, regulation or government policy which

may be in conflict, overlapping, or duplication: There is no known conflict with other statutes, rules, regulations or policies.

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no known conflict.

(10) Any additional information or comments: The cabinet offers no additional comments.

(11) TIERING: Is tiering applied? No. The primary purpose of this emergency administrative regulation is to address permitting issues that will be faced immediately by major air pollution sources in Kentucky required to submit permit applications by December 14, 1996. Additional issues regarding smaller sources will be considered during adoption of the permanent administrative regulation that will replace 401 KAR 50:035E.

#### 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. Any facility, such as a waste incinerator, which is owned or operated by a local government and emits a regulated pollutant in amounts greater than the specified de minimis will be required to obtain a permit under this administrative regulation. The proposed amendments do not change this requirement.

3. State the aspect or service of local government to which this administrative regulation relates. As stated in the response to question 2, any service provided by local government which emits a regulated pollutant in amounts greater than the specified de minimis will be affected, and the proposed amendments will not alter this effect.

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 on the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments to this administrative regulation revise 401 KAR 50:035, which contained the state operating permit program required by Title V of the 1990 Clean Air Act Amendments. The federal mandate is contained in 42 USC 7401-7671q and 40 CFR Part 70 as published in the Federal Register of July 21, 1992 (57 FR 32250). 42 USC 7661-7661f (Title V of the CAAA) contains the specific requirements for a federally enforceable operating permit program. The final rules establishing the requirements for an approvable state operating permit program are contained in 40 CFR Part 70.

2. State compliance standards. The state compliance standards are contained in KRS Chapter 13A and in the current version of this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. There were no emission 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? No. To the contrary, these amendments remove some of the requirements contained in the September

28, 1994, version which were found to be more stringent than necessary.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This emergency administrative regulation does not impose stricter standards, or additional or different responsibilities or requirements.

#### STATEMENT OF EMERGENCY 701 KAR 5:020E

This emergency administrative regulation, as approved by the Kentucky Board of Education, establishes appeal procedures for appeals from decisions of the Kentucky High School Athletic Association. The amended administrative regulation is in emergency form so that it can apply when the new uniform administrative hearing procedures in KRS Chapter 13B, which apply to KHSAA hearings, take effect on July 15, 1996.

PAUL PATTON, Governor  
JOSEPH W. KELLY, Chairman

#### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Chief State School Officer

**701 KAR 5:020E. Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education. [Elementary and secondary education hearing officer.]**

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: KRS 156.070 requires the Kentucky [State] Board of [for Elementary and Secondary] Education to provide for appeals from decisions of the Kentucky High School Athletic Association. This administrative regulation establishes relevant appeal [hearing] procedures.

Section 1. A review [hearing] officer ~~[who shall be a member of the board]~~ shall conduct ~~[a hearing, or]~~ a review on the law and record, as appropriate, of all appeals from the Kentucky High School Athletic Association.

Section 2. Any aggrieved party may appeal the ruling of the Kentucky High School Athletic Association within ten (10) days of the date of the Kentucky High School Athletic Association hearing, or its written decision if no ruling is made at the hearing, to the Kentucky [State] Board of [for Elementary and Secondary] Education, by filing notice with the Secretary of the Kentucky [State] Board of [for Elementary and Secondary] Education and by mailing a copy to [of the same] the Commissioner of the Kentucky High School Athletic Association. Appeals not timely filed shall not be considered [heard]. The secretary of the board shall immediately notify the commissioner of the Kentucky High School Athletic Association of the appeal and the commissioner shall immediately [forthwith] send the record of the matter, including a transcript or tape recording of the hearing before the association, to the secretary.

(1) The notice of appeal need not be in any prescribed form, but shall clearly state reasons for the appeal. If the appellant requests to present additional evidence to a review [hearing] officer, the notice also shall set forth the nature of the [such] evidence and reasons it has not been previously introduced.

(2) ~~[The notice of appeal may also request oral argument before a hearing officer, and if it does, it shall also state the reasons for such request.]~~



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~~(3)~~ Written arguments (or briefs) may be filed with the secretary within ten (10) days after notice of the appeal has been filed, with a copy sent by mail to the Commissioner of the Kentucky High School Athletic Association.

~~(3) [(4)]~~ The Commissioner of the Kentucky High School Athletic Association may respond to the written argument within five (5) days but may have one (1) extension of an additional five (5) days for good cause shown. The response shall be made by mail to the appellant with a copy sent to the secretary of the state board.

~~[(5) Unless the hearing officer grants the motion to introduce additional evidence or the request for an oral argument, the appeal shall be considered on the written record alone. Only in extraordinary cases where additional evidence is allowed to be introduced shall the appeal be considered de novo in nature.]~~

Section 3. The review ~~[hearing]~~ officer shall make findings of fact, conclusions of law and recommendations to the parties and to the Kentucky [State] Board of [for Elementary and Secondary] Education, and ~~[such]~~ shall allow ten (10) days for written exceptions and responses to the state board. Except in cases of clear and compelling justification, the parties shall not have a right to make oral argument in person to the state board.

Section 4. ~~[The board may accept or reject the submission of the hearing officer in total or in part, may return the matter to the hearing officer for further proceedings or may have the parties appear before the board for further proceedings and ultimate decision. In any event, the board, in making its final decision, shall adopt or incorporate appropriate findings and conclusions.]~~

~~Section 5.]~~ Because of the varied nature of the matters that may from time to time be assigned to a review ~~[hearing]~~ officer, and because time may be of the essence, in order for the submission of the review ~~[hearing]~~ officer to be presented to the board at a scheduled meeting of the board, the review ~~[hearing]~~ officer may ~~[is hereby authorized, consistent with the limitations of the assignment, to]~~ set ~~[such]~~ time frames and other procedural matters as will assure due process to the parties and allow the submission to the board within the time prescribed.

Section 5. The provisions of this administrative regulation shall apply beginning on July 15, 1996.

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: June 13, 1996  
FILED WITH LRC: June 14, 1996 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings to those affected:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon com-

petition) 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 costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

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

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

### STATEMENT OF EMERGENCY

701 KAR 5:051E

SB 292, Section 46, as enacted by the 1996 General Assembly, deletes the requirement that the Kentucky Board of Education promulgate an administrative regulation on this subject. SB 292, Section 12, which creates a new section of KRS Chapter 13B, establishes an emergency hearing procedure that supersedes and negates the need for 701 KAR 5:050, relating to summary hearing procedures for suspension of local school officials. Therefore, the repeal of 701 KAR 5:050 needs to apply beginning when SB 292 and KRS Chapter 13B hearing procedures take effect, which is July 15, 1996.

PAUL PATTON, Governor  
JOSEPH W. KELLY, Chairman

### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education  
Department of Education  
Office of Chief State School Officer

### 701 KAR 5:051E. Summary hearing procedures.

RELATES TO: KRS 156.132, 156.210

STATUTORY AUTHORITY: KRS 156.070, 156.132

EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: KRS Chapter 13B, as amended by



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SB 292 of the 1996 Kentucky General Assembly, provides a uniform administrative hearing procedure for state boards' and agencies' administrative hearings, effective July 15, 1996. SB 292, Section 12, which creates a new section of KRS Chapter 13B, establishes an emergency hearing procedure that supersedes and negates the need for 701 KAR 5:050, relating to summary hearing procedures for suspension of local school officials. Additionally, SB 292, Section 46, deletes the requirement that the Kentucky Board of Education promulgate an administrative regulation on this subject. Therefore, 701 KAR 5:050 is being repealed.

Section 1. 701 KAR 5:050, Summary hearing procedures, is hereby repealed.

Section 2. The provisions of this administrative regulation shall apply beginning on July 15, 1996.

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: June 13, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected:

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

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

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

1. First year following implementation: 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: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

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

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

### STATEMENT OF EMERGENCY

701 KAR 5:055E

This emergency administrative regulation, as approved by the Kentucky Board of Education, establishes procedures to be followed prior to and during the evidentiary hearing regarding the charges brought for removal of local board of education members, superintendents, and public school officers upon a finding of misconduct or certain other offenses. The amendments are necessary to conform the hearing procedures to those required by KRS Chapter 13B, which apply beginning July 15, 1996.

PAUL PATTON, Governor

JOSEPH W. KELLY, Chairman

### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education  
Department of Education  
Office of Chief State School Officer

#### 701 KAR 5:055E. Removal hearing procedures.

RELATES TO: KRS 156.132

STATUTORY AUTHORITY: KRS 156.070

EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: KRS 156.132 provides authority to the Kentucky [State] Board of [for Elementary and Secondary] Education to remove local board of education members, superintendents, and public school officers upon a finding of misconduct or certain other offenses. This administrative regulation establishes procedures to be followed prior to and during the evidentiary hearing regarding the charges brought for removal.

Section 1. Definitions. "Officer" means district board member, superintendent of schools, or other public school officer.

Section 2. Preliminary Matters. (1) The statement of charges required by KRS 156.132(4) and (5) shall be served personally or by certified mail upon the officer being charged.

(2) At any time before the matter is submitted for final decision, the statement of charges may be amended or supplemented. If the amended or supplemented statement of charges presents new charges, the officer being charged shall be afforded a reasonable opportunity, and not less than twenty (20) [thirty (30)] days, to prepare his defense.

Section 3. Prehearing Procedures. ~~[If within the twenty (20) days provided in KRS 156.132(4) and (5) the officer being charged notifies the State Board for Elementary and Secondary Education (state board) of his intention to appear and answer the charges, the following prehearing procedures shall apply:~~

~~(1) If the officer charged retains an attorney to represent him at the hearing on the charges, the attorney shall file a written entry of appearance. All future notices, correspondence and other documents~~

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relative to the hearing shall be transmitted to that attorney on behalf of the officer charged.

~~(2) No later than five (5) days before the scheduled hearing on the charges, the attorney for the chief state school officer shall provide the officer and the state board a proposed witness list, identifying the specific counts to which each witness may testify, and he shall provide a list of proposed exhibits which may be presented at the hearing.~~

~~(3) No later than five (5) days before the scheduled hearing on the charges, the officer charged shall provide the attorney for the chief state school officer and the state board a proposed witness list, identifying the specific counts to which each witness may testify, and he shall provide a list of proposed exhibits which may be presented at the hearing.~~

~~(4) A witness or exhibit shall not be utilized at the hearing if not on the proposed witness or exhibit list, except when good cause is demonstrated or for rebuttal purposes.~~

~~(5) Subpoenas may be issued by the chairman of the state board upon the request of any party. Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.~~

~~(6) The testimony of any material witness may be taken by deposition only if:~~

~~(a) The witness will be unavailable at the time and date of the scheduled hearing or the witness cannot be compelled to attend; and~~

~~(b) Written authorization of the chairman of the state board is provided or there is agreement of the parties.~~

~~(2) [(7)] If there is no agreement between the parties, the party requesting the deposition shall file a written request with the chairman of the state board stating:~~

~~(a) The name and address of the witness whose testimony is desired;~~

~~(b) The nature and materiality of the testimony; and~~

~~(c) The reasons why the witness will be unable or cannot be compelled to attend the hearing.~~

~~(3) [(9)] Upon a proper showing, the chairman of the state board may issue an interim order requiring the witness to appear and to testify by deposition.~~

~~(4) [(9)] The request for deposition shall be filed as soon as it becomes known that a witness will be unavailable at the time and date of the scheduled hearing. Any objection shall be filed no more than three (3) days after the filing of the written request.~~

~~(5) [(10)] The cost of the deposition shall be paid by the party requesting the deposition.~~

Section 4. Hearing Procedures. (1) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B. [The following hearing procedures shall apply:

~~(1) The chairman of the state board, the panel chairman, or the hearing officer may restrict the number of witnesses and set a reasonable time limit on the length of the hearing.~~

~~(2) Each party may cross-examine a witness called to testify by the opposing party on matters relevant to the issues.~~

~~(3) The hearing shall not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable prudent persons rely in the conduct of their serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.~~

~~(4) Hearsay evidence may be presented; however, irrelevant, immaterial, grossly prejudicial, highly unreliable, or unduly repetitious evidence may be excluded by the chairman of the state board, the panel chairman, or the hearing officer.~~

~~(5) When an exhibit is presented in the hearing on behalf of a party, the party shall have available sufficient copies of the document for the court reporter, each of the state board members, the state~~

~~board's counsel, and the opposing party.]~~

~~(2) [(6)] The scheduled hearing may be rescheduled or continued only upon a showing of good cause or agreement of the parties, and written authorization of the chairman of the state board.~~

~~(3) [(7)] The party seeking the continuance shall file with the chairman of the state board a written request stating the reason for the request or a statement indicating the agreement of the parties.~~

~~(4) [(8)] The request for a continuance shall be filed no less than ten (10) days prior to the scheduled hearing. Any objection to the request shall be filed no more than three (3) days after the filing of request.~~

Section 5. The provisions of this administrative regulation shall apply beginning on July 15, 1996.

~~[(9) If the hearing is held by a hearing officer or panel pursuant to KRS 156.071:~~

~~(a) The hearing officer or panel shall prepare a written recommendation of disposition, which shall include proposed findings of fact and conclusions of law;~~

~~(b) The recommendations shall be provided to the parties, who shall have ten (10) days from the date of entry of the written recommendations in which to file any exceptions to the recommendations;~~

~~(c) The party opposing the exceptions shall have ten (10) days from the filing of the exceptions in which to file any written response to the exceptions; and~~

~~(d) The written recommendations with exceptions and responses, if any, shall be forwarded to the state board for its final decision.]~~

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: June 13, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected:

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

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

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

1. First year following implementation: 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: N/A

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

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administrative regulation on: None

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

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

### STATEMENT OF EMERGENCY 701 KAR 5:086E

SB 292, as enacted by the 1996 General Assembly, deletes the requirement that the Kentucky Board of Education promulgate an administrative regulation establishing a hearing process for complaints referred by the Office of Education Accountability regarding an alleged intentional pattern of practice in violation of KRS 160.345, the school-based decision-making statute. SB 292, Section 52, mandates that the hearing be conducted in accordance with KRS Chapter 13B. As a result, there is no longer a need for 701 KAR 5:085, and thus it is being repealed. This repeal needs to apply beginning when SB 292 and KRS Chapter 13B hearing procedures take effect, which is July 15, 1996.

PAUL PATTON, Governor  
JOSEPH W. KELLY, Chairman

### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Chief State School Officer

#### 701 KAR 5:086E. Hearing process for school-based decision making complaints.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: KRS Chapter 13B, as amended by SB 292 of the 1996 Kentucky General Assembly, provides a uniform administrative hearing procedure for state boards' and agencies' administrative hearings effective July 15, 1996. SB 292, Section 52, deletes the requirement that the Kentucky Board of Education promulgate an administrative regulation establishing a hearing process for complaints referred by the Office of Education Accountability regarding an alleged intentional pattern of practice in violation of KRS 160.345, the school-based decision-making statute. SB 292, Section 52, mandates that the hearing be conducted in accordance with KRS Chapter 13B. As a result, there is no longer a need for 701 KAR 5:085, and thus it is being repealed.

Section 1. 701 KAR 5:085, Hearing process for school-based

decision-making complaints, is hereby repealed.

Section 2. The provisions of this administrative regulation shall apply beginning on July 15, 1996.

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: June 13, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected:

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

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

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

1. First year following implementation: 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: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

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

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

STATEMENT OF EMERGENCY  
701 KAR 5:090E

This emergency administrative regulation, as approved by the Kentucky Board of Education, implements KRS 161.790, which provides for the chief state school officer to appoint an impartial three (3) member tribunal to hear appeals and make the final administrative determination whenever a local school district disciplines or places on involuntary leave a certificated employee. This administrative regulation establishes necessary administrative and hearing procedures with respect to the tribunal process. The administrative regulation is being amended to conform to KRS Chapter 13B and SB 292 enacted by the 1996 General Assembly, which are applicable to tribunal hearings beginning July 15, 1996.

PAUL PATTON, Governor  
JOSEPH W. KELLY, Chairman

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Office of Chief State School Officer

701 KAR 5:090E. Teacher disciplinary hearings.

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS ~~[456.029]~~ 156.070, 161.790

EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: KRS 161.770 and 161.790 provide for the chief state school officer~~[-now the Commissioner of Education]~~ to appoint an impartial three (3) member tribunal to hear evidence and make the final administrative determination whenever a local school district proposes to discipline or place on involuntary leave a certificated employee. This administrative regulation establishes necessary administrative and hearing procedures with respect to the tribunal process.

Section 1. A local school district ~~[board of education or]~~ superintendent~~[-as applicable under statute]~~ proposing to discipline (except for a private reprimand) or place on involuntary leave a certificated employee shall immediately after notice to the employee transmit a copy of the notice of the action to the chief state school officer, along with advice as to the date of the receipt of the notice by the employee.

Section 2. ~~[If the employee fails to contest the proposed action, by written intent filed with the chief state school officer and the local superintendent within ten (10) days of receipt of the notice of the proposed action by the employee, the chief state school officer shall transmit appropriate notice that the district's action has become final. Failure to transmit such notice shall not affect the finality of the local district's action.]~~

~~Section 3.]~~ (1) If, after a requested hearing has been scheduled by the chief state school officer, or his designee, a continuance is requested by the certificated employee, the employee shall specifically and in writing waive the statutory hearing deadlines and any subsequent backpay award for the period of the requested continuance, unless the continuance request was initiated by the school district. No continuance initiated by the employee shall be granted without the appropriate waiver.

(2) A continuance requested by the certificated employee may be granted for good cause shown, including but not limited to pending criminal charges making it inadvisable for the employee to testify at any administrative hearing and late entry of an attorney into the case on behalf of the employee. Objections to a continuance request by the school district shall be considered on a case-by-case basis.

(3) A continuance requested by the school district, and not agreed to by the employee, shall be granted only upon documentation of the existence of an emergency or other circumstances making it impossible or prejudicially impractical for the district to adequately present its case at the scheduled hearing.

(4) All requests for continuances prior to the three (3) member tribunal convening shall be directed in writing to the office of the chief state school officer, and the chief state school officer or his designee shall consider and grant or deny all prehearing continuance ~~[such]~~ requests.

~~[(6) After convening a hearing, the three (3) member tribunal shall consider and rule upon all other requests for continuances.]~~

Section 3. ~~[4.]~~ (1) ~~[The chief state school officer shall, whenever practicable, provide a legal advisor for the three (3) member tribunal, and] The local school district shall pay all travel expenses of the hearing officer [legal advisor].~~

(2) The local school district shall, no later than the convening of the hearing, advise the tribunal members how to claim their per diem and travel expenses.

~~[Section 5. (1) No later than seven (7) days after an employee files a notice to contest, the school district shall provide the employee, and the chief state school officer and the panel members, with a proposed witness list and general summary of testimony and a list of proposed exhibits. The employee shall provide such documents no later than two (2) days prior to the scheduled hearing. No proposed witness or exhibit not on the list shall be utilized at the hearing except for good cause demonstrated to the tribunal or for rebuttal.]~~

~~(2) No later than one (1) day prior to a scheduled hearing, any party may submit to the other, and to the chief state school officer and the tribunal members, proposed findings of fact and conclusions of law. If a tribunal continues a hearing once convened or defers its decision, any right to submit proposed findings and conclusions shall be governed by ruling of the tribunal.]~~

~~(3) Prehearing documents shall be submitted to panel members through the chief state school officer, and the chief state school officer or his designee shall have discretion to eliminate potentially prejudicial or inadmissible information from prehearing documents and from the notice of charges to be supplied to panel members until the panel has an opportunity to rule upon such matters.]~~

Section 4. A hearing before the tribunal shall be conducted in accordance with KRS Chapter 13B. ~~[6. At the hearing, both the school district and the certificated employee shall be allowed to direct reasonable voir dire to the tribunal members, such voir dire going solely to the tribunal members' possible bias, meeting statutory eligibility requirements, or improper prior knowledge of the case.]~~

Section 7. ~~(1) Once the hearing has been convened and the parties given the opportunity for appropriate motions and responses, voir dire, and opening statements, the local school district shall have the burden of proof and the burden of going forward with its evidence.]~~

~~(2) Technical rules of evidence shall not apply, but all witnesses shall be subject to cross examination and any finding of fact by a tribunal shall be supported by some substantial and legally competent evidence.]~~

Section 5. ~~[8.]~~ (1) If, for any reason and after testimony has commenced, a tribunal member becomes unavailable to complete the hearing of the evidence of both parties, an appropriate substitute tribunal member shall be appointed by the chief state school officer and provided by the school district with a written transcript of all prior proceedings at the hearing.

(2) A hearing may be concluded and a decision rendered in such circumstances by a two (2) member tribunal only upon express agreement of both parties.

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Section 6. The provisions of this administrative regulation shall apply beginning on July 15, 1996.

~~[Section 9. The three (3) member tribunal shall render its decision by findings of fact and conclusions of law spread upon the stenographic record of the proceedings or by separate written decision incorporating appropriate findings and conclusions. Any decision spread upon the stenographic record shall be considered final as of the date such decision is read into the record.]~~

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: June 13, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected:

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

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

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

1. First year following implementation: 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: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

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

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

### STATEMENT OF EMERGENCY 702 KAR 1:080E

This emergency administrative regulation, as approved by the Kentucky Board of Education provides procedures for an orderly hearing to resolve differences between local boards of education with regard to the transfer or annexation of property. The hearing procedures are being amended to conform to the uniform hearing procedures required by KRS Chapter 13B, which apply beginning July 15, 1996.

PAUL PATTON, Governor  
JOSEPH W. KELLY, Chairman

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

702 KAR 1:080E. Transfer of annexed property; hearing.

RELATES TO: KRS ~~[156.031]~~ 160.045

STATUTORY AUTHORITY: KRS 156.070, 156.160, 160.045

EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: ~~[KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;] KRS 160.045 requires the Kentucky [State] Board of [for Elementary and Secondary] Education to grant and schedule an administrative [hold-a] hearing and be the final arbiter at the administrative level of annexation disputes under that statute. This administrative regulation provides procedures for an orderly hearing to resolve differences between local boards of education with regard to the transfer or annexation of property.~~

Section 1. Upon receipt of a petition of a board of education by reason of the provisions of KRS 160.045, the chief state school officer, or his designated representative, shall conduct an impartial investigation of the facts and conditions attendant to the proposed annexation and provide each affected board of education a report which sets forth the factual findings of his investigation and his recommendations based upon those findings.

Section 2. ~~If [in the event]~~ either affected board of education appeals the decision of the chief state school officer to the Kentucky [State] Board of [for Elementary and Secondary] Education, the board shall schedule an administrative hearing in accordance with KRS Chapter 13B. [at its next regularly scheduled meeting, the chief state school officer shall file notice of such appeal by certified mail on the respective boards of education fixing the time and place of the hearing of the appeal.]

Section 3. ~~[Each board of education, at least ten (10) days prior to the hearing on the appeal, shall present to the State Board for Elementary and Secondary Education and the other affected local board of education, a brief which shall set forth arguments for or against the transfer of property.]~~

Section 4. ~~Oral arguments and rebuttals shall be heard by the State Board for Elementary and Secondary Education. Each affected board of education shall be represented by one (1) person who may~~

be an attorney, the superintendent of schools, or a board member.

(1) Arguments shall be limited to thirty (30) minutes and rebuttals to ten (10) minutes for each board of education.

(2) Interested persons shall be permitted to present arguments for or against approval of transfer, but rebuttals shall not be permitted by any person other than the representative designated by the board of education. The time for arguments by interested persons shall be specified by the Chairman of the State Board for Elementary and Secondary Education at the time of the hearing.

(3) Any member of the State Board for Elementary and Secondary Education shall have the privilege of questioning the representatives of boards of education or any interested persons who present arguments for or against approval of transfer.

Section 5. After the hearing is completed, but before any action is taken, the chief state school officer, or a member of his staff, shall make, subsequent to completion of the hearing, recommendations concerning his findings and investigation of the proposed annexation to the State Board for Elementary and Secondary Education. These recommendations shall be read in the presence of all interested persons and copies of the written recommendations shall be given to the parties involved in the dispute.

Section 6. The State Board for Elementary and Secondary Education shall by appropriate action approve or reject the transfer of property involved. This action shall not be subject to rehearing. However, the matter may be again brought before the State Board for Elementary and Secondary Education for a new hearing if new facts warrant after all steps provided in KRS 160.045 have been followed and new efforts have been made to solve the problem locally.

Section 7. The Kentucky [State] Board of [for Elementary and Secondary] Education shall, in case of approval of transfer of property:

- (1) Specify the effective date of transfer;
- (2) Determine the ratio of the current assessed value of all property in the district relinquishing the property;
- (3) Specify the amount required to repay the transferred property's proportionate share of said district's current bonded indebtedness;
- (4) Calculate the amount and when payment shall be made to the district relinquishing the property; and
- (5) Specify pertinent details which will affect the transfer of property.

Section 4. The provisions of this administrative regulation shall apply beginning on July 15, 1996.

[Section 8. The State Board for Elementary and Secondary Education shall cause to be made a stenographic record of all public hearings and such copies of the transcript thereof as it requires for its own purpose. Participants desiring copies of transcripts may obtain the same from the official reporter upon payment of the cost thereof.]

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: June 13, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings to those affected:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None
    1. First year following implementation: 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: N/A
    - (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None
      - (a) Geographical area in which administrative regulation will be implemented: None
      - (b) Kentucky: None
      - (7) Assessment of alternative methods; methods why alternatives were rejected: N/A
      - (8) Assessment of expected benefits:
        - (a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None
        - (b) State whether a detrimental effect on environment and public health would result if not implemented: N/A
        - (c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.
        - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
        - (a) Necessity of proposed regulation, if in conflict: N/A
        - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
        - (10) Any additional information or comments: None
        - (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

## STATEMENT OF EMERGENCY 702 KAR 7:065E

This emergency administrative regulation, as approved by the Kentucky Board of Education, designates the agent to manage high school interscholastic athletics as required by KRS 156.070. The administrative regulation specifies the Kentucky High School Athletic Association (KHSAA) as this agent and sets forth the conditions for management, financial planning, and review requirements for maintaining the designation by the Kentucky Board of Education. Section 4 of this administrative regulation directs the KHSAA to complete an annual review of its bylaws by October 30 of each year. This emergency administrative regulation is necessary for the KHSAA to fulfill the review requirements set forth and to put into effect the 1996-97 KHSAA Handbook, including amended bylaws, as soon as

possible so that the bylaws will apply to the 1996-97 school year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

PAUL PATTON, Governor  
JOSEPH W. KELLY, Chairman

**EDUCATION, ARTS AND HUMANITIES CABINET**  
**Department of Education**  
**Office of District Support Services**

**702 KAR 7:065E. Designation of agent to manage high school interscholastic athletics.**

RELATES TO: KRS 156.070  
STATUTORY AUTHORITY: KRS 156.070  
EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: KRS 156.070 gives the Kentucky Board of Education (KBE) the management and control of the common schools, including interscholastic athletics, and allows the KBE to designate an agency to manage athletics pursuant to rules approved by the KBE. This administrative regulation designates an agent for high school athletics and sets forth financial planning and review processes for that agent. Also, this administrative regulation adopts the bylaws, procedures and rules of that agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate with KHSAA and to compete with the common schools.

Section 2. The KHSAA shall meet the following conditions in order to remain eligible to maintain the designation as the agent to manage interscholastic athletics:

- (1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
- (2) Sponsor an annual meeting of its member schools;
- (3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration at the annual meeting;
- (4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
- (5) The governing body shall set goals and objectives and perform a self-assessment and submit them annually to the KBE.
- (6) Advise the Department of Education of all legal action brought against the KHSAA;
- (7) Permit Board of Control members to serve a maximum of two (2) four (4) year terms with no region represented for more than eight (8) years;
- (8) Employ the commissioner and evaluate that person's performance annually and establish all staff positions upon recommendation of the commissioner;
- (9) Permit the commissioner to employ all other personnel deemed necessary to perform the staff responsibilities;
- (10) Permit the Board of Control to assess fines on member schools;
- (11) Utilize trained independent hearing officers instead of eligibility committees for appeals; and
- (12) Establish a philosophical statement of principles to use as a guide in eligibility cases.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall submit the following financial documents to the KBE:

- (a) Draft budget for the next two (2) years in November of each year;
- (b) Annual audit with KHSAA Commissioner's letter addressing any exceptions within thirty (30) days of receipt of the audit; and
- (c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.
- (2) KHSAA shall submit a strategic plan to KBE by June 1 of each year.
- (3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.
- (4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:
  - (a) Athletic appeals;
  - (b) Eligibility rules;
  - (c) Duties of school officials;
  - (d) Contests; and
  - (e) Requirements for officials and coaches.
- (5) KHSAA shall submit to KBE a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of individual(s), grade, school, and the action taken by KHSAA.

Section 4. The bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1996-97 [~~1995-96~~] as revised, adopted, and approved on June 11, 1996 [~~December 6, 1995~~], are hereby incorporated by reference. This material may be inspected and copied at the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

WILMER S. CODY  
Commissioner of Education

JOSEPH W. KELLY, Chairman  
APPROVED BY AGENCY: June 13, 1996  
FILED WITH LRC: June 14, 1996 at 9 a.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Randy Kimbrough, Deputy Commissioner

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings to those affected: None
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
    1. First year following implementation: None
    2. Second and subsequent years: None
  - (3) Effects on the promulgating administrative body:
    - (a) Direct and indirect costs or savings:
      1. First year: None
      2. Continuing costs or savings: None
    3. Additional factors increasing or decreasing costs: None
    - (b) Reporting and paperwork requirements: None
    - (4) Assessment of anticipated effect on state and local revenues: None
    - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None



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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### STATEMENT OF EMERGENCY 703 KAR 3:205E

This emergency administrative regulation, as approved by the Kentucky Board of Education, outlines the operational procedures for the Management Improvement Program established by the Kentucky Board of Education. The Management Improvement Program provides services for school districts which demonstrate such a critical lack of efficiency or effectiveness in governance or administration that state mandated corrective action or state control of the district is required. The amendments are to conform the hearing procedure to those required by KRS Chapter 13B, which applies beginning July 15, 1996.

PAUL PATTON, Governor  
JOSEPH W. KELLY, Chairman

#### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Division of Management Assistance Programs

#### 703 KAR 3:205E. Management Improvement Program.

RELATES TO KRS 158.780, 158.785

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.780, 158.785

EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: KRS 158.780 and 158.785 require the Kentucky [State] Board of [for Elementary and Secondary] Education to establish a program for management improvement services for school districts which demonstrate such a critical lack of efficiency or effectiveness in governance or administration that state mandated corrective action or state control of the district is required. This administrative regulation outlines the operational procedures for the management improvement program.

Section 1. (1) The Kentucky Department of Education shall collect data from local school districts pursuant to KRS 158.785(2). The data shall include instructional and operational data routinely submitted by the districts, and other information as requested by the Kentucky Department of Education.

(2) If a review of data, such as instructional and operational data, regarding a school district indicates significant deficiencies, the Department of Education staff shall conduct an on-site review.

(3) The on-site review shall include the examination of local school records and interviews with school district officials, staff, and community leaders. The on-site review may examine school district operations in one (1) or more of the following areas:

(a) Governance policy and procedures;

(b) Instructional programming and organization;

(c) Fiscal management and accountability procedures;

(d) The maintenance and condition of the physical plant;

(e) Facility construction;

(f) Student transportation; and

(g) Community perception and support.

Section 2. (1) If the data review and school district investigation outlined in Section 1 of this administrative regulation, reveal significant deficiencies, the commissioner of education shall determine whether a comprehensive management audit is appropriate.

(2) The comprehensive audit shall include an investigation of the district's compliance with state and federal statutes and administrative regulations and local board policies. The audit shall include an on-site review, investigation, and analysis of the governance and administration of the school district to determine if a significant lack of efficiency and effectiveness exists in the following areas:

(a) Planning - failure to develop, adopt and implement planning processes that allow for public review and timely action by the board and administration regarding management of the administrative and business activities of the school district and of the management of the instructional program;

(b) Operational support - failure to provide the operational support services required to operate an efficient and effective school system including such factors as:

1. Maintenance and operation of the physical plants - failure of the district to maintain school building cleanliness and safety including such factors as:

a. Failure to develop and maintain an accurate record of the maintenance needs and expenditures.

b. Failure to budget and expend funds necessary to maintain the physical plant.

c. Failure to employ maintenance and operation staff who provide clean and safe school buildings.

d. Failure to make efficient use of personnel as indicated by excessive staffing when compared to school districts of similar size and funding.

e. Failure to make repairs that prevent costly and unnecessary maintenance expenditures.

f. Failure to ensure that existing facilities are adequately insured;

2. Facility construction - failure to manage a school facility construction program that is in compliance with 702 KAR Chapter 4 and is planned, executed, and completed to ensure that public funds are expended in a responsible manner including such factors as failure to:

a. Develop and implement a planning process for identifying the need for new or improved facilities.

b. Maintain an up-to-date facility survey or ensure that regulatory approvals are secured.

c. Develop and implement plans to receive the allowable benefit from School Facilities Construction Commission.

d. Follow proper bidding requirements and develop and maintain accurate records of expenditures and authorization of expenditures on school construction projects.

e. Institute an administrative oversight process to ensure that facility construction activities are efficient and accountable for both local and state funds.

3. Maintenance and operation of the transportation system - provide and maintain an efficient transportation system including such

factors as failure to:

a. Provide training for personnel responsible for the safe transportation of children in accordance with Kentucky [State] Board of [for Elementary and Secondary] Education administrative regulations.

b. Develop and implement policies and procedures regarding the use of district-owned vehicles.

c. Purchase and maintain equipment to safely and efficiently transport children to school.

d. Establish transportation routes that minimize public expenditure and time children spend en route to school.

e. Follow bidding requirements for the purchase of equipment and materials necessary to conduct the school's transportation program.

4. School food services - failure to develop an efficient system of school food services including such factors as failure to:

a. Develop and maintain an accurate record of school food service expenditures.

b. Utilize federal and local resources to operate a nutritious program in a cost effective manner.

c. Employ school food service staff who provide meals in accordance with federal and state guidelines.

d. Make efficient use of personnel as indicated by excessive staffing when compared to school districts of similar size and funding;

(c) Fiscal management - failure to perform the appropriate planning, budgeting, fund management, and accounting responsibilities required for the fiscal management of the school district including such factors as failure to:

1. Assess the need for expenditures.

2. Recommend use of available funds according to an established set of priorities.

3. Maintain accurate records of expenditures and authorization of expenditures as required for auditing purposes.

4. Comply with purchasing requirements applicable to school districts.

5. Implement investment policies to ensure that all public funds are invested safely and productively.

(d) Personnel administration - failure to ensure school district staff are prepared to perform the required professional and staff responsibilities in an effective and efficient manner, including such factors as failure to:

1. Develop and implement employment practices and procedures that ensure the selection and placement of the most qualified personnel.

2. Train and evaluate the professional staff of the district as required by applicable laws.

(e) Instructional management - failure to develop and maintain district-level instructional policy including such factors as failure to:

1. Maintain a curriculum consistent with the valued outcomes or applicable laws.

2. Provide the resources necessary to support the instructional program.

(3) Deficiencies identified and established in some or all of the factors listed in this section may constitute a pattern of a significant lack of effectiveness and efficiency in the governance and administration of the school district.

Section 3. (1) Following the comprehensive audit, the department staff shall prepare a report of the comprehensive audit and the commissioner shall determine if there exists a pattern of a significant lack of effectiveness and efficiency in the governance or administration of the school district.

(2) If the commissioner determines that the comprehensive audit does establish an existing pattern of a significant lack of effectiveness and efficiency and state assistance or state management is necessary to correct the inefficiencies and ineffectiveness, he shall place a recommendation to declare the district "state-assisted" or "state-managed" before the state board as specified in Section 4 of this

administrative regulation.

(3) If the commissioner does not place a recommendation before the state board, the department shall convey the comprehensive report to the school district for its information and use.

(4) If the local district agrees with the commissioner's recommendation to declare the district "state-assisted" or "state-managed" and the district waives the right to participate in the hearing before the state board, the commissioner shall ~~will~~ place this recommendation before the Kentucky [State] Board of [for Elementary and Secondary] Education for its [their] approval without a hearing.

Section 4. The procedure for submitting a recommendation to the state board regarding the declaration of a school district as a "state-assisted" or "state-managed" district shall include the following:

(1) The commissioner shall file with the state board his written recommendation along with supporting information, and he shall arrange the scheduling of a hearing on the matter before the state board; and

(2) The hearing procedures established by KRS Chapter 13B shall be applicable. [At least twenty (20) days before the scheduled hearing, the commissioner of education shall provide the school district's superintendent and the school district's board of education with a copy of the written recommendation and supporting information, as well as written notice of the date and place at which the hearing before the state board shall be held;]

~~(3) The commissioner and the school district may be represented by counsel and may present witnesses; and~~

~~(4) After completion of the hearing, the state board may declare the school district as a state-assisted or state-managed district, and the board shall issue written findings, specifying the basis for the declaration;]~~

Section 5. (1) If a school district is declared a state-assisted or state-managed district, the district shall develop and implement an improvement plan that identifies the deficiencies and the corrective actions necessary to improve school district governance and administration. The improvement plan shall be subject to approval by the state board.

(2) The improvement plan shall include:

(a) Specific objectives and strategies to correct deficiencies in defined time frames; and

(b) The identification of local board and individual administrative staff responsibilities and activities that shall be required to improve school district governance and administration.

(3) A school district declared state-assisted shall remain a state-assisted district until:

(a) The commissioner recommends to the state board and it determines that sufficient progress has been made in implementing the improvement plan; or

(b) The state board makes a determination that the district shall be state-managed.

Section 6. The local school district declared a state-assisted or state-managed district shall provide to the commissioner monthly reports indicating the status of improvement activities in the district.

Section 7. The provisions of this administrative regulation shall apply beginning on July 15, 1996.

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

## ADMINISTRATIVE REGISTER - 91

JOSEPH W. KELLY, Chairman  
APPROVED BY AGENCY: June 13, 1996  
FILED WITH LRC: June 14, 1996 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings to those affected:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None
    1. First year following implementation: 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: N/A
  - (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None
    - (a) Geographical area in which administrative regulation will be implemented: None
    - (b) Kentucky: None
  - (7) Assessment of alternative methods; methods why alternatives were rejected: N/A
  - (8) Assessment of expected benefits:
    - (a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None
    - (b) State whether a detrimental effect on environment and public health would result if not implemented: N/A
  - (c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.
  - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
    - (a) Necessity of proposed regulation, if in conflict: N/A
    - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
  - (10) Any additional information or comments: None
  - (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

### STATEMENT OF EMERGENCY 707 KAR 1:180E

This emergency administrative regulation, as approved by the Kentucky Board of Education, establishes requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended. The amendments are necessary to conform the hearing procedures to those required by KRS Chapter

13B, which apply beginning on July 15, 1996.

PAUL PATTON, Governor  
JOSEPH W. KELLY, Chairman

### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Special Instructional Services

#### 707 KAR 1:180E. Due process procedures.

RELATES TO: KRS 157.200, 157.360, 158.030, 158.100, 167.150, 20 USC 1232g, 1401-1418

STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.210, 157.220, 157.260, 167.015

EFFECTIVE: June 14, 1996

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended.

#### Section 1. Definitions. (1) "Consent" means that:

(a) The parent of the child or youth has been fully informed of all information relevant to the activity for which consent is sought;

(b) The parent of the child or youth understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent of the child or youth understands that the granting of consent is voluntary and may be revoked at any time.

#### (2) "Emancipated youth" means:

(a) A youth who has reached the age of majority, eighteen (18), and no evidence exists that there is a court order or legal document showing the parent as the guardian or youth's representative in educational matters; or

(b) A youth who is married.

(3) "Independent evaluation" means an evaluation conducted by a qualified examiner who is not employed by the local education agency (LEA) responsible for the education of the child or youth in question.

(4) "Native language of the parent of a child or youth" means the primary language used in the home, that is, the language most frequently used for communication by the parent of the child or youth.

(5) "Parent" means a parent, a guardian, a person acting as a parent of a child or youth, a permanent foster parent or a surrogate parent appointed by the LEA as required by this administrative regulation. The term does not include a guardian who is an employee of the Commonwealth if the child or youth is a ward of the state.

(6) "Procedural safeguards" means all rights guaranteed to the parent and the child with disabilities under Subpart E of the Individuals with Disabilities Education Act (IDEA).

(7) "Public expense" means that the LEA either pays for the full cost of the evaluation or makes sure that the evaluation is otherwise provided at no cost to the parent.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation to address procedural safeguards. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Timelines. Each LEA shall establish and implement reasonable timelines for the identification, evaluation, and placement

of children and youth suspected of having disabilities to occur without delay. The total amount of time from the date of the completed referral until the date services are initiated, excluding the number of days the LEA is waiting for parental decisions, shall not exceed sixty (60) school days.

(1) An admissions and release committee (ARC) meeting as described in Sections 4 and 5 of this administrative regulation, to complete the individual education program (IEP), as defined in 707 KAR 1:210, shall be held within thirty (30) calendar days of a meeting when an ARC determines, based on a full and individual evaluation, that a child or youth is eligible for specially designed instruction and related services. This timeline shall be included within the sixty (60) school day timeline above.

(2) The ARC shall develop an IEP for each child or youth with a disability before specially designed instruction and related services are provided.

(3) The IEP for initial placement shall be implemented as soon as possible after notice and consent for initial placement.

(4) A meeting for the annual review of the IEP shall be held within twelve (12) calendar months of the date of the meeting when the IEP was developed.

(5) For each child or youth receiving specially designed instruction, the IEP shall be implemented as soon as possible after the ARC meeting where the IEP is reviewed and revised.

(6) The LEA shall have in effect an IEP for each child or youth with a disability who needs specially designed instruction and related services at the beginning of each school year.

(7) The LEA's timelines for reevaluation of children and youth currently receiving specially designed instruction services shall not exceed thirty-six (36) calendar months from the date the ARC convened and determined eligibility for specially designed instruction and related services.

Section 4. The ARC Membership. The LEA shall establish admissions and release committees (ARCs) with appropriate membership that addresses the process of identification, evaluation, and placement of children and youth and the provision of free appropriate public education for children and youth with disabilities.

(1) The LEA shall ensure that each ARC meeting includes the following participants:

- (a) Parent;
- (b) Child or youth, where appropriate;
- (c) Regular education teacher of the child or youth;
- (d) Teacher of exceptional children who is knowledgeable of the disability or suspected disability;

(e) Administrator or designee, other than the child's teacher, who is qualified to provide or supervise the provision of specially designed instruction. The administrator or designee shall have the authority to commit personnel and fiscal resources;

(f) Others as requested by any member of the ARC. Teacher organization officials shall not be authorized to participate in ARC meetings to represent teachers.

(2) For a child or youth who has been evaluated for the first time, the LEA shall ensure that one (1) of the following participates in the ARC:

- (a) A member of the evaluation team; or
- (b) The representative of the agency, the child or youth's teacher, or some other person knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(3) If the purpose of the ARC is the consideration of transition services, the LEA shall invite the youth and a representative of any other agency that is likely to be responsible for providing or paying for the transition services.

(a) If the youth does not attend the ARC meeting, the LEA shall take other steps to ensure that the youth's preferences and interests are considered; and

(b) If an agency is invited but does not send a representative to

the ARC meeting, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(4) If the purpose of the ARC is to send or receive a child to or from a private, LEA, public or state operated program, the membership shall include a representative of the other program.

Section 5. The ARC Process. Each LEA shall ensure that each ARC follows due process procedures to ensure that children and their parents are guaranteed procedural safeguards and that meetings are initiated for the purposes of:

- (1) Acting on referrals as follows:
  - (a) Review complete, written referrals;
  - (b) Determine the need to evaluate;
  - (c) Determine the need for written parental consent to evaluate.
- (2) Act on evaluation as follows:
  - (a) Determine that a full and complete evaluation was conducted;
  - (b) Determine if the child or youth can be classified as having a disability; and
  - (c) Develop a remedial plan if the ARC determines the child or youth is not eligible for specially designed instruction or related services.
- (3) Developing, reviewing, or revising an IEP as follows:
  - (a) Ensure that the IEP meets regulatory requirements;
  - (b) Review and revise the IEP at least annually or as requested by any ARC member.
- (4) Determining placement as follows:
  - (a) Determine placement in the least restrictive environment;
  - (b) Determine placement at least annually, or as the IEP is revised;
  - (c) Propose or refuse to provide services based on the current and complete IEP in the place determined;
  - (d) Determine the need for written parental consent for services;
  - (e) Ensure that services are provided.
- (5) Acting on reevaluation as follows:
  - (a) Ensure that a full and complete evaluation is conducted at least every thirty-six (36) months or as requested by any ARC member;
  - (b) Review the full and individual evaluation information; and
  - (c) Propose and refuse continuation or change in placement.

Section 6. Notice. The LEA shall provide written notices to parents within LEA established timelines and procedures each time the LEA proposes or refuses to initiate, continue, or change the identification, evaluation, placement or provision of a free appropriate public education.

- (1) Notice shall be provided at the point of:
  - (a) Referral as a possible candidate for programs for specially designed instruction and related services;
  - (b) Individual initial evaluation;
  - (c) Initial placement;
  - (d) Continued or change in placement;
  - (e) Reevaluation; and
- (2) The written notice given to parents shall include, as follows:
  - (a) A full explanation of all the procedural safeguards available to the parents under Subpart E of Part B of IDEA;
  - (b) A description of the action proposed or refused by the LEA;
  - (c) An explanation of reasons the LEA proposes or refuses to take action;
  - (d) A description of any options the LEA considered and the reasons those options were rejected;
  - (e) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;
  - (f) A description of any other factors relevant to the LEA's proposal or refusal; and
  - (g) Information that if the parent prevails in administrative hearings or court action, courts may award reasonable attorney fees and costs.

(3) Additional requirements.

(a) The LEA shall provide written notices which are understandable to the general public.

(b) The LEA shall determine the language or mode of communication used by the parent of the child or youth and provides the notice in that language or mode of communication unless clearly not feasible to do so.

(c) If the native language or other mode of communication is not a written language, the LEA shall ensure:

1. That the notice is translated orally or by other means to the parent in his native language or other mode of communication;
2. That the parent understands the content of the notice; and
3. That there is written evidence that these requirements have been met.

(4) Notice of ARC meeting. The LEA shall take steps to ensure that one (1) or both of the parents of the child or youth are present at each meeting or are afforded the opportunity to participate, including:

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed upon time and place;

(c) The notice of an ARC meeting sent to parents shall indicate:

1. The purpose of the meeting;
2. The date and time and location of the meeting;
3. How the parent indicates the need for an alternative meeting date, time, or location;
4. The names and titles of all persons who are expected to attend;

5. Information stating that the parent of the child or youth may bring persons to give them aid or support;

a. That if the parent selects another person to act as an agent (attorney or advocate), the LEA is to be informed in writing that person has authority to represent him in educational matters; and

b. That a person selected to act as an agent during a meeting shall not be empowered to provide or deny written consent and that the LEA only recognizes one (1) agent at any given time; however, the parent of the child or youth may replace an agent at will;

6. If a purpose of the ARC meeting is the consideration of transition services, the notice shall also:

- a. Indicate this purpose;
- b. Indicate that the LEA will invite the child or youth; and
- c. Identify any other agency that will be invited to send a representative.

(d) When the LEA is unable to convince the parents that they should attend, a meeting may be conducted without a parent in attendance, provided the LEA maintains records of attempts to arrange a mutually agreed-on time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of these calls;
2. Copies of correspondence sent to the parents and any responses received;
3. Detailed records of visits made to the parents' home or place of employment and results of those visits.

(e) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English and document the action.

(f) If parents do not attend the ARC meeting, the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

(g) Parents shall receive a copy of the IEP regardless of whether they attend the ARC meeting.

Section 7. Consent. The LEA shall obtain written, informed parental consent prior to initial evaluation and initial provision of services.

(1) Consent to evaluate.

(a) The LEA shall obtain written parental consent before using any procedures selectively with an individual child or youth to determine if the child or youth has a disability and needs specially designed instruction and related services.

(b) The consent for initial evaluation shall include information about individual evaluation procedures that will be used selectively with the child or youth in all areas related to the suspected disability.

(c) The consent for initial evaluation shall explain that the full and individual evaluation information will be used to determine:

1. If the child or youth has a disability; and
2. The extent and nature of the specially designed instruction and related services the child or youth may need in order to receive a free appropriate public education.

(d) The consent shall list the records (if any) which will be released and to whom.

(2) Consent for placement.

(a) The LEA shall obtain written informed parental consent prior to the initial provision of specially designed instruction and related services.

(b) If a child or youth was receiving specially designed instruction and related services in another LEA within the Commonwealth and enrolls, the enrolling LEA shall implement the IEP and placement from the previous LEA until such time as the IEP is revised, if necessary.

(c) If a child or youth was receiving specially designed instruction and related services in another state and enrolls, the enrolling agency shall implement the IEP from the previous LEA pursuant to the requirements for placement for temporary services.

(3) Consent shall not be used as a condition to continuing to provide specially designed instruction and related services for a child or youth with disabilities.

(4) Denial or revocation of consent.

(a) The LEA shall include in its notice to parents the following:

1. Permission is voluntary;
2. Parents' right to deny permission for initial evaluation and placement;
3. Parents' right to revoke permission at any time.

(b) If the LEA disagrees with the parents' denial or revocation, a due process hearing shall be requested.

Section 8. Independent Evaluation. (1) If a parent disagrees with an evaluation obtained by the LEA, the parent shall have the right to obtain an independent educational evaluation of the child or youth at public expense. An LEA may initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(2) If the parent requests, the LEA shall give the parent information about where an independent educational evaluation may be obtained.

(3) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(a) Shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the child or youth; and

(b) May be presented as evidence at a due process hearing regarding the child or youth.

(4) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense.

(5) Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the LEA uses when it initiates an evaluation.

Section 9. Representation. (1) The LEA shall assure that each child or youth is represented by a parent at all decision-making points

in the identification, evaluation, and placement process and relative to a free appropriate public education.

(2) Determination of representation.

(a) No later than at the time of referral, the LEA shall determine if the child or youth is:

1. Emancipated and, therefore, represents himself in educational decision-making; or

2. To be represented by an adult, such as a parent, a guardian, a person acting as a parent, a surrogate parent, or a permanent foster parent.

(b) The LEA shall verify the location, legal status and availability of parents or guardians prior to taking any action with regard to the identification, evaluation or educational placement of a child or youth.

Section 10. Surrogate Parent. The LEA shall protect the rights of a child or youth by assigning a surrogate parent.

(1) The LEA shall protect the rights of a child or youth when:

(a) No parent can be identified;

(b) The LEA, after reasonable efforts, cannot determine the whereabouts of a parent; or

(c) The child is a ward of the state. The child or youth is a ward of the state when all parental rights have been terminated by a court of competent jurisdiction.

(2) The LEA shall not assign a surrogate to an emancipated individual.

(3) The LEA shall terminate a surrogate parent assignment when the parent becomes known or is located or when the youth becomes emancipated.

(4) The LEA shall establish procedures for the selection and assignment of surrogate parents which include:

(a) A method of determining whether a child needs a surrogate parent;

(b) A method for recruiting persons to serve as a surrogate parent;

(c) A method for selecting and assigning a surrogate parent;

(d) Criteria for selection of a surrogate which ensure that the person selected as surrogate:

1. Has no conflict of interest;

2. Has knowledge and skills to represent the child or youth; and

3. Is not an employee of the public agency involved in the education or care of the child or youth.

(e) A surrogate parent shall not be considered an employee of the LEA solely because he is paid by the LEA to serve as a surrogate parent.

(f) A surrogate parent shall not be considered an employee of the Cabinet for Human Resources solely because he is paid by that agency to serve as a foster parent of the child.

(5) The LEA shall provide training to persons selected as surrogate parents to assure these persons have sufficient knowledge and skills to effectively represent the child or youth.

(6) The LEA shall select persons as surrogate parents who:

(a) Have no conflicting vested interest;

(b) Are committed to personally and thoroughly acquainting themselves with the child and his needs;

(c) Are familiar with the educational system within the state;

(d) Are readily accessible to the child;

(e) Are age eighteen (18) or older; and

(f) Are a United States citizen.

(7) The LEA shall assign a surrogate parent within fifteen (15) school days after determining the need and shall acknowledge the authority of the surrogate to represent the child in all matters relating to the identification, evaluation, and educational placement of the child and provision of a free appropriate public education.

(8) The LEA shall recognize the surrogate parent as the one to exercise all of the educational rights, responsibilities and authorities as a parent of the child or youth, such as the rights to:

(a) Receive notice of proposed or refused actions;

(b) Provide or deny consent;

(c) Participate in ARC meetings as the parent;

(d) Protections under confidentiality;

(e) Request an independent educational evaluation of the child or youth; and

(f) Request an impartial due process hearing and appeal.

Section 11. Due Process Hearings. A parent or LEA may initiate a hearing on any matter concerning the identification, evaluation, placement or the provision of a free appropriate public education. The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information.

(1) Hearing requests ~~[Notice of hearing]~~.

(a) The LEA shall inform the parents of:

1. The right to request a due process hearing related to disagreements about identification, evaluation, placement or provision of a free appropriate public education;

2. The procedures for requesting a due process hearing.

(b) Requests for hearings may be initiated by the LEA or the parent or their authorized agent and shall:

1. Be submitted to the Director, Division of Exceptional Children Services, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601;

2. Be in writing and signed by the LEA representative or the parent; and

3. Clearly state:

a. A summary of the facts regarding the disagreement over which the hearing was requested; and

b. The specific issues the LEA or the parent is requesting the hearing officer to decide.

(c) The facts contained in the hearing request shall establish that the disagreement which exists between the LEA and the parent of the child or youth is related to the identification, evaluation, placement, or the provision of a free appropriate public education to a child or youth.

(d) Any hearing request may be cancelled by the hearing officer upon receipt of written documentation from the party requesting the hearing.

(2) Assignment of a hearing officer.

(a) The Division of Exceptional Children Services shall assign a hearing officer to preside at a due process hearing. Written notification of the assignment shall be provided to the hearing officer, the LEA, and the parent.

(b) Within five (5) working days of receipt of notification of the assignment of the hearing officer, the public agency, or the parent shall submit in writing to the Division of Exceptional Children Services reasons for the contention, if any, that the hearing officer would not be impartial. Reasons for dismissal of the hearing officer shall be substantiated prior to the assignment of another hearing officer.

(c) It shall be the responsibility of the Division of Exceptional Children Services to ensure the selection, training, and maintenance of a registry of hearing officers to serve at a due process hearing. Persons to be considered for appointment as impartial hearing officers may come from a variety of working environments, such as public schools, universities and colleges, and outside professional agencies concerned with the education of children and youth with disabilities.

(d) The Division of Exceptional Children Services shall ensure that each public agency maintains a listing of trained individuals and their qualifications from which hearing officer assignments shall be made.

(3) Qualifications of hearing officer.

(a) The competencies of a hearing officer shall include:

1. Minimum of Rank I in education or special education or equivalent degree in law, psychology or counseling;

2. Attendance at hearing officer training; and

3. Conduction of a hearing within the last three (3) years.

(b) The hearing officer assigned shall not be an employee of a public agency which is involved in the education or care of the child.

~~[(c) The hearing officer shall not appear to have vested interest in the outcome of the hearing.]~~

~~(4) Exceptional children due process hearings shall be conducted in accordance with KRS Chapter 13B, [Authority of the hearing officer.]~~

~~(a) The hearing officer shall regulate the course of proceedings and the conduct of the parties during the proceedings. The hearing officer shall take all steps necessary to conduct a fair and impartial proceeding to avoid delay, and to maintain order.~~

~~(b) The hearing officer may schedule a prehearing conference of the hearing officer and parties.~~

~~1. Any party may request the hearing officer to schedule a prehearing. The hearing officer shall decide if a conference is necessary and shall notify all parties.~~

~~2. At a prehearing conference, the hearing officer and the parties may consider subjects including:~~

~~a. Narrowing and clarifying issues;~~

~~b. Assisting the parties in reaching agreements and stipulations; and~~

~~c. Clarifying the positions of the parties.~~

~~3. A prehearing conference may be conducted by telephone conference call.~~

~~4. At a prehearing conference the parties shall be prepared to discuss the subjects listed in subparagraph 2 of this paragraph.~~

~~5. At a prehearing conference the hearing officer may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties or may require the parties to do so.~~

~~(c) The hearing officer may require parties to state their positions and to provide all or part of the evidence in writing.~~

~~(d) The hearing officer may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the hearing officer.~~

~~(e) The hearing officer may receive, rule on, exclude, or limit evidence at any stage of the proceedings.~~

~~(f) The hearing officer may rule on motions and other issues at any stage of the proceedings.~~

~~(g) The hearing officer may examine witnesses.~~

~~(h) The hearing officer may set reasonable time limits for submission of written documents.~~

~~(i) The hearing officer may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.~~

~~(j) The hearing officer may interpret applicable statutes and administrative regulations but may not waive them or rule on their validity.~~

~~(k) The hearing officer shall give each party an opportunity to be represented by counsel and by individuals with specialized knowledge or training with respect to the problems of children with disabilities.~~

~~(l) The hearing officer shall give each party the right to call as witness individuals with special knowledge or training in the area of disabilities.~~

~~(m) The hearing officer or panel shall give each party:~~

~~1. An opportunity to present witnesses on the party's behalf; and~~

~~2. An opportunity to cross-examine witnesses either orally or with written questions.~~

~~(n) The hearing officer shall accept any evidence that he finds is relevant and material to the proceedings and is not unduly repetitious.~~

~~(o) Each party shall file with the hearing officer all written motions, briefs, and other documents and shall at the same time, provide a copy to the other parties to the proceedings.]~~

~~(5) [(p)] The hearing officer shall monitor timelines to ensure that a decision and order can be rendered within forty-five (45) days of receipt of the request by the Division of Exceptional Children Services.~~

~~[(q) The hearing officer may extend the time beyond the specified timelines at the request of either party upon good cause.]~~

~~(6) [(r)] The hearing officer may dismiss any request for a hearing~~

if it is determined that there is insufficient factual information available to render a decision on the issue raised within the forty-five (45) day timeline. Dismissal under this subsection shall not preclude either party from requesting a later hearing on the same issue when the necessary information has been acquired.

~~(7) [(6)] Arrangements prior to the hearing.~~

~~(a) Prior to the due process hearing the LEA shall:~~

~~1. Inform the parent of any free or low-cost legal and other relevant services available in the area;~~

~~2. Schedule within five (5) calendar days of receipt of hearing officer assignment the hearing at a time, date and location convenient for the agency, parent, and hearing officer;~~

~~3. Inform the hearing officer of the existing time, date and location of the hearing;~~

~~4. At least fourteen (14) calendar days prior to the hearing, provide the hearing officer and the parent with a written chronology of events leading to the hearing;~~

~~5. Make arrangements to provide a tape recorder and stenographer for the hearing to ensure a true and accurate record of the hearing is available in a timely manner. A written verbatim record shall be provided to the hearing officer and to the parent upon request;~~

~~6. Inform the parent that the hearing will be closed unless requested to be open by the parent or, if the youth is emancipated, upon request of the youth;~~

~~7. Inform the parent of the right to have the child or youth present during the proceedings;~~

~~8. Notify the parent and the hearing officer in writing of its intent to be represented by legal counsel (if true). The notice shall include the legal counsel's name, address and telephone number. [;~~

~~9. At least seven (7) calendar days prior to the hearing, disclose all pertinent information concerning the hearing to the parents and to the impartial hearing officer, including:~~

~~a. The name, title of all witnesses;~~

~~b. The general nature of expected testimony; and~~

~~c. All documents and records which may be entered as evidence at the hearing.~~

~~[(b) All information not disclosed prior to the hearing shall become inadmissible unless the parties agree otherwise.]~~

~~[(b) [(e)] Prior to the due process hearing the parent shall[;~~

~~1-) notify the LEA and the hearing officer in writing of his intent to be represented by legal counsel (if true). The notice shall include the legal counsel's name, address, and telephone number.~~

~~[(2) At least seven (7) calendar days prior to the hearing, disclose all pertinent information concerning the hearing to the LEA and to the impartial hearing officer, including:~~

~~a. The name, title of all witnesses;~~

~~b. The general nature of expected testimony; and~~

~~c. All documents and records which may be entered as evidence at the hearing.~~

~~3. All information not disclosed prior to the hearing shall become inadmissible unless the parties agree otherwise.~~

~~4. Cooperate with the LEA in scheduling a hearing at a time, date and location that is convenient for all parties.]~~

~~(8) [(6)] Hearing format.~~

~~(a) The hearing officer shall make an introductory statement explaining the format and rules of the hearing request.~~

~~(b) The initiating party shall present its opening statement first. The initiating party shall not waive its opening statement.~~

~~(c) The noninitiating party shall then make an opening statement. The noninitiating party shall not waive its opening statement.~~

~~(d) Following the opening statements, the hearing officer shall direct one (1) party to present its evidence and testimony.~~

~~(e) The other party shall then present its evidence and testimony.~~

~~(f) Each witness presented shall be subject to cross-examination by the opposing party.~~

~~(g) The noninitiating party shall present its closing statement.~~

~~(h) The initiating party shall then present its closing statement.~~



(i) When closing statements have been completed, the hearing officer shall give both parties copies of the appeal procedure and orally explain how an appeal may be requested. The hearing officer shall summarize the procedures for dissemination of the decision.

~~(9) [(7)]~~ Funding hearings. The total costs involved in holding a due process hearing, excluding those caused to be incurred by the parents/child, shall be paid for by the public agency.

(a) The hearing officer shall receive a stipend as determined by the Division of Exceptional Children Services and is commensurate with standard department consultant fees.

(b) All expenses associated with the hearing officer's availability shall be reimbursed upon submission of receipts. Included in expenses shall be:

1. Mileage to and from the home of the hearing officer consistent with current state mileage reimbursement;
2. Meals during the time away from home;
3. Lodging at a convenient location, if necessary; and
4. Phone, clerical, and other associated costs.

~~(10) [(8)]~~ Subpoena. ~~[Any party to a hearing shall have the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. Subpoenas may be obtained from the commissioner of education.]~~

~~(a) Requests for issuance of subpoenas shall be in writing and addressed to the Office of Legal Services. A copy of the request shall also be submitted to the Division Director, Division of Exceptional Children Services.]~~

(a) ~~[(b)]~~ The subpoenas shall be issued for the named witnesses, and the party requesting the subpoenas shall be responsible for completing them and ensuring proper service.

(b) ~~[(e)]~~ All costs incurred in compelling the attendance of witnesses, including the cost of service of subpoenas, shall be borne by the party requesting their attendance.

~~(11) [(9)]~~ Timelines for the hearing.

(a) No later than forty-five (45) days after the Division of Exceptional Children Services receives a written request, the due process hearing officer's written findings of fact and decision shall be rendered and copies mailed to parties of the action by the hearing officer. ~~[A reasonable extension of this time frame may be granted by the impartial due process hearing officer.]~~

(b) ~~[At least ten (10) calendar days prior to the hearing,]~~ The LEA may make a written offer of settlement to the parents. The LEA shall not submit a copy of this settlement offer to the hearing officer.

(c) ~~[No later than seven (7) days prior to the hearing, the hearing officer shall send to the public agency, parent and Division of Exceptional Children Services via certified mail, a letter confirming the date, location and time of the hearing.]~~

~~[(d)]~~ No later than fourteen (14) calendar days following receipt of the verbatim transcript, the hearing officer shall send written findings of fact and decisions via certified mail to the LEA and parent, with a copy of the decision to the Division of Exceptional Children Services.

~~[(d)] [(e)]~~ Within fourteen (14) calendar days of rendering a decision and order, the hearing officer shall send all evidence, including tapes and transcripts, to the Division of Exceptional Children Services.

~~(12) [(40)]~~ The decision of the hearing officer shall be final unless either party appeals the decision.

~~(13) [(44)]~~ Copies of the hearing officer decisions, including findings of fact and conclusions of law with all personally identifiable information deleted, shall be transmitted to the State Advisory Panel for Exceptional Children.

Section 12. Exceptional Children Appeals Board. (1) There is hereby established for the Kentucky Department of Education the Exceptional Children Appeals Board. The commissioner of education shall appoint for each appeal filed three (3) persons from the registry of trained hearing and review officers to serve as members and shall designate one (1) as chairperson. The members shall not be

employees of a public agency which is involved in the education or care of the child, or an employee of the Department of Education and shall not appear to have a vested interest in the outcome of the appeal. The ECAB shall have the same power and authority as a due process hearing officer.

(2) Any person who is a party to the hearing involving the identification, evaluation, or placement of children or youth with disabilities and who is aggrieved by the order of such hearing, may appeal such order in writing by certified mail to the Exceptional Children Appeals Board within thirty (30) calendar days of the entry of such order. This appeal shall also be submitted to the opposing party.

(a) Within twenty-one (21) calendar days of receipt of the written appeal, the opposing party may file a written response to the appeal, stating the exceptions to the appeal. The response shall be sent by certified mail to the Chairperson, Exceptional Children Appeals Board, Kentucky Department of Education.

(b) Upon receipt of the written appeal, the Division of Exceptional Children Services shall provide a copy of the entire hearing record to the Exceptional Children Appeals Board.

(c) After receipt of the entire hearing record, the Exceptional Children Appeals Board shall conduct an impartial review of the entire record and the written findings of fact and decision to ensure that procedures were consistent with requirements of due process. In any appeal filed, the provisions of Section 11 ~~(7) [(5)]~~ (a)8 and (b) ~~[(6)]~~ (b)2, and ~~(8)]~~ of this administrative regulation shall apply.

(d) The Exceptional Children Appeals Board may seek additional evidence if necessary to ensure that the child shall be provided a free appropriate public education. If additional testimony is necessary, a review hearing shall be conducted at a time and place which is reasonably convenient for the parents, LEA and the Exceptional Children Appeals Board.

(e) For good cause, the Exceptional Children Appeals Board, through its chairperson, may grant specific extensions of time beyond the specified timelines at the request of either party.

(f) Upon conclusion of the hearing on appeals, the Exceptional Children Appeals Board shall make an independent decision including findings of fact and conclusions of law.

(g) The Exceptional Children Appeals Board shall ensure that no later than thirty (30) days after the receipt of a written request for a review of the hearing officer's findings of fact and decision in a due process hearing:

1. A final decision is reached in the review; and
  2. A copy of the decision is mailed to each of the parties.
- (h) The decision of the Exceptional Children Appeals Board shall be final, unless either party initiates a civil action in court.
- (3) Copies of the Exceptional Children Appeals Board decisions, including findings of fact and conclusions of law with all personally identifiable information deleted, shall be transmitted to the State Advisory Panel for Exceptional Children.

Section 13. Child Status During Pendency of Administrative or Judicial Proceedings. The LEA ensures that during the pendency of any administrative proceedings or judicial proceedings, the child or youth shall remain in his present educational placement unless the LEA and the parent agree otherwise. If the administrative or judicial proceedings involve an application for initial admission to public school, the child or youth, with the consent of the parent, shall be placed in the LEA program until the completion of all the proceedings.

Section 14. Suspension or Expulsion. The LEA shall ensure that appropriate procedures are followed in the suspension and expulsion of children or youth with disabilities.

(1) Suspension of a child or youth with disabilities for more than ten (10) days during a school year shall constitute a change of educational placement. The ARC shall meet to:

(a) Review placement and make recommendations for continued placement or a change in placement; and

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(b) Determine if regular suspension or expulsion procedures apply.

(2) If the suspension is for a minor infraction and no further disciplinary action is planned, then an ARC meeting shall not be required unless requested by the parent or principal or other service providers.

(3) If the LEA considers a suspension that will cumulatively exceed ten (10) days during a school year, parents shall be provided notice of a proposed action and notice of an ARC meeting consistent with Section 5 of this administrative regulation.

(4) When the ARC convenes to consider suspension or expulsion, the ARC shall determine:

(a) If the IEP and placement are appropriate and being fully and correctly implemented; and

(b) Whether the behavior or misconduct is a manifestation of the disability.

(5) If the ARC finds that the IEP or placement are not appropriate or not being fully and correctly implemented, appropriate modifications are determined at the ARC meeting and no further disciplinary action occurs.

(6) If the ARC finds that the IEP and placement are appropriate and being fully and correctly implemented, then it shall consider whether the behavior or misconduct was a manifestation of the disability.

(7) If the ARC determines that the behavior of a child or youth with disabilities is related to the disability, the child or youth shall not be subject to further suspension or expulsion.

(8) The LEA may seek injunctive relief through the courts if the parent and the other members of the ARC cannot agree upon a placement and the current placement will substantially likely result in injury to the child or youth or to others.

(9) If the ARC determines that the behavior is not related to the disability, the LEA may follow its regular suspension or expulsion procedures; however, educational services for the child or youth shall not be terminated during the period of the expulsion.

(10) If the parent disagrees with the proposed action of the ARC, the parent may request a due process hearing, in accordance with this administrative regulation and KRS Chapter 13B, and the child shall remain in his current educational placement during any administrative or judicial proceedings unless the LEA and parent agree otherwise. A full and complete explanation of parental rights shall accompany the notice of the proposed action.

(11) The code of student conduct shall include the guidelines for suspension and expulsion of children and youth with disabilities.

Section 15. Placement of Students at Kentucky School for the Blind/Kentucky School for the Deaf (KSB/KSD).

(1) Local admissions and release committees may consider placement of students with visual disabilities at KSB and students with hearing disabilities at KSD, even though they do not meet the criteria for admission set by the Kentucky Department of Education.

(2) Local admissions and release committees shall not automatically place students at KSB and KSD who do not meet their admissions criteria. The admissions criteria shall not prevent placement if placement is provided for by an IEP as the result of appropriate due process procedures specified in the Individuals with Disabilities Education Act.

(3) If an admissions and release committee wants to consider placement at KSB/KSD of a student with disabilities who does not meet the admissions criteria, the superintendent from the local education agency shall send to the Director, Division of Exceptional Children Services:

(a) A letter notifying the director of their interest in considering placement;

(b) All pertinent notices of proposed actions from meetings where this has been discussed;

(c) A copy of the written notice of eligibility determination; and

(d) All appropriate assessment information.

(4) An admissions and release committee shall be scheduled which affords the division director or his designee the opportunity to participate. In the event of a disagreement, the state education agency, local education agency, or parent may appeal by requesting a due process hearing. The final decision shall be made according to the due process procedures outlined in this administrative regulation. The KSB/KSD admissions criteria may be considered but are not binding upon the decision-makers.

Section 16. The provisions of this administrative regulation shall apply beginning on July 15, 1996.

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: June 13, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected:

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

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

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

1. First year following implementation: 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: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

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

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

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- (a) Necessity of proposed regulation, if in conflict: N/A
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Individuals with Disabilities Education Act, 20 USC subsection 1401 et seq., 34 CFR Part 300.500 - 300.515.
2. State compliance standards. This administrative regulation sets out the due process procedure requirements for special education programs. The proposed amendment will allow this regulation to be consistent with the administrative hearing procedures delineated in KRS Chapter 13B.
3. Minimum or uniform standards contained in the federal mandate. According to federal mandate contained in 34 CFR Part 300.512, a final decision in a hearing must be rendered within 45 days after the receipt of the request for the hearing. Specific extensions of time beyond this period may be granted by the hearing officer at the request of either party. Additionally, 34 CFR Part 300.509 states the decision rendered by the hearing officer must be final. 34 CFR Part 300.508 requires disclosure of evidence by each party at least five days prior to the hearing.
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 will not impose stricter requirements, or additional or different responsibilities or requirements, than those imposed by the federal mandate. 34 CFR Part 300.506 states that the hearing must be conducted "as determined under state statute, state regulations..." This administrative regulation is necessary in order to establish procedures necessary to carry out the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

### STATEMENT OF EMERGENCY 902 KAR 105:070E

Emergency administrative regulation 902 KAR 105:070E is necessary to enable the cabinet to implement the required provisions of KRS Chapter 13B by July 15, 1996 to ensure the continued protection of the citizens of the Commonwealth. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Regulations Compiler on or before August 15, 1996.

PAUL E. PATTON, Governor  
JOHN MORSE, Secretary

### CABINET FOR HEALTH SERVICES Department for Public Health Division of Environmental Health and Community Safety

#### 902 KAR 105:070E. Violations and enforcement.

RELATES TO: KRS 211.870, 211.890, 211.993

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.870, EO 95-79

EFFECTIVE: June 12, 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. The Cabinet for Health Services [Human Resources] is authorized by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. ~~[The purpose of]~~ This administrative regulation establishes ~~[is to establish]~~ uniform enforcement procedures applicable ~~[to the cabinet's administrative regulations relating]~~ to the certification of operators of sources of radiation.

Section 1. ~~[Applicability. This administrative regulation shall relate to the enforcement procedures of the cabinet pertaining to the certification of operators of sources of radiation.]~~

~~Section 2.~~ Denial. Revocation and Suspension of Certificates. The cabinet may deny, revoke or suspend 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) Becomes a drug-dependent person or drug abuser as defined in KRS 222.011(8);
- (3) Becomes an alcoholic person who suffers from alcoholism as defined in KRS 211.011(3);
- (4) Develops a physical or mental disability or other condition that continued practice or performance of this duties may be dangerous to patients or the public; or
- (5) Fails to comply with any administrative regulation of the cabinet relating to the certification of operators of sources of radiation.

Section 2. ~~[3.]~~ Hearings. The cabinet shall furnish the certificate holder with written notice setting out the substance of each offense charged with sufficient detail to reasonably apprise a person of the nature, time and place thereof. The person 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. ~~[The certificate holder shall have the right to be present in person, be represented by counsel, to present evidence and to be heard in opposition to the charges which may be instituted. The cabinet shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the Secretary of the Cabinet for Human Resources.]~~

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: June 10, 1996

FILED WITH LRC: June 12, 1996 at 3 p.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: The number of persons affected is 4,400 by the requirements of KRS Chapter 13B as related to administrative hearings.

(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 change from present.

(c) Compliance, reporting, and paperwork requirements, including

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factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year: If a certified operator of a radiation producing machine has their certification suspended or revoked, the operator will be required to file for an administrative hearing under KRS Chapter 13B.

2. Second and subsequent years: If an operator has their certification 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 amendment.

(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

(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: No alternatives were available due to compliance with KRS 211.870, 211.890, and 211.993.

(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 certified operators to address hearings, if a certificate 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 the certificate of a person 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, tiering was not applied because all operators of radiation producing machines are required to comply with 902 KAR Chapter 105 and KRS Chapter 13B.

### STATEMENT OF EMERGENCY

902 KAR 115:020E

Emergency administrative regulation 902 KAR 115:020E is necessary to enable the cabinet to implement the required provisions of KRS Chapter 13B by July 1, 1996 to ensure the continued protection of the citizens of the Commonwealth. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Regulations Compiler on or before June 14, 1996.

PAUL E. PATTON, Governor  
JOHN MORSE, Secretary

### CABINET FOR HEALTH SERVICES Department for Health Services Division of Maternal and Child Health

#### 902 KAR 115:020E. Enforcement of Water Fluoridation Program.

RELATES TO: KRS 211.180 ~~(211.190)~~

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.180, 211.190(11), EO 95-79

EFFECTIVE: June 12, 1996

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures for the enforcement of the Cabinet for Health Services' ~~[Human Resources]~~ Water Fluoridation Programs as directed by KRS 211.190(11). Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Health Services and the Dental Health Program under the Cabinet for Health Services.

Section 1. Notice of Violation. (1) If the Cabinet for Health Services ~~[Human Resources]~~ has reasonable grounds to believe that a violation of 902 KAR 115:010 has occurred, it shall serve the alleged violator with cabinet Form DH-36, "Notice of Violation".

(2) The "Notice of Violation" shall state:

(a) In particular, the specific:

1. Violation; and

2. Measures required to be taken to correct the violation; and

(b) The date by which the corrective measures shall be completed;

(c) That the alleged violator has the right to request a hearing which shall be conducted in accordance with 902 KAR 1:400. ~~(before the cabinet, at which he may:~~

~~1. Be represented by counsel;~~

~~2. Present evidence on his behalf; and~~

~~3. Cross-examine witnesses;]~~

(d) That the alleged violator may file an appeal in accordance with 902 KAR 1:400. ~~(That the request for a hearing shall be made on cabinet Form DH-37, "Request For Hearing";~~

~~(e) That a written transcript of a hearing shall:~~

~~1. Not be made unless requested by a party; and~~

~~2. Be paid for by the requesting party; and~~

~~(f) That, within thirty (30) days of the date of the notice, the cabinet shall begin legal proceedings against the alleged violator if he fails to:~~

~~1. Take the corrective measures specified in the notice; or~~

~~2. Request a hearing;]~~

Section 2. Hearing. An administrative hearing shall be conducted in accordance with 902 KAR 1:400. ~~[(1) If an alleged violator requests a hearing, the cabinet shall notify him of the:~~

~~a) Time and place of the hearing; and~~

~~(b) Name of the hearing officer;~~

~~(2) Notice of the hearing shall be made on Form DH-38, "Notice of Hearing"; and~~

~~(3) The decision of the hearing officer shall:~~

~~(a) Be written;~~

~~(b) Made upon the evidence presented; and~~

~~(c) Include findings of fact and conclusions of law.]~~

Section 3. Incorporation by Reference. (1) The form necessary for notifying water companies of a violation is being incorporated by reference. This form is the ~~[following material is incorporated by reference:~~

~~(a) Form] DH-36, "Notice of Violation (4/96)". [(10/94)];~~

~~(b) Form DH-37, "Request for Hearing (12/94)"; and~~

~~(c) Form DH-38, "Notice of Hearing (7/95)".]~~

(2) This form ~~[These forms]~~ may be inspected, copied, or obtained at the Office of the Commissioner for Health Services, 275 East Main

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Street, Frankfort Kentucky, 8 a.m. to 4:30 p.m., Monday through Friday.

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: June 10, 1996

FILED WITH LRC: June 12, 1996 at 3 p.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Robert Fowler

(1) Type and number of entities affected: 215 community water system operators.

(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 hearing was requested as a result of the Notice of Intent being published so no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the Notice of Intent being published so no written comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the: Will require recordkeeping and reporting by the water plant operators and maintenance of fluoride analysis reports for 5 years by the Dental Health Program.

1. First year:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Additional printing costs of regulations, notice of violation forms, and hearing forms and administrative monitoring of the program.

(a) Direct and indirect costs or savings:

1. First year: Minimal

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will remain the same.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing general and agency funds.

(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 hearing was requested as a result of the Notice of Intent being published so no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published so no comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternative methods were not considered since 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: Regulation enforcement of proper fluoridation of community water systems would in turn benefit the citizens of Kentucky through the reduction of dental disease.

(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: Proper fluoridation of community water systems would not be implemented, therefore citizens would not receive the benefits necessary to maintain proper dental health.

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

(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? Tiering was not applied because it does not create disproportional impact.

### 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 the operation of community water system fluoridation units.

2. State what unit, part or division of local government this administrative regulation will affect. Will only affect a part of the local government.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to fluoridation of community water systems necessary for compliance with KRS 211.180 and 211.190(11).

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 (+1):

Expenditures (+/-):

Other explanation: This proposed regulation will define the requirements for enforcement of community water system fluoridation equipment.

### STATEMENT OF EMERGENCY

905 KAR 1:360E

This emergency administrative regulation and Notice of Intent were promulgated to establish a level of care reimbursement system based upon the needs of the child. It will establish four (4) levels of care for child-caring facilities which are consistent with a level of service provided. The function of the administrative regulation shall be to establish procedures whereby each child shall be initially and periodically evaluated to assure classification in the appropriate level of care which shall determine both type of placement and rate of payment for that child. It is necessary to promulgate an emergency administrative regulation to implement this revised system of reimbursement for child-caring facilities as governed by KRS 199.641. This system is necessary on an emergency basis to allow appropriate attention to fiscal controls while maintaining a priority on the individual health, safety and protective service needs of the children in need of out-of-home placement. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on November 22, 1995 as follows: An established reimbursement rate for each level of care is contained within the body of the administrative regulation and there are clarifications in the dispute resolution process and administrative hearing process that comply with KRS Chapter 13B. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation shall be filed with the Regulations Compiler on or about June 15, 1996.

PAUL E. PATTON, Governor

VIOLA P. MILLER, Secretary

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Social Services**

**905 KAR 1:360E. Private child care levels of care.**

RELATES TO: KRS 605.090, 610.110, 199.640-199.670

STATUTORY AUTHORITY: KRS 194.050, 199.641, EO 95-79

EFFECTIVE: June 6, 1996

NECESSITY AND FUNCTION: KRS 199.641 authorizes the cabinet to establish the rate of reimbursement for child-caring facilities which is consistent with the level of service provided. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children. This administrative regulation establishes a four (4) level reimbursement system based on the needs of the child with a reimbursement rate for each level. The function of this administrative regulation shall be to establish procedures whereby each child shall be evaluated to assure classification in the appropriate level of care.

Section 1. Definitions. (1) "Commissioner" means the Commissioner or designee of the Department for Social Services.

(2) "Department" means the Department for Social Services as defined in KRS 199.641.

(3) "Gatekeeper" means the department or agent responsible for making a clinical determination of the level of care necessary to meet a child's treatment and service needs.

(4) "Referral packet" means the required forms to be submitted to the gatekeeper and private child care providers to determine level of care and placement and contains the following forms:

(a) DSS-886, Private Child Care Client Interagency Referral;

(b) DSS-886A, Application for Referral to Private Child Care;

(c) Achenbach Child Behavior Checklist; and, if a child has been assessed for youth services:

(d) DSS-881, Social History Needs Assessment.

(5) "Utilization review" means during a child's placement each child's case records and existing documentation shall be examined to identify the child's current level of functioning and assign the appropriate level of care.

Section 2. Levels of Care. The department shall establish a four (4) level reimbursement system based on the needs of a child in care.

(1) Level I children require a routine home environment which provides maintenance, guidance and supervision to meet the needs of the child and ensures the emotional and physical well-being of the child. The rate for Level I shall be forty-five (45) dollars per day.

(2) Level II children may engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships and require supervision in a structured supportive setting with counseling available from professional or paraprofessional staff, educational support, and services designed to improve developmental or normalized social skills. The rate for Level II shall be sixty-five (65) dollars per day.

(3) Level III children have both physical and emotional needs and may be at moderate risk for causing harm to themselves and others and require a structured supportive setting with therapeutic counseling available by professional staff and physical, environmental, and treatment programs designed to improve social, emotional, and educational adaptation behavior. The rate for Level III shall be \$135 per day.

(4) Level IV children require a highly structured program with twenty-four (24) hour supervision and a specialized setting which can safely and effectively care for severe and chronic medical conditions complicated by behavioral disorders or emotional disturbance. The rate for Level IV shall be \$180 per day.

Section 3. Role of the Gatekeeper. The gatekeeper shall be

responsible for:

(1) Assessing each child-caring facility to determine what levels of care are provided;

(2) Evaluating each child referred by the department or currently in a child caring facility to determine classification in the appropriate level of care;

(3) Reevaluating each child within six (6) months after placement in a facility, and every three (3) months thereafter, at which time the child may be reassigned to another level of care or recommended for placement outside the level of care system:

(a) If a child is reassigned to a lower level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the lower level shall be effective thirty (30) days from the date of the reassigned level. If the child is placed in another child-caring facility, the rate for the lower level shall be effective on the day the child is placed.

(b) If a child is reassigned to a higher level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the higher level shall be effective the day after the reassigned level is made. If the child is placed in another child-caring facility, the rate shall be effective on the day the child is placed.

(c) If, after the first six (6) months and before the next scheduled utilization review, the child-caring facility determines a child may be transitioned to a lower level of care, the rate for the current assigned level shall remain in effect until the next scheduled utilization review. If the lower level of care is therapeutic foster care, independent living, or other alternative placement, the facility shall notify the department.

(d) If the child-caring facility determines a child is beyond the facility's capacity to provide care, or there is new information previously not considered by the gatekeeper, a request for a redetermination may be made to the gatekeeper prior to the next utilization review;

1. After a redetermination is completed by the gatekeeper, the facility and department shall be notified of the results.

2. If the child-caring facility disagrees with a redetermination made by the gatekeeper, a request for dispute resolution shall be submitted in writing to the department as governed by Section 6 of this administrative regulation.

(4) Monitoring each placement for quality assurance; and

(5) Maintaining an information system for children served which shall include, but not be limited to:

(a) Placement history;

(b) Facility placement;

(c) Cost of services;

(d) Length of treatment; and

(e) Discharge outcomes.

Section 4. Provider Requirements. (1) Providers in the levels of care reimbursement plan shall be licensed under 905 KAR 1:300. Providers shall comply with 905 KAR 1:300, Section 8, Youth treatment center, if providing intensive treatment oriented services.

(2) The provider shall demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for that child and shall include:

(a) Room and board including any activity contributing to housing, food, clothing, school supplies, or personal incidentals;

(b) Clinical services include the evaluation and treatment of emotional disorders, mental illness and substance abuse and are directed to the identification and alleviation of disability or distress experienced by a child which follows specific treatment plans targeted to identified problems; and

(c) Support services which include:

1. The identification of resources needed by a child and the coordination of services provided by a range of agencies or professionals;

2. Services which allow a child to maintain a positive level of functioning;

3. Services which provide access to improving the educational or

vocational status of the child; and

4. Services which provide essential elements of daily living.

Section 5. Referral Process. (1) When the family service worker determines a need to place a child with a child-caring facility, a referral packet shall be completed and a copy submitted to the gatekeeper.

(2) The gatekeeper shall determine the appropriate level of care needed, using a needs assessment consistent with one (1) of the four (4) levels, and return the completed DSS-886 Private Child Care Client Interagency Referral Form, to the family service worker within three (3) working days of receipt of the referral packet.

(3) Upon notification of the assigned level of care, the family service worker shall forward the referral packet to potential child-caring facilities.

(4) Once a child-caring facility accepts a child for placement, the family service worker shall complete the DSS-114, Schedule of Payment, herein incorporated by reference, and on the prearranged date of placement, transport the child to the facility.

(5) On a monthly basis, the child-caring facility shall submit to the gatekeeper and family service worker a copy of the child's record or a narrative summary including:

- (a) Information regarding the child's adjustment;
- (b) Services provided to both the child and family;
- (c) Progress made toward returning the child home; and
- (d) Future plans for the child.

Section 6. Dispute Resolution. A child-caring facility may request a dispute resolution to a determination made by the gatekeeper in the application of the provisions of this administrative regulation.

(1) A written notice of dispute shall be submitted to the commissioner no later than thirty (30) days after a child-caring facility is notified of a level of care determination. The notice of dispute shall:

- (a) Specify the action being disputed;
- (b) Specify the reasons the child-caring facility believes the level of care determination is unwarranted;
- (c) Include documentation the child-caring facility considers relevant to support the dispute; and
- (d) Specify alternative determinations or actions that may be taken.

(2) The commissioner shall cause the dispute to be reviewed and evaluated and shall:

(a) Notify the facility of the date, time and place for the informal conference within thirty (30) days of the receipt of the notice of dispute. The informal conference with the child-caring facility shall be conducted according to the following procedures:

1. The commissioner shall preside over the informal conference with the child-caring facility.
2. The proceedings shall be recorded.
3. The child-caring facility or his authorized representative may present oral arguments or documentation which are considered relevant to support the facility's contention regarding the assigned level of care.
4. The department staff and the gatekeeper shall explain the department's decision regarding the assigned level of care.
5. The commissioner may question the participants and may permit questions or discussions among participants if that may contribute to reaching a decision regarding the assigned level of care under dispute.

(b) Issue a written decision on the dispute, including findings of fact and conclusions of law, no later than thirty (30) days after the informal conference.

Section 7. Administrative Hearing Process. If the child-caring facility disagrees with the commissioner's decision on the dispute, the facility has the right to an administrative hearing held in accordance with KRS Chapter 13B. The notice of hearing shall comply with KRS

13B.050.

Section 8. Material Incorporated by Reference. (1) The following forms are herein incorporated by reference:

- (a) DSS-114, Schedule of Payment, Revised March, 1996;
- (b) DSS-886, Private Child Care Client Interagency Referral Form, Revised March 1996;
- (c) DSS-886A, Application for Referral to Private Child Care, Revised July, 1993;
- (d) DSS-881, Social History/Needs Assessment, Revised January, 1993; and
- (e) Achenbach Child Behavior Checklist (CBCL), Revised January, 1995.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

VIOLA MILLER, Commissioner, Secretary

APPROVED BY AGENCY: June 4, 1996

FILED WITH LRC: June 6, 1996 at 3 p.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: Private child caring programs in the state of Kentucky providing residential care and treatment for children and youth committed to the Department for Social Services are affected by this regulation. There are 26 organizations operating at least 41 different programs throughout the state. These organizations include private nonprofit, private for-profit, and local government entities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. On a statewide basis the immediate impact should be revenue neutral as the new rates reflect the average of current payment rates at each level of care. The impact on individual programs will vary depending on whether their current rates are higher or lower than level of care reimbursement rates. A Notice of Intent has been filed that may result in additional public comment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. These regulations do not change the licensing standards and will not increase the cost of doing business for agencies that continue to provide the same level of care they are currently providing. Agencies that are interested in enhancing their programs to serve more difficult children at higher payment rates will experience an increase in cost which should be offset by the higher reimbursement rates for youth requiring more intensive treatment services. A Notice of Intent has been filed that may result in additional public comment.

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

1. First year following implementation: There will be a minimal additional cost involved in sending copies of client progress reports to the gatekeeper as well as to DSS offices. The cost of additional copies to be faxed or mailed should essentially be limited to the cost of paper and transmittal. The reports to be generated are copies of existing reports and will not directly result in new costs.

2. Second and subsequent years: There should not be any additional reporting or paperwork requirements for the second or subsequent years. Once agencies are assured of a specified rate, if they are willing to accept more difficult children, competition among agencies may increase and assist in controlling the escalating cost of



private child care.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Expenditures for private child care services have increased from \$12.3 million in FY'90 to \$33.8 million in FY'95. The levels of care system will introduce greater uniformity into the process and should slow the rate of growth. Once agencies are assured of a specified rate, if they are willing to accept more difficult children, competition among agencies may increase and assist in controlling the escalating cost of private child care. The introduction of the gatekeeping function will introduce systematic reviews by an objective third party and should result in greater cost efficiency by reviewing both the level of care provided and the duration of placements. The only direct costs involved are the \$500,000 associated with the cost of the gatekeeper services. Those services are essential to assure uniform application of the levels of care system on a statewide basis. The gatekeeper will also add a utilization review and quality assurance review that has not been available in this service area. Additionally, the gatekeeper will maintain an information system for children served under the contract which will include placement history, facility placement, cost, length of treatment, and discharge outcomes.

2. Continuing costs or savings: Expenditures for private child care services have increased from \$12.3 million in FY'90 to \$33.8 million in FY'95. The levels of care system will introduce greater uniformity into the process and should slow the rate of growth. Once agencies are assured of a specified rate, if they are willing to accept more difficult children, competition among agencies may increase and assist in controlling the escalating cost of private child care. The introduction of the gatekeeping function will introduce systematic reviews by an objective third party and should result in greater cost efficiency by reviewing both the level of care provided and the duration of placements. The only direct costs involved are the \$500,000 associated with the cost of the gatekeeper services. Those services are essential to assure uniform application of the levels of care system on a statewide basis. The gatekeeper will also add a utilization review and quality assurance review that has not been available in this service area. Additionally, the gatekeeper will maintain an information system for children served under the contract which will include placement history, facility placement, cost, length of treatment and discharge outcomes.

3. Additional factors increasing or decreasing costs: There may be additional costs to the agency depending upon the number of appeals requested by the private child care agencies and the number of requests for an administrative review.

(b) Reporting and paperwork requirements: Family services staff will summarize client information needed for placement decisions on the DSS-886A, Application for Referral to Private Child Care and the Achenbach Child Behavior Checklist. The Achenbach Child Behavior Checklist is the only new form involved, however it will summarize information already gathered and should not add appreciably to cost. A copy of this form will be sent to the gatekeeper by fax or overnight mail which again represents a new but negligible cost. This cost will be offset by the information provided by the gatekeeper in the assessment process which will enable staff to more carefully target proposals for services to individual children. The expense now involved in mailing proposals to providers with no vacancies or who do not provide the appropriate level of care may be reduced.

(4) Assessment of anticipated effect on state and local revenues: There should be no immediate effect on state and local revenues. In the long run, implementation of this regulation should assist in controlling the growth in the cost of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation of this administrative regulation is general fund and Title IV-E.

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

from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: A Notice of Intent to promulgate has been filed with this emergency regulation which will provide for public comment.

(b) Kentucky: A Notice of Intent to promulgate has been filed with this emergency regulation which will provide for public comment.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative one was to continue negotiating special rates individually for each child to be placed which is essentially the current process. The negotiating process has caused significant increases in expenditures and is time consuming and subject to manipulation and external pressures. Use of levels of care combined with the objective third party gatekeeper will assist in controlling the growth in expenditures and assure that all agencies are treated in a uniform manner. Alternative two was to establish one uniform rate for all placements. The range of needs is too broad to support this option. Some children need only a safe environment with minimal supervision in a home-like atmosphere while others need intensive treatment and 24-hour direct supervision to prevent harm to themselves or others. One uniform rate would result in both gross overpayments and underpayments. The use of four levels allows each rate to cover a narrower range of service suited to the needs of the child.

(8) Assessment of expected benefits: The benefits expected from the proposed emergency administrative regulation are:

1. Providing services which are tailored to the individual needs of children by changing from the existing reimbursement system and special contracts to a system that will require reimbursement rates based on the needs of the child.

2. Shifting the focus to providing services geared to agreed upon outcomes which should increase the benefits to children and provide professionals with an objective measure of the success of service delivery.

3. Streamlining the system by removing existing barriers and using a contractor for assigning levels and monitoring placements which will allow a focus on the needs of the children across the entire system.

4. Controlling expenditures by implementing a closer review of the service providers.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The effects on public welfare are the expected benefits for Kentucky's children. The cabinet believes that the implementation of a level of care system which requires that the individual needs of the child determine the level of care should more appropriately meet the needs of the children and more effectively control the cost of care.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: The only additional information available is that with the implementation of the levels of care system, the department cannot determine the full affect on individual agencies until all the children in the system have had a level of care determination. However, the total amount of expenditures for private child care was used to reflect the average of current payment rates at each level of care.

(11) TIERING: Is tiering applied? No. This administrative regulation was not tiered as it implements a level of care system statewide

and is applicable to all private child care agencies contracting with the Department for Social Services.

STATEMENT OF EMERGENCY  
907 KAR 1:022

This emergency administrative regulation is being amended to provide for additional ventilator facility beds for Medicaid recipients. This action must be taken on an emergency basis to provide for access to medically necessary nursing services of ventilator dependent 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 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s, EO 95-79

EFFECTIVE: June 13, 1996

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Medicaid Program. Executive Order 95-79, effective December 28, 1995, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid Program on ~~in~~ behalf of both the categorically needy and medically needy recipients.

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

(1) "Department" means the Department for Medicaid Services or its designee.

(2) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(3) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(4) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.

(5) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular

intervals, but not on a twenty-four (24) hour-per-day basis.

(6) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(7) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations.

(8) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency. Some nursing facilities with waiver do not meet Medicare participation requirements.

(9) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(10) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen. ["Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October

1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.]

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made [to the cabinet] using the procedures specified by the [Commissioner,] Department for Medicaid Services[, Cabinet for Human Resources]. A vendor number shall be assigned to the facility by the department [cabinet] when participation status is achieved.

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least twenty (20) percent of the facility's Medicaid participating beds [{} but not less than ten (10) beds, if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program] before the conditions of participation for Medicaid shall be deemed met].

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation requirements in at least twenty (20) percent of the facility's Medicaid participating beds [{} but not less than ten (10) beds, if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.{}]

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual resident review requirements specified in 42 USC 1396r [effective with regard to admissions and resident stays occurring on or after January 1, 1989]. Facilities failing to comply with this requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, [4:220, Terms and conditions of provider participation; provider appeals, and federal regulations at] 42 CFR 431.153, and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status[; a facility not appropriately certified shall not participate in the Medicaid Program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990].

(6) A facility shall have appropriate accreditation to provide specialized rehabilitation services as approved by the state. Appropriate accreditation shall have occurred if [when] the facility has been

accredited by a nationally recognized accrediting agency or organization, including:

(a) [such as] The Commission on Accreditation of Rehabilitation Facilities (CARF); or

(b) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this administrative regulation.

(a) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria if the services are provided in beds also participating in the Medicare Program; [and]

(b) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria if [when] the services are provided in any Medicaid participating beds;

(c) An ICF-MR shall [may] provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified[;] in accordance with standards and conditions specified in the [907 KAR 1:545, Incorporation by reference of the] nursing facility services manual[;] to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

(3) A participating nursing facility may be certified in accordance with standards and conditions specified in the Nursing Facility Services Manual to operate a unit providing care for persons who are ventilator dependent.

Section 4. Determining Patient Status. The department or its designee [Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet,] shall review and evaluate the health status and care needs of the individual [recipient] in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) An individual [patient] shall not qualify for Medicaid patient status unless the individual [person] is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in 42 USC 1396r [with regard to admissions and resident stays occurring on or after January 1, 1989].

(2) Individuals [Patients] qualify for high intensity nursing care if [when] their needs mandate high intensity nursing or high intensity rehabilitation services on a daily basis and if [when], as a practical matter, the care can only be provided on an inpatient basis. If [where] the inherent complexity of a service prescribed for an individual [patient] exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the individual [patient] would qualify for high intensity nursing care. An individual [patient] with an unstable medical condition manifesting a combination of care needs in the following areas shall qualify for high intensity nursing care:

(a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(b) Nasogastric or gastrostomy tube feedings;

(c) Nasopharyngeal and tracheotomy aspiration;

(d) Recent or complicated ostomy requiring extensive care and self-help training;

(e) In-dwelling catheter for therapeutic management of a urinary tract condition;

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(f) Bladder irrigations in relation to previously indicated stipulation;  
(g) Special vital signs evaluation necessary in the management of related conditions;

(h) Sterile dressings;

(i) Changes in bed position to maintain proper body alignment;

(j) Treatment of extensive decubitus ulcers or other widespread skin disorders;

(k) Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

(l) Initial phases of a regimen involving administration of medical gases;

(m) Receiving services which would qualify as high intensity rehabilitation services if ~~when~~ provided by or under the supervision of a qualified therapist(s), for example: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status if ~~when~~ the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status if ~~when~~ the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;
2. Physical or environmental management for confusion and mild agitation;
3. Must be fed;
4. Assistance with going to bathroom or using bedpan for elimination;
5. Old colostomy care;
6. In-dwelling catheter for dry care;
7. Changes in bed position;
8. Administration of stabilized dosages of medication;
9. Restorative and supportive nursing care to maintain the individual ~~(patient)~~ and prevent deterioration of his condition;
10. Administration of injections during time licensed personnel is

available.

11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care.

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria if ~~when~~ care needs are limited to the following:

1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
4. Medications that can be self-administered or the individual requires minimal supervision.

(4) ~~[Evaluation of patient status for persons with mental disorders or mental retardation.]~~ An individual ~~(person)~~ with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) If ~~when~~ the ~~department~~ ~~(cabinet)~~ determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual ~~(patient)~~, other patients in the facility, or staff of the facility; and

(b) If ~~when~~ the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) If ~~when~~ the individual ~~(patient)~~ does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and individuals ~~(persons)~~ with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities;
4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only if:

1. ~~when~~ The individual also has care needs as shown in paragraph (a) or (b) of this subsection;
2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded); and
3. The individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) ~~(It shall be the policy of the cabinet that)~~ No individual shall be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the individual ~~[patient]~~ no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Individuals ~~[Persons]~~ with Brain Injuries. Individuals ~~[Patients]~~ who are brain injured and meet usual high intensity nursing facility patient status criteria or as qualified under subsection (5) of this section may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if ~~[when]~~ the care is preauthorized by ~~[staff of]~~ the department ~~[for Medicaid Services]~~ using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) The following is a list of indicators for admission and continued stay:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following is a list of conditions which shall ~~[are]~~ not be considered brain injuries requiring specialized rehabilitation under this section:

(a) Strokes treatable in nursing facilities providing routine rehabilitation services;

(b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

(5) An individual ~~[patient]~~ may qualify for coverage under the brain injury program if the patient meets low-intensity level of care and has

sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require an intensity of care which is equal to high intensity nursing care, if the following criteria are met:

(a) The individual ~~[patient]~~ shall not have previously received specialized rehabilitation services (individuals ~~[persons]~~ discharged for the purpose of transfer to another brain injury facility are not considered to have "previously received specialized rehabilitation services") as provided for in this section;

(b) The individual ~~[patient]~~ shall have the potential for rehabilitation;

(c) The care shall be prior authorized on an individual basis by the Department for Medicaid Services; and

(d) The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Preauthorization of Provision of Specialized Ventilator Care. Individuals who are ventilator dependent and meet usual high intensity nursing facility patient status criteria may be provided care in a certified distinct part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Nursing Facilities Services Manual.

(1) Facility participation criteria.

(a) The nursing facility shall operate a program of ventilator care within a certified distinct part nursing facility unit which meets the needs of all ventilator patients admitted to the unit.

(b) The unit shall have not less than twenty (20) beds certified for the provision of ventilator care.

(c) The unit shall be required to have an average patient census of not less than fifteen (15) patients during the calendar quarter preceding the beginning of the facility's rate year or the quarter for which certification is being granted in order to qualify for distinct part ventilator nursing facility certification.

(d) The unit shall have a ventilator machine owned by the facility for each certified bed with an additional back-up ventilator machine required for every ten (10) beds.

(e) The facility shall have an appropriate program for discharge planning and weaning from the ventilator.

(2) Patient criteria and service characteristics. The following describe general patient criteria and treatment characteristics for distinct part ventilator nursing facilities:

(a) The individual shall be ventilator (or respiration stimulating mechanism) dependent for twenty-four (24) hours per day and requiring twenty-four (24) hours per day high intensity specialty nursing care;

(b) The individual shall be ventilator (or respiration stimulating mechanism) dependent for twelve (12) hours or more per day during a weaning program with the goal to attain the least mechanical support in the least invasive manner that is consistent with maximal function of the individual and requiring twenty-four (24) hours per day high intensity specialty nursing care;

(c) Admissions from hospitalization or other location should demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer; and

(d) As a practical matter, the services cannot be provided in an appropriate alternative setting to meet the medical stability and safety needs of the individual.

(3) Patient status determinations shall be made taking into consideration the following factors as shown in the Nursing Facility Services Manual:

(a) Alternative care possibilities;

(b) Goals for patient care;

(c) Patient hyperventilation, lung, ventilatory muscle, and airway disease needs which may necessitate mechanical ventilator and related care;

(d) Nonhospital management factors and needs;

(e) Patient treatment characteristics;

(f) Home care potential;

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- (g) Suitability of transfer to the ventilator care unit;
- (h) Provision of an appropriate place of care; and
- (i) Other facility admission indicators as shown in the Nursing Facility Services Manual.

Section 8. Reserved Bed Days. The department ~~[cabinet]~~ shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with wavier shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and individuals ~~[persons]~~ with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during an individual's ~~[recipient's]~~ absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The individual ~~[person]~~ shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Individuals ~~[Persons]~~ for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The individual ~~[person]~~ can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) For leaves of absence other than for hospitalization, the individual's ~~[patient's]~~ physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

~~[Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994.]~~

Section 9. Material Incorporated by Reference. (1) The "Medicaid Nursing Facility Services Manual", dated July 1, 1996 is incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday from 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 10. Implementation Date. The revisions to this administrative regulation shall be applicable for services provided on or after July 1, 1996.

Section 11. Repealer. 907 KAR 1:545, Incorporation by reference of the Nursing Facility Services Manual, is repealed.

JOHN H. MORSE, Commissioner, Secretary  
APPROVED BY AGENCY: June 12, 1996  
FILED WITH LRC: June 13, 1996 at 1 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore (564-5020)

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program and approximately 20 Medicaid recipients who are ventilator dependent.

(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 1:025E.

2. Continuing costs or savings: See companion regulation 907 KAR 1:025E.

3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:025E.

(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 assure adequate access to medically necessary ventilator nursing facility beds 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.

#### STATEMENT OF EMERGENCY 907 KAR 1:025E

This emergency administrative regulation is being amended to provide for the payment of additional ventilator facility beds. This action must be taken on an emergency basis to provide for access to medically necessary nursing services of ventilator dependent individuals. 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 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s, 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, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Medicaid Program [~~cabinet~~]

for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(2) "Allowable cost" means that portion of the facility's cost which may be allowed by the department [~~cabinet~~] in establishing the reimbursement rate. Cost shall be considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the department [~~cabinet~~], i.e., the allowable cost is "reasonable."

(3) "Ancillary services" means those direct services for which a separate charge is customarily made, and which, except for ventilator therapy services, and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services shall be limited to the following:

(a) Physical, occupational and speech therapy;

(b) Laboratory procedures;

(c) X-ray;

(d) Oxygen and other related oxygen supplies;

(e) Respiratory therapy (excluding the routine administration of oxygen);

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); and

(g) Ventilator therapy services, subject to the coverage limitations shown in the Nursing Facility Reimbursement Manual.

(4) "Basic per diem cost" means for each major cost category (nursing services costs and all other costs) shall be the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(7) [(6)] "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(8) [(7)] "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(9) [(8)] "ICF-MRs" means intermediate care facilities for the mentally retarded.

(10) [(9)] "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(11) [(10)] "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

(12) [(11)] "Nursing facilities with waiver (NFs-W)" means facilities certified to the Medicaid Program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.



(13) [(42)] "Nursing facility (NFs)" means a facility certified to the Medicaid Program by the state survey agency as meeting all nursing facility requirements, and in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b)

(4)(C)(ii), unless the context specifies otherwise.

(14) [(43)] "Nursing facility with a mental retardation specialty (NF-MRS)" means a nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(15) [(44)] "Nursing services costs" means the direct costs associated with nursing services.

(16) [(45)] "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(17) [(46)] "PRO" means peer review organization.

(18) [(47)] "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the department [cabinet].

(19) [(48)] "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(20) [(49)] "Upper limit" means the maximum level at which the department [cabinet] shall reimburse, on a facility by facility basis, for routine services.

Section 2. Reimbursement for Nursing Facilities, [(NFs)] (Including Nursing Facilities with Waiver[]) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities, [(NFs)] (including nursing facilities with waiver[]) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022[~~Nursing facility and intermediate care facility for the mentally retarded services~~].

(3)(a) A nursing facility desiring to participate in Medicaid shall be

required to have at least twenty (20) percent of its Medicaid participating beds [(but not less than ten (10) beds)]~~;~~ A facility with less than ten (10) beds, shall have all beds[] participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds [(but not less than ten (10) beds)] If the facility has less than ten (10) beds, all beds shall [] participate in the Medicare Program.

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the department [cabinet] to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the department [cabinet] and contained in the Kentucky Medicaid Program Nursing Facility Reimbursement Manual, ~~revised July 1, 1995 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020.~~

Section 4. Implementation of the Payment System. The department's [cabinet's] reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The [cabinet's] reimbursement system shall include the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department [cabinet] on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the department [cabinet].

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;
2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or
3. Other governmental actions that result in an unforeseen cost increase.

(c)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report period cost data has not been audited or desk reviewed prior to rate setting the [with] prospective rates shall be based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed. If desk reviews or audits are completed after May 16, but prior to universal rate setting for the rate year, the desk review or audited data shall be used.

~~2. [Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.~~

~~3.] Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports shall subject to adjustment to the audited amount.~~

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF-MRs, NF-institutions for mental disease, and NF-pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a standard metropolitan statistical area.

b. The rural array shall include all facilities in nonstandard metropolitan statistical area counties.

c. For purposes of arraying, current multilevel facilities (i.e., NF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. Hospital dual licensed beds shall be paid at the hospital based facility upper limits;

d. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate. A distinct part unit of not less than twenty (20) beds shall be required with a requirement that the facility have a ventilator patient census of at least fifteen (15) patients. The patient census shall be based upon the quarter preceding the beginning of the rate year, or upon the quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a ventilator care unit at the beginning of the rate year. The fixed rate for hospital based facilities shall be \$460 per day, and the fixed rate for freestanding facilities shall be \$250 per day. The rates shall be increased based on the Data Resources, Inc. rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year; and [which shall be equal to projected costs; and]

e. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.

4. Other factors relating to costs and upper limit determination shall be:

a. If the department [cabinet] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [cabinet] shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the department [cabinet] shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the

facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department [cabinet] exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the department [cabinet] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if [when] it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if [when] an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business. [;] However, an exception to the relationship shall be determined to exist if [when] fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of

historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department [cabinet] shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medicaid Program Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the department [cabinet]. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be [are] allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) [No] Increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a) (13)(C) and the Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 effective for services provided on or after July 1, 1995.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall

be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.

(11) Each facility shall maintain and make available any records (in a form acceptable to the department ~~[cabinet]~~) which the department ~~[cabinet]~~ may require to justify and document all costs to and services performed by the facility. The department ~~[cabinet]~~ shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department ~~[Cabinet]~~ approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If ~~[When]~~ a request for prior approval of projections or expansions is made, absence of a response by the department ~~[cabinet]~~ shall not be construed as approval of the item or expansion.

(13) The department ~~[cabinet]~~ shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The department ~~[cabinet]~~ may develop and utilize methodology to assure an adequate level of care. Facilities determined by the department ~~[cabinet]~~ to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the department's ~~[cabinet's]~~ concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate

year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet.

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The department ~~[cabinet]~~ may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The department ~~[cabinet]~~ may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, institutions for mental diseases, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive.

(a) Facilities qualifying for the cost savings incentive (except for NF-MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The cost savings incentive shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) NF-MRSs shall qualify for the cost savings incentive if the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. ~~[No]~~ Return for investment risk shall not be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$ 96.99 & below	\$1.38	\$.87
97.00 -102.99	1.29	\$.75
103.00 -108.99	1.18	\$.62
109.00 -114.99	1.06	\$.47
115.00 -120.99	.92	\$.31
121.00 -126.99	.76	\$.13
127.00 -133.49	*.53	----

\*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per

diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, institutions for mental diseases, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

~~(a) 1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high intensity, low intensity, or neither. For patients meeting patient status (high or low intensity), the PRO will then determine the case weight).~~

2.] The average case weight [thereafter] shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency.

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

- (1) The adjusted allowable cost for the facility;
- (2) Adjustments to allowable cost related to occupancy;
- (3) Adjustments to allowable cost related to application of upper limits;
- (4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;
- (5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual. ~~[; however,]~~ The cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;
- (6) Adjustments as appropriate for costs shifted from ancillary to routine;
- (7) Nursing home reform adjustments; and
- (8) Hold harmless adjustments.

Section 6. Material Incorporated by Reference. (1) The "Nursing Facility Reimbursement Manual", dated July 1, 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. 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. ~~[6.]~~ Reimbursement Review and Appeal. Participating facilities may appeal ~~department [cabinet]~~ decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671~~[- Conditions of Medicaid provider participation; enrollment; documentation of services; disclosure; claims processing; withholding overpayments; appeals process; and sanctions].~~

Section 8. ~~[7.]~~ Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1996 ~~[1996]~~.

## ADMINISTRATIVE REGISTER - 115

JOHN H. MORSE, Commissioner, Secretary  
APPROVED BY AGENCY: June 12, 1996  
FILED WITH LRC: June 13, 1996 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore (564-5020)

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program and approximately twenty (20) Medicaid recipients.

(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: \$3,358,000 (costs).

2. Continuing costs or savings: \$3,358,000 (costs).

3. Additional factors increasing or decreasing costs: Number of Medicaid recipients needing ventilator facility beds.

(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 assure adequate access to medically necessary ventilator nursing facility beds 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 ventilator dependent 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.



ADMINISTRATIVE REGULATION AS AMENDED BY  
PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

**COMPILER'S NOTE:** The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on June 3, 1996.

**COUNCIL ON HIGHER EDUCATION  
(As Amended)**

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

RELATES TO: KRS 164.020(3)

STATUTORY AUTHORITY: KRS ~~[13A.100,]~~ 164.020(3); ~~164.020, 164.284, 164.2841, 164.2842, 164.606, 164.515]~~

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

Section 1. General. The Council on Higher Education sets the tuition for all students enrolled in each **public [state-supported]** ~~[public]~~ institution of higher education including **an [any]** individually-accredited community colleges and professional schools in Kentucky. These include Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, University of Kentucky - University System, University of Louisville, Western Kentucky University, and University of Kentucky - Community College System.

Section 2. Tuition Policy. (1) Kentucky's tuition policy shall be responsive to access and marketplace; that is, the policy shall be based in large part on tuition rates at benchmark (peer) institutions in neighboring states and shall consider the need for economic access to higher education for Kentucky residents. The council shall conduct **periodic surveys [an annual survey]** of doctoral, master's, community college system, and professional schools ~~[(dentistry, law, and medicine)]~~ benchmarks' tuition consistent with the following tuition-setting principles:

(a) Maintain tuition levels for Kentucky residents as a reasonable percentage of per capita personal income (PCPI), with concomitant recommendations for adequate funding for need-based student financial aid to ensure economic access to higher education;

(b) Use all council-approved benchmark institutions as points of reference for determining tuition;

(c) Differentiate tuition rates by type of institutions (individually-accredited community colleges, regional/master's degree-granting universities, and doctoral degree-granting universities); and

(d) Provide for stability of tuition rate increases from biennium to biennium (i.e., minimize fluctuations).

(2)(a) A resident tuition objective, expressing tuition as a

percentage of PCPI, is set for each type of institution and professional school.

(b) Resident undergraduate and professional school tuition rates are expressed as a percentage of PCPI.

(c) Graduate resident tuition rates are expressed as a percentage of the undergraduate resident tuition rates. Nonresident undergraduate and graduate rates are expressed as a percentage of appropriate resident rates.

(d) Tuition rates for nonresident professional schools ~~[(medical, dental, and law)]~~ are set at the median of similar rates at benchmark institutions.

JAMES M. MILLER, Chair

APPROVED BY AGENCY: January 22, 1996

FILED WITH LRC: April 8, 1996 at 4 p.m.

**GENERAL GOVERNMENT CABINET  
State Board of Elections  
(As Amended)**

**31 KAR 4:030. Reporting forms.**

RELATES TO: KRS 117.355, 119.307

STATUTORY AUTHORITY: KRS 117.015(1) ~~[417.106]~~, 117.355

NECESSITY AND FUNCTION: **KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.355 requires the State Board of Elections to prescribe the forms for the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report absentee ballot and voter assistance usage statistics, and to report other information required by the state board. KRS 117.086 requires the county clerk to keep a list of all persons who return their paper absentee ballots or cast their absentee ballots in the clerk's office and send a copy of that list to the state board. This administrative regulation prescribes these forms.** ~~[To prescribe forms for the precinct election sheriff and the county board of elections to report elections irregularities and recommendations for improving the elections process to report absentee [special] ballot and voter assistance usage statistics and the absence of precinct election officials to specified officials.]~~

Section 1. Incorporation by Reference. (1) The following State Board of Elections forms are incorporated by reference ~~[hereby adopted]~~:

(a) ~~[(1)]~~ SBE 53 - "Precinct Election Sheriff's Postelection Report" (August 1993 edition [8/93]) [effective 7/88, ~~(see Appendix A)~~];

(b) ~~[(2)]~~ SBE 54 - "County Board of Elections Postelection Report" (January 1994 edition [1/94]) [effective 8/88, ~~(see Appendix B)~~];

(c) ~~[(3)]~~ SBE 54A - "County Board of Elections Postelection Statistical Report" (July 1994 edition [7/94]) [effective 8/88, ~~(see Appendix C)~~]; ~~[and]~~

(d) ~~[(4)]~~ SBE 54B - "County Board of Elections Precinct Election Officials Absence Report" (August 1988 edition [8/88]) [effective 8/88, ~~(see Appendix D)~~]; ~~and.~~

(e) ~~[(5)]~~ SBE 33 - "List of Applicants for Absentee Ballots" (August 1990 edition [8/90]).

(2) This material may be inspected, copied, or obtained at [Copies of the SBE 53, SBE 54, SBE 54A, SBE 54B, and SBE 33



## ADMINISTRATIVE REGISTER - 117

~~may be inspected or obtained at the office of~~ the State Board of Elections, 140 Walnut, Frankfort, Kentucky 40601, **Monday through Friday, [between the hours of] 8 a.m. to [through] 4:30 p.m. [EST, Monday through Friday.]**

### [APPENDIX A

#### COMMONWEALTH OF KENTUCKY STATE BOARD OF ELECTIONS

##### PRECINCT ELECTION SHERIFF'S POSTELECTION REPORT

KRS 117.355(1) Within three (3) days after any primary or general election, the precinct election sheriff shall file a report with the chairman of the county board of elections and with the local grand jury. The report shall include any irregularities observed and any recommendations for improving the election process.

\_\_\_\_\_  
County

\_\_\_\_\_  
Precinct

\_\_\_\_\_  
Precinct Election Sheriff  
(Name)

IRREGULARITIES OBSERVED: (If you observed any irregularities, describe in your own words with as many details as possible, including names of alleged violators of election laws. Reported violations should include, but not be limited to violations of KRS 117.255 relating to assisting voters and execution of the voter assistance forms, adjusting the voting machine in primary elections to enable the voter to vote for only persons for whom the voter is entitled to vote, voting more than once, and voting supplemental paper ballots. Violations of KRS 117.235 relating to electioneering must also be reported. If more space is required, attach additional sheets as necessary. If no violations are observed, so indicate.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

KRS 117.355, 117.255(13) \_\_\_\_\_ Goldenrod — County Board of Elections  
Yellow — Grand Jury  
SBE 53 (8/88) \_\_\_\_\_ Green — Precinct Election Sheriff

### APPENDIX B

#### COMMONWEALTH OF KENTUCKY STATE BOARD OF ELECTIONS

##### COUNTY BOARD OF ELECTIONS POSTELECTION REPORT

\_\_\_\_\_  
County, \_\_\_\_\_ Election held \_\_\_\_\_, 19\_\_\_\_

KRS 117.355(2) Within ten (10) days after any primary or general election, the county board of elections shall file a report with the state board of elections, the registry of election finance and the local grand jury. The report shall include any irregularities of which the county board has knowledge and any recommendations for improving the election process. The report shall also include a precinct-by-precinct breakdown of the number of voters requiring assistance to vote and the reasons therefor; the number of special ballots cast by category; and any other information required by the state board.

REPORT OF IRREGULARITIES: (If you have knowledge of any irregularities, describe in your own words with as many details as possible, including names of alleged violators of election laws. If more space is required, attach additional sheets as necessary. If no violations are known, so indicate.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

KRS 117.355(2) \_\_\_\_\_ Yellow — Grand Jury  
Pink — Registry of Election Finance  
Blue — State Board of Elections

# ADMINISTRATIVE REGISTER - 118

SBE 54 (8/88)

Green Precinct Election Sheriff

## APPENDIX C

### COMMONWEALTH OF KENTUCKY STATE BOARD OF ELECTIONS

#### COUNTY BOARD OF ELECTIONS POSTELECTION STATISTICAL REPORT

County, Election held, 10

PRECINCT (Name or Number)	ENTER NUMBER OF VOTERS PER PRECINCT						
	SPECIAL BALLOTS			VOTER ASSISTANCE			
	Regular	Disabled	Medical Emer- gency	Certified Perma- nently Disabled	Inability to Read English	Blind	Other Disability

(Attach additional pages if necessary) Attach to County Board of Elections Post Election Report (SBE 54)

Chairman, County Board of Elections

Date Submitted

KRS 117.355(2)

Yellow Grand Jury

Pink Registry of Election Finance

Blue State Board of Elections

SBE 54A (8/88)

Goldenrod County Board of Elections

## APPENDIX D

### COMMONWEALTH OF KENTUCKY STATE BOARD OF ELECTIONS

#### COUNTY BOARD OF ELECTIONS PRECINCT ELECTION OFFICIALS ABSENCE REPORT

County, Election held, 10

Pursuant to KRS 119.307, the following election officials failed to appear and serve at the election, and were not excused by the County Board of Elections.

NAME OF PRECINCT ELECTION OFFICIAL	PRECINCT NAME OR NUMBER

# ADMINISTRATIVE REGISTER - 119


(Attach additional pages if necessary) Attach to County Board of Elections Postelection Report (SBE-54)

Chairman, County Board of Elections

Date Submitted

KRS 119.307, 117.355(2)

Yellow — Grand Jury  
Pink — Registry of Election Finance  
Blue — State Board of Elections  
Goldenrod — County Board of Elections

SBE 54B (8/88)

JOHN Y. BROWN III, Chairman  
APPROVED BY AGENCY: March 11, 1996  
FILED WITH LRC: April 11, 1996 at 1 p.m.

## OFFICE OF THE ATTORNEY GENERAL Division of Administrative Hearings (As Amended)

### 40 KAR 5:010. Required training.

RELATES TO: KRS 13B.030(4)  
STATUTORY AUTHORITY: KRS 13B.030(4)

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with KRS 13B.030(4) which requires the division to establish by administrative regulations minimum standards concerning length of training, course content and instructor qualifications for initial training and continuing education of hearing officers. The function of this administrative regulation is to establish education requirements for hearing officers.

Section 1. Definitions. (1) "Classroom hour" means fifty (50) minutes of actual classroom instruction.

(2) "Hearing officer" is defined by KRS 13B.010(7). [means the individual, duly qualified and employed pursuant to KRS Chapter 13B, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head.]

Section 2. A person shall not serve as a hearing officer unless he has completed eighteen (18) classroom hours, including agency specific training, of initial hearing officer instruction, and six (6) classroom hours of continuing education instruction as provided by Sections 3 and 5 of this administrative regulation. [Required Hours of Instruction. A person wishing to become qualified as a hearing officer shall have completed eighteen (18) classroom hours of approved instruction.]

Section 3. Approved Instruction. Approved instruction for hearing

officers shall be the [subjects related to] administrative hearings subjects established by this section. [that:]

(1) Instruction [include training] in the conduct of administrative hearings[and shall consist of a minimum of instruction] in each of the following areas:

(a) Administrative law and procedure. The course shall cover the:

1. History, origin, source, and limitations of agency authority to act;

2. Role of hearing officials;

3. Adjudicatory function as opposed to and differentiated from the regulatory and enforcement functions of an agency; and

4. Regulatory and enforcement processes of agencies. [The course shall cover at least the history, origin, source, and limitations of agency authority to act, the role of hearing officials, the adjudicatory function as opposed to and differentiated from the regulatory and enforcement functions of the agency. The training should cover the regulatory and enforcement processes of applicable agencies.]

(b) Due process. The course shall cover [at least] the fundamentals of constitutional due process concepts of adequate notice and a reasonable opportunity to be heard, and shall emphasize [giving some detail to the] constitutional restrictions on notice and a hearing.

(c) Conduct and control of hearings. The course shall cover the following items and include applicable documentary samples:

1. The role of prehearing conferences and discovery;

2. Opening a hearing;

3. The conduct of a hearing;

4. The order of proof;

5. Marking and handling exhibits;

6. Ruling on objections;

7. Swearing in of witnesses;

8. Proper demeanor, dress, formality, and decorum;

9. Making the hearing accessible to handicapped persons; and

10. Closing a hearing. [The course shall cover at least the role of prehearing conferences and discovery, opening a hearing, conduct of a hearing, order of proof, marking and handling exhibits, ruling on objections, swearing witnesses, proper demeanor, dress, formality

and decorum, making the hearing accessible to disabled persons, and closing a hearing. The course shall include documentary samples.]

(d) Credibility. The course shall cover:

1. Judging demeanor and forthrightness of witnesses, appearance and body language;
2. Sexual, racial and cultural bias, and prejudice; and
3. Judging common sense of answers, consistency, context and flow.

(e) Ethics. The course shall include:

1. ~~[cover at least]~~ The ~~[general]~~ principles of:
  - a. Conflict of interest;
  - b. ~~[and]~~ Ex parte contact;
2. ~~[and the general]~~ Ethical standards to which hearing officers, judges and lawyers are held; and
3. A review ~~[with at least an overview]~~ of the ethical code applicable to hearing officers, judges and lawyers.

(f) Case file and docket management. The course shall cover the principles of:

1. Case file composition, handling, docketing and tracking;
2. ~~[principles]~~ Keeping exhibit and witness lists;
3. Motion practice;
4. Setting discovery deadlines;
5. Continuances;
6. Reviewing the record, hearing decision time limitations and extensions thereof.

(g) Evidence in administrative proceedings. The course shall include a review of the following items, and applicable samples of documentary and testimonial evidence:

1. Competency;
2. Documentary evidence;
3. Demonstrative evidence;
4. Hearsay;
5. Privileges;
6. Work product rule;
7. Oaths and swearing;
8. Establishing a foundation;
9. Cumulative, proffered, and confidential evidence;
10. Official notice;
11. Handling evidence; and
12. Standards and burdens of proof applicable in administrative proceedings. ~~[cover at least an overview of competency, documentary evidence, demonstrative evidence, hearsay, privileges, the work product rule, oaths and swearing, establishing a foundation, cumulative evidence, proffered evidence, confidential evidence, official notice and handling the evidence. The course shall include instruction on the standards and burdens of proof applicable in administrative proceedings. The course shall include sample documentary and testimonial evidence.]~~

(h) Decision writing. The course shall cover the following items and include written samples:

1. The function and purpose of the written decision;
2. The basic administrative decision format;
3. How to differentiate between factual findings and legal conclusions;
4. How to identify and establish jurisdiction over subject matter and parties;
5. How to establish the procedural history;
6. How to use an appropriate format; and
7. A review of writing style, tone and organization. ~~[the function and purpose of the written decision, and at least the basic administrative decision format and how to differentiate between factual findings and legal conclusions, how to identify and establish jurisdiction over subject matter and parties, establish the procedural history, use an appropriate format, and some coverage of writing style, tone and organization. The course shall include written samples.]~~

(2) The course shall include training in the application of KRS

Chapter 13B, and shall consist of ~~[a minimum of]~~ instruction in each of the following areas:

(a) Conflict of interest. The course shall cover conflicts of interest as addressed in KRS 13B.040 including:

1. Who is governed;
2. What kind of contact is prohibited;
3. Prohibited actions or conduct, including serving as, or assisting or advising a hearing officer;
4. The mechanics of withdrawal;
5. Determination of who is an investigator or prosecutor who acted in the same proceeding, or the preadjudicative stage of an administrative hearing; and

6. The standard to be applied. ~~[who is governed by KRS 13B.040, what kind of contact is prohibited, what the statute prohibits, and the mechanics of withdrawal. The course must cover identifying who is an "investigator" or "prosecutor" who acted in the "same proceeding" or the "preadjudicative stage" of an "administrative hearing." The course must cover what actions are prohibited under KRS 13B.040, addressing "serving as" or "assisting or advising a hearing officer." The course must address the standard to be applied and the mechanics of withdrawal.]~~

(b) Ex parte contact. The course shall cover improper ex parte contact as defined in KRS 13B.100 including:

1. The concept of "substantive" as opposed to "procedural" inquiries and a determination of ~~[what are]~~ the "merits" of an administrative action;
2. Who is prohibited from making ex parte inquiries;
3. ~~[and]~~ Under what circumstances hearing officials and assistants may talk ex parte with "parties" and other "interested persons";

4. ~~[The course shall include]~~ Specific instruction on how to handle ex parte contact, how to train support staff and the method required to document ex parte contact in the record;

5. ~~[The course shall specifically address]~~ Contacts by agency and outside counsel, contacts by the hearing officer and contacts with the agency head or other agency personnel;

6. ~~[The course shall include]~~ Case studies and written materials, including ethical opinions from the Bar, relevant case decisions, and the relevant judicial cannons and rules of professional conduct applicable to judges and attorneys.

(c) Adequate notice. The course shall cover the contents and effect of the notice of hearing required by KRS 13B.050, including:

1. ~~[at least]~~ Scheduling and time limits;
2. Improper mailing;
3. Incomplete or improper notice content; and
4. The effect of violation of KRS 13B.050 and remedies therefore.

(d) Intervention. The course shall cover intervention under KRS 13B.060 and include sample petitions and orders:

1. ~~[including]~~ Mandatory and permissive intervention;
2. Statutory rights to intervention;
3. The standard for permissive intervention;
4. The procedure for petitioning to intervene;
5. Structuring the intervention; and
6. Writing the order permitting or denying intervention. ~~[The course shall include sample petitions and orders.]~~

(e) Prehearing conferences and discovery. The course shall cover the nature, scope and purpose of a prehearing conference under KRS 13B.070 including:

1. Its relation to settlement, alternative dispute resolution, discovery and the hearing process;
2. ~~[The course shall address]~~ Methods of managing and scheduling prehearing conferences that will promote the orderly and prompt conduct of a hearing, including the filing of motions, prehearing memorandums, witness and exhibit lists, briefs, proposed findings, ~~[and]~~ conclusions, and recommended orders;
3. ~~[The course shall also cover]~~ Discovery available under KRS 13B.050, 13B.080 and 13B.090;

4. ~~[-and]~~ Discovery orders and problems;  
5. ~~[-as well as]~~ Issuance, quashing and enforcement of subpoenas and the standards therefore;

6. ~~[therefor. The course shall specifically address]~~ The obligation to reveal documentary or tangible evidence and exculpatory evidence in the agency's possession, and the consequences of the failure to do so; and

7. ~~[-The course shall include]~~ Written samples of prehearing conference orders, motions and subpoenas.

(f) Hearing procedures and compiling the record. The course shall cover and include material relating to the following items:

1. Methods to ensure the orderly and prompt conduct of the hearing under KRS 13B.080;

2. The obligation to have testimony given under oath, and the swearing of witnesses;

3. Briefs;

4. Argument;

5. Testimony;

6. Marking and admission of evidence;

7. Granting defaults, and the procedures and standards for rendering defaults;

8. The meaning and composition of the record under KRS 13B.130; and

9. The method of compiling the record for review, including submission in writing, and proffers of evidence. ~~[manners and methods of ensuring the "orderly and prompt conduct of the hearing" under KRS 13B.080 and shall specifically include material on the obligation to have testimony under oath and swearing witnesses; material on briefs, argument, testimony, marking and admission of evidence, granting defaults, and procedures and standards for rendering defaults and shall address the meaning and composition of the record under KRS 13B.130 and method of compiling the record for review, including submission in writing, and proffers of evidence.]~~

(g) Findings and evidence. The admissibility of hearsay and standards therefor. The course shall:

1. ~~[also]~~ Cover the basic evidentiary standard for all types of evidence;

2. ~~[and]~~ Constitutional, statutory grounds for exclusion and privileges recognized in Kentucky law;

3. Ruling on and memorializing objections; and

4. Taking "official notice" of facts.

(h) The recommended order and writing for judicial review. The course shall cover the following items and include samples of written findings, conclusions and recommended orders:

1. The nature, scope, and function of findings and conclusions under KRS 13B.110;

2. The interrelation with evidentiary rulings under KRS 13B.050 and 13B.090;

3. Compilation of the record under KRS 13B.130;

4. The standards for judicial review under KRS 13B.150;

5. The obligation to base findings only upon the evidence in the record, under KRS 13B.090(1); and

6. Time limits, extensions, and the consequences of the failure to file a recommended order within statutory time periods.

~~[the nature, scope and function of findings and conclusions under KRS 13B.110 and the interrelation with evidentiary rulings under KRS 13B.050, 13B.090, compilation of the record under KRS 13B.130 and the standards for judicial review under KRS 13B.150. The course shall address the obligation to base findings only upon the evidence in the record under KRS 13B.090(1), and shall cover time limits, extensions and the consequences of failure to file a recommended order within statutory time periods. The course shall include samples of written findings, conclusions and recommended orders.]~~

(3) Agency specific training. Instruction shall include agency specific training that:

(a) Covers the specific federal and state authorizing statutes and regulations under which a hearing officer will conduct

hearings; and

(b) Has been approved by the agency head and the division.

~~[Include agency specific training which shall cover the specific federal and state authorizing statutes and regulations under which a particular hearing officer will be conducting hearings, and will be as approved by the agency head or the division. Except in exceptional circumstances, a hearing officer shall not be deemed qualified by the division to conduct hearings in a particular area without agency specific training.]~~

Section 4. (1) An initial hearing officer instruction or continuing education course shall:

(a) Comply with the provisions of Sections 3 and 5 of this administrative regulation;

(b) Consist of topics that will enable a hearing officer to:

1. Acquire, maintain, and improve his skills as a hearing officer; and

2. Serve the public; and

(c) Consist of a minimum of two (2) hours.

(2)(a) Credit shall be granted for completion of an initial hearing officer instruction or continuing education course that has been approved by the division.

(b) A sponsor of an education course shall submit for approval by the division:

1. An outline of the course in sufficient detail to disclose the pertinent material that is to be taught; and

2. The work experience, credentials, and education background of the instructor of the course.

~~[Section 4. Course Approval. (1) In order for an education course to be approved by the division, for initial hearing officer instruction or continuing education, the sponsor of the course shall provide to the division for approval:~~

~~(a) An outline of the course in such detail that all the pertinent material to be taught is disclosed; and~~

~~(b) The work experience, credentials and educational background of the instructors of the course.~~

~~(2) To receive approval, an education course shall consist of topics that will:~~

~~(a) Enable a hearing officer to maintain or improve their skills as a hearing officer;~~

~~(b) Serve the public.~~

~~(3) An education course shall consist of a minimum of two (2) hours.]~~

Section 5. Continuing Education. (1) An education year shall begin on July 1, and end on June 30 of the next calendar year.

(2) Credit shall be given for continuing education courses that have been completed on or before June 30.

(3) For each education year, a person certified as a qualified hearing officer pursuant to KRS Chapter 13B shall complete a minimum of six (6) credit hours of continuing education courses that have been approved by the division.

(4) A hearing officer who earns more than six (6) credits of continuing education may carry forward a total twelve (12) credits.

(5) A total of six (6) of the continuing education credits earned in an education year may be credited toward satisfaction of the continuing education requirement for each of the two (2) continuing education years following the education year in which they were earned.

(6) Continuing education credits earned in an education year in excess of twelve (12) credits shall:

(a) Not be carried forward; and

(b) Remain on the hearing officer's record.

(7) [Each education year, every person certified as a qualified hearing officer under KRS Chapter 13B in this Commonwealth, shall

~~complete a minimum of six (6) credit hours in continuing education activities approved by the division. An educational year shall begin on July 1 and end on the following June 30. All continuing education activities must be completed not later than June 30 of each educational year.~~

~~(2) A member who accumulates an excess over the six (6) credit requirement may carry forward the excess credits into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those years. Carry forward is limited to a total of twelve (12) credits. All excess credits above a total of twelve (12) credits will remain on the member's records but may not be carried forward.~~

~~(3) On or before July 1 of each year, a [every] person certified as a qualified hearing officer under KRS Chapter 13B in this Commonwealth, shall certify to the director the number of [that he or she has completed a minimum of six (6)] credit hours of continuing education hours completed.~~

~~(8)(a) [(4)] Certification may be submitted to the director upon completion of the continuing education activity at any time during the education[al] year.~~

~~(b) Certification shall not be submitted later than the July 15th immediately following the education[al] year in which the activities were completed.~~

~~(9)(a) [(6)] If a hearing officer fails to comply with the provisions of this section, the division director shall notify him as soon as practicable on or after August 1 of the same year calendar year.~~

~~(b) The authority to hear administrative actions under KRS Chapter 13B shall be suspended until such time as the continuing education requirements are met.~~

JEFFREY F. LAGREW, Director

APPROVED BY AGENCY: April 15, 1996

FILED WITH LRC: April 15, 1996 at noon

**GENERAL GOVERNMENT CABINET  
Board of Accountancy  
(As Amended)**

**201 KAR 1:160. Quality reviews.**

RELATES TO: KRS 325.301(7) [(6)]

STATUTORY AUTHORITY: KRS 325.240, 325.301(7) [(6)]

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures that a CPA firm must follow to obtain a quality review.

Section 1. Definitions. "Sponsoring organization" means an entity operating a quality review program whose standards of review are equivalent to or better than the "Standards for Performing and Reporting on Peer Reviews" of [published by] the American Institute of Certified Public Accountants, ~~effective April 3, 1995. This document is incorporated by reference and may be inspected, copied or obtained from the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.~~

Section 2. (1)(a) Beginning August 1, 1996 ~~[with the effective date of this administrative regulation]~~ the board shall review its records of the quality enhancement program to determine if a firm [all the practice units] in the program that performs audits has [have] submitted proof that it is [they are currently] enrolled in a quality review program operated by a sponsoring organization for the period covered by the firm's [that unit's] most recent filing with the quality enhancement program.

(b) If ~~[no]~~ proof has not been submitted, a letter shall be issued to the firm [practice unit] advising it [them] that it [they] shall enroll

in a quality review program operated by a sponsoring organization within forty-five (45) days of the date of the letter.

(2) Within eighteen (18) months of the date of enrollment in a [an acceptable] quality review program conducted by a sponsoring organization, the firm [practice unit] shall submit to the board:

(a) A letter from the sponsoring organization indicating satisfactory completion of a quality review; or

(b) Submit the quality review report.

(3)(a) A [All] sponsoring organization[s] shall report to the board on a semiannual basis the names of the [all] firms enrolled in the quality review program.

(b) A [The] sponsoring organization shall bear the [all] costs of verifying compliance with the standards for performing quality reviews.

Section 3. If a firm is not enrolled in an approved quality review program when it enters into an agreement to perform an audit, it shall not begin work on the audit until it has enrolled in an approved quality review program. [Any firm that agrees to perform an audit and is not enrolled in an acceptable quality review program at the time of entering into such an agreement, shall enroll in a quality review program before beginning work on the audit.]

Section 4. Incorporation by Reference. (1) "Standards for Performing and Reporting on Peer Reviews, April 3, 1995" is incorporated by reference.

(2) It may be inspected, copied, or obtained at the office of the Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

ASA L. HORD, CPA, President

APPROVED BY AGENCY: April 5, 1996

FILED WITH LRC: April 8, 1996 at noon

**GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Commission  
(As Amended)**

**201 KAR 11:400. Agency disclosure requirements.**

RELATES TO: KRS 324.160(1)(e) [Chapter 324]

STATUTORY AUTHORITY: KRS 324.160(1)(e), [(f)] 324.282[, 324.285(5)]

NECESSITY AND FUNCTION: ~~[Confusion exists among brokers and sales associates, and consumers, about the various agency relationships which exist in real estate brokerage transactions.]~~ KRS 324.382 authorizes the Real Estate Commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.160(1)(e) permits the commission to take disciplinary action when a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation describes and requires disclosure of relationships between brokers, sales associates, and consumers. [This administrative regulation establishes the types of relationships between brokers, sales associates, and consumers; [, and] required forms; and informs brokers, sales associates, and consumer [the consumer] of their rights and duties [of brokers, sales associates, and consumers].]

Section 1. Definitions. (1) "Delivery" means delivery of an item to a prospective party or his broker or sales associate [agent] by:

(a) Mail;

(b) FAX transmission;

(c) Messenger; or

(d) Hand.

(2) "First contact" means the period:

(a) Before a contract containing a duty of representation and

compensation is entered into by a:

1. Prospective party who does not have a broker or sales associate [an-agent]; and

2. A broker or sales associate [Licensee] who has offered to represent him.

(b) Before the beginning of discussions relating to a real estate transaction between a:

1. Prospective party who does not have a broker or sales associate [an-agent]; and

2. A broker or sales associate [Licensee] who has proposed to discuss the real estate transaction with him.

(3) "First substantial contact" means the period before a written offer to purchase is presented.

(4) "Prospective party" means a person who:

(a) Enters a listing contract as a seller;

(b) Enters a buyer broker agreement as a buyer; or

(c) Seeks or uses the services of a broker or sales associate [person licensed by the Kentucky Real Estate Commission].

(5) "Prospective party who is represented by a broker or sales associate [an-agent]" means a person who has entered into a current listing contract, or buyer broker agreement with a broker or sales associate [Licensee].

Section 2. The provisions of this administrative regulation shall not apply to:

(1) Sales of real estate at auction; or

(2) Property management of real estate.

Section 3. Prospective Party Information. (1) A broker or sales associate [Licensee] shall deliver to a prospective party an:

(a) "Agency Information For Consumers Bulletin", on the first contact; and

(b) "Agency Disclosure Form", on the first substantial contact.

(2) An "Agency Disclosure Form" shall:

(a) Be signed by each:

1. Prospective party to the transaction; and

2. Broker or sales associate [Licensee] involved in the transaction; and

(b) Identify:

1. Each prospective party known to the broker or sales associate [Licensee] making the disclosure except that prospective parties who intend to buy or rent for a nonowner occupant residential use who direct that their identity not be disclosed in writing, shall not be identified; and

2. If a prospective party is represented by a broker or sales associate [an-agent], the name of the broker or sales associate [agent], his real estate company, and whom they represent except as provided in subparagraph 1 of this paragraph; and

3. The real estate that is the subject of the negotiation;

(c) Describe the personal, family, or business relationships between:

1. The broker or sales associate [Licensee] making the disclosure; and

2. Each prospective party known to the broker or sales associate [Licensee] when [Licensee-at-the-time] the disclosure is made;

(d) State whether the broker or sales associate [Licensee] making the disclosure is acting as a principal as a prospective:

1. Seller;

2. Buyer;

3. Lender; or

4. Investor.

(3) The "Agency Disclosure Form" and the "Agency Information For Consumers Bulletin" required by subsection (1) of this section shall be:

(a) The "Agency Disclosure Form Approved By Kentucky Real Estate Commission", and the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission"; or

(b) An Agency Disclosure Form, and Agency Information For Consumers Bulletin, that have been developed by the broker or sales associate [Licensee] and approved by the commission.

(4) An "Agency Information For Consumers Bulletin" developed by a licensee:

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

(b) May contain the principal broker's [a-licensee's] logo and be in a format that differs from the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission".

(5)(a) An "Agency Disclosure Form" or "Agency Information For Consumers Bulletin" that has been developed by the broker or sales associate [Licensee], shall be submitted to the commission for approval.

(b) The general counsel of the commission shall:

1. Review the form or bulletin;

2. Make a recommendation to the commission that the form or bulletin be approved or disapproved; and

3. Inform the broker or sales associate [Licensee] of the commission's decision.

Section 4. ~~[3-]~~ Commission Review of Licensee Documents. The commission shall:

(1) Review licensee listing agreements, buyer broker agreements, and purchase agreements;

(2) Approve agreements that it determines contain the information required by this administrative regulation; and

(3) Inform licensees of commission action.

Section 5. ~~[4-]~~ Incorporation By Reference. (1) The following documents are incorporated by reference:

(a) "Agency Disclosure Form Approved By Kentucky Real Estate Commission (Sep-07-1995)"; and

(b) "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission (Sep-07-1995)".

(2) They may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville Kentucky 40223, 8 a.m. to 4:30 p.m., Monday through Friday.

SUE TEEGARDEN, Chairman

APPROVED BY AGENCY: March 12, 1996

FILED WITH LRC: April 4, 1996 at noon

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Certification  
of Marriage and Family Therapists  
(As Amended)**

**201 KAR 32:050. Code of ethics.**

RELATES TO: KRS 335.320~~(5)~~

STATUTORY AUTHORITY: KRS 335.320~~(5)~~, ~~(7)~~

NECESSITY AND FUNCTION: KRS 335.320~~(5)~~ requires the board to promulgate [adopt] a code of ethics for certified marriage and family therapists. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A marriage and family therapist shall:

(a) ~~[seek to]~~ Advance and protect the welfare of his client;

(b) ~~[He shall]~~ respect the rights of persons seeking his assistance; and

(c) Make reasonable efforts to ensure that his services are used appropriately. ~~[In order to accomplish these goals,]~~



(2) A marriage and family therapist shall not:

(a) [(4)] Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, national origin, or sexual orientation;

(b) [(2)] Exploit the trust and dependency of a client;

(c) [(3)] Engage in a dual relationship with a client, including a social, business, or personal relationship, that may:

1. Impair professional judgment;

2. Incur a risk of exploitation of the client; or

3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a therapist shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur. [in dual relationships with a client that may impair professional judgment or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, business or close personal relationships with a client. When a dual relationship cannot be avoided, a therapist shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.]

(d) [(4)] Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of therapy;

(e) [(5)] Use his professional relationship with a client to further his own interests;

(f) [(6)] Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(g) [(7)] Fail to assist a person in obtaining other therapeutic services if the therapist is unable or unwilling, for appropriate reasons, to provide professional help;

(h) [(8)] Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of [such] treatment;

(i) [(9)] Videotape, record, or permit third party observation of therapy sessions without having first obtained written informed consent from the client;

(j) [(10)] Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) [(11)] Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 2. Confidentiality. (1) ~~[A marriage and family therapist has unique confidentiality concerns because the client in a therapeutic relationship may be more than one (1) person. Therefore,]~~ A therapist shall respect and guard the confidences of each individual client.

(2) [(4)] Marriage and family therapists shall not disclose a client confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If [Where] the therapist is a defendant in a civil, criminal, or disciplinary action arising from the therapy, ~~[(in which case client] confidences may be disclosed only in the course of that action[)]; or~~

(d) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives therapy, unless a waiver is executed by each family member receiving therapy, who is legally competent to execute a waiver, a therapist shall not disclose information received from any family member. [If there is a waiver previously obtained in writing, and then such information may be revealed only in accordance with the terms of the waiver. In circumstances where more than one (1) person in a family receives therapy, each such family member who

~~is legally competent to execute a waiver must agree to the waiver required by this subparagraph. Without such a waiver from each family member legally competent to execute a waiver, a therapist shall not disclose information received from any family member.]~~

(2) A marriage and family therapist may use client or clinical materials in teaching, writing, and public presentations ~~[only]~~ if:

(a) A written waiver has been obtained in accordance with subsection (1)(d) of this section; or

(b) ~~[when]~~ Appropriate steps have been taken to protect client identity and confidentiality.

(3) A marriage and family therapist shall store or dispose of client records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A marriage and family therapist shall maintain ~~[high]~~ standards of professional competence and integrity and ~~shall [may]~~ be subject to disciplinary action ~~[(if)]~~:

(1)(a) Upon conviction of a [Convicted of any] felony, or a misdemeanor related to his practice as a marriage and family therapist.

(b) Conviction shall include conviction based on:

1. A plea of no contest or an "Alford Plea"; or

2. The suspension or deferral of a sentence. [includes all instances in which a plea of no contest or an "Alford Plea" is the basis of the conviction or when the imposition of a sentence is suspended or deferred;]

(2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Upon a showing of impairment [He is impaired] due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of marriage and family therapy;

(4) If he misrepresented or concealed a material fact in obtaining or seeking reinstatement of a certificate;

(5) If he has refused [failed] to comply with an order issued by the board; or

(6) He has failed to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated;

(c) Properly responding to subpoenas issued by the board.

Section 4. Responsibility to a Student or Supervisee. (1) A marriage and family therapist shall not exploit the trust and dependency of a student or supervisee.

(2) [(4)] A marriage and family therapist shall:

(a) Be aware of his influential position with respect to a student or supervisee; and

(b) ~~[he shall]~~ Avoid exploiting the trust and dependency of these persons.

1. ~~[(a)]~~ A therapist shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If [(b) When] a dual relationship cannot be avoided, a therapist shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

~~[(c) Examples of dual relationships include, but are not limited to, business or close personal relationships with a student or supervisee.]~~

3. A therapist shall not provide therapy to a student, employee or supervisee. [(d) Provision of therapy to a student, employee, or supervisee shall be prohibited.]

4. A therapist shall not engage in sexual intimacy or contact with a student or supervisee. [(e) Sexual intimacy or contact with

a student or supervisee shall be prohibited.]

(3) [(2)] A marriage and family therapist shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) [(3)] A marriage and family therapist shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If [Where] the therapist is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the [(in which case a)] student's or supervisee's confidence may be disclosed only in the course of that action[];

(d) In educational or training settings if [where] there are multiple supervisors, [and then only] to other professional colleagues who share responsibility for the training of the supervisee; or

(e) If there is a waiver previously obtained in writing, [and then such] information shall [may] be revealed only in accordance with the terms of the waiver.

Section 5. Financial Arrangements. (1) A marriage and family therapist shall make financial arrangements with a client, third party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A marriage and family therapist shall:

(a) [(1)] Not offer or accept payment for referrals;

(b) [(2)] Not charge excessive fees for services;

(c) [(3)] Disclose his fees to clients and supervisees at the beginning of services; or

(d) [(4)] Represent facts truthfully to clients, third party payors, and supervisees regarding services rendered.

Section 6. Advertising. A marriage and family therapist shall:

(1) Accurately represent his education, training, and experience relevant to his practice of marriage and family therapy;

(2) Not use [any] professional identification, including [but not limited to] a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.

JOHN SOHAN, Board Chairman

APPROVED BY AGENCY: February 15, 1996

FILED WITH LRC: March 14, 1996 at 11 a.m.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Certification  
for Professional Art Therapists  
(As Amended)**

**201 KAR 34:010. Certification of professional art therapists [Definitions].**

RELATES TO: KRS 309.1315(5) [(44)], 309.133

STATUTORY AUTHORITY: KRS [309.1305(2)] 309.1315(1), (11)

NECESSITY AND FUNCTION: KRS 309.1315(1) requires the board to promulgate administrative regulations to implement the provisions of KRS 309.130 to 309.1399. This administrative regulation establishes the requirements for certification of professional art therapists. [KRS 309.133 sets forth the require-

ments for certification as a professional art therapist. The board is required to review the applications of applicants for certification. KRS 309.133 requires applicants to have experience under supervision and hours of sequential coursework in the history, theory, and practice of art therapy. This administrative regulation establishes definitions necessary for the evaluation of experience under supervision and the requirements for the coursework.]

Section 1. [Definitions. The following terms relate to the evaluation of applications for certification:] (1) ["An applicant for certification as a professional art therapist" means a person who is seeking to satisfy the requirements of KRS 309.133.] Proof of certification or registration with the Art Therapy Certification Board, Inc. shall be accepted as evidence that the applicant has met [both] the educational and experiential requirements for certification as set forth in KRS 309.133(1).

(2) Supervision shall be considered appropriate if:

(a) For group supervision it:

1. Is provided by an approved supervisor to an individual or a group not exceeding six (6) individuals;

2. Enhances the professional development of a supervisee in the provision of professional art therapy services; and

3. Is equally distributed throughout the period of supervision; and

(b) For individual supervision, it consists of case consultation between the supervisor and the supervisee that is restricted to the supervisee's cases. ["Appropriate supervision" means the process of utilizing individual or group supervision between a supervisee and an approved supervisor aimed at enhancing the professional development of the supervisee in providing professional art therapy services. Supervision shall be equally distributed throughout the period of experience.]

(3) An ["approved supervisor shall ["means a person who]:

(a) Be [is] certified as a professional art therapist in the commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of art therapy; or

(b) Until July 15, 1999, hold [Holds] a master's degree in another mental health profession whose education and experience demonstrate to the board a level of competence equivalent to that established by [contained in] paragraph (a) of this subsection. After July 15, 1999, a supervisor qualifying under this paragraph shall no longer be considered as an approved supervisor.

(4) To identify himself as a certified professional art therapist, ["CPAT" means the abbreviation that] a certified professional art therapist may use "CPAT". [when holding himself out as having the status of certified professional art therapist.

(5) ["Group supervision" means face-to-face supervision rendered to not more than six (6) individuals.

(6) ["Individual supervision" means face-to-face case consultation between the supervisor and the supervisee related only to the supervisee's cases.

(7) ["To qualify, an internship experience shall have been ["means] an internship in the field of art therapy.

(6) To qualify, a [(8)] postgraduate experience shall have been ["means engaging in] the practice of art therapy after completion of and receipt of the qualifying degree pursuant to KRS 309.133.

(7)(a) The [(9)] practice of art therapy shall include ["means] the rendering to individuals, families, or groups, services that use art media and verbalization as a means of expressions and communication to promote perceptive, intuitive, affective and expressive experiences that:

1. Alleviate distress, reduce physical, emotional, behavioral, and social impairment; and

2. Lead to growth or reintegration of one's personality.

(b) Art therapy services shall include:

1. [-but are not limited to-] Assessment and evaluation;

2. Development of treatment plans, goals and objectives;

3. Case management services; and

4. Therapeutic verbal and visual treatment.

(8) [(40)] "Twenty-one (21) semester hours of sequential course work in the history, theory, and practice of art therapy" shall [may] include completion of the following:

(a) A minimum of twenty-one (21) semester hours, thirty-one (31) quarter hours, or 315 clock hours in art therapy courses from an accredited institution as defined in KRS 309.130(4);

(b) The required core curriculum shall [which may] include the following components:

1. History of art therapy;
2. Theory of art therapy;
3. Techniques of practice in art therapy;
4. The application of art therapy with people in different treatment settings;
5. Psychopathology;
6. Assessment of patients and diagnostic categories;
7. Ethical and legal issues of art therapy practice;
8. Standards of good practice in art therapy; and
9. Matters of cultural diversity bearing on the practice of art therapy.

HELEN HEDDENS, Board Chairman

APPROVED BY AGENCY: February 23, 1996

FILED WITH LRC: March 14, 1996 at 11 a.m.

**JUSTICE CABINET  
Juvenile Detention Facilities  
(As Amended)**

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

RELATES TO: KRS 15A.210(9)

STATUTORY AUTHORITY: KRS 15A.160, 15A.210(9)

NECESSITY AND FUNCTION: KRS 15A.210 requires [mandates that] the Justice Cabinet to promulgate [issue] administrative regulations governing the operation of juvenile detention centers, including medical and health services. This administrative regulation governs medical and health care services at juvenile detention centers.

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

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

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

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

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

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

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

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

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

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

(h) [(h)] Provide for the prompt notification of a juvenile's parent or guardian [juveniles' parents or [A] guardians] and the responsible agency if [in case of] serious illness, surgery, injury or death;

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

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

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

3. Methods of obtaining assistance;

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

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

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

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

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

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

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

1. A formulary specifically developed for the facility;

2. Prescription practices that require that:

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

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

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

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

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

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

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

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

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

1. The active health record shall be [is] maintained separately

from the confinement record;

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

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

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

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

(3) Written health care policy and procedures shall be approved by the responsible physician ~~[and]~~ for medical administrator.

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

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

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

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

(8) Appropriate state and federal licensure, certification or registration requirements and restrictions apply to personnel who provide health care services to juveniles. Verification of current credentials and job descriptions shall be [are] on file in the facility.

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

(10) Program staff shall be informed of juveniles' special medical problems. When a juvenile is admitted, [At the time of admission,] staff shall be informed of any physical problems that might require medical attention.

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) The person administering medications shall:

(a) Have received training from a responsible physician and the official responsible for the facility;

(b) Be accountable for administering medications according to orders; and

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

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

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

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

- (a) The completed receiving screening form;
- (b) Health appraisal data forms;
- (c) All findings, diagnoses, treatments, disposition;
- (d) Prescribed medications and their administration;
- (e) Laboratory, x-ray and diagnostic studies;
- (f) Signature and title of documenter;
- (g) Consent and refusal forms;
- (h) Release of information forms;
- (i) Place, date and time of health encounters;
- (j) Health service reports, e.g., dental, mental health and consultations;

(k) Treatment plan, including nursing care plan;

(l) Progress reports; and

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

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

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

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

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

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

E. DANIEL CHERRY, Secretary

## ADMINISTRATIVE REGISTER - 128

APPROVED BY AGENCY: April 12, 1996  
FILED WITH LRC: April 15, 1996 at 11 a.m.

### JUSTICE CABINET Juvenile Detention Facilities (As Amended)

#### 500 KAR 6:150. Programs.

RELATES TO: KRS 15A.210(12)

STATUTORY AUTHORITY: KRS 15A.160, 15A.210(12)

NECESSITY AND FUNCTION: KRS 15A.210 requires ~~mandates~~ ~~that~~ the Justice Cabinet to promulgate ~~issue~~ administrative regulations governing the operation of juvenile detention centers, including programs and services. This administrative regulation governs programs and services at juvenile detention centers.

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

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

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

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

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

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

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

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

(8) The facility shall issue and enforce written policies and procedures that require:

(a) A recreation and leisure-time plan including at least one (1) hour per day of large muscle activity and one (1) hour of structured leisure-time activity;

(b) Adherence to dietary and other requirements of various faiths if approved by the religious authority; and

(c) Staff members to be available to counsel juveniles if requested and on an emergency basis. ~~The facility shall adopt and enforce written policies and procedures which:~~

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

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

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

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

(10) A variety of fixed and movable equipment shall be provided

for each outdoor recreation area.

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

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

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

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

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

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

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

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

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 15, 1996 at 11 a.m.

### JUSTICE CABINET Juvenile Detention Facilities (As Amended)

#### 500 KAR 6:190. Waiver of compliance.

RELATES TO: KRS 15A.210

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

NECESSITY AND FUNCTION: KRS 15A.210 requires ~~mandates~~ ~~that~~ the Justice Cabinet to promulgate ~~issue~~ administrative regulations governing the operation of juvenile detention centers. This administrative regulation establishes a waiver process for compliance with rated capacity limits at juvenile detention centers.

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

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

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

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

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

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

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

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

(3) A waiver, if granted by the Justice Cabinet, shall apply only to the petitioner for the ~~[specific]~~ period of time specified and may ~~shall~~ include conditions ~~[any requirements]~~ imposed by the cabinet ~~[as conditions upon the waiver]~~. A ~~[No]~~ waiver shall not be granted for longer than twelve (12) months. A ~~[Any]~~ waiver granted for a

twelve (12) month period shall be reviewed at the end of the period for reapproval.

E. DANIEL CHERRY, Secretary  
APPROVED BY AGENCY: April 12, 1996  
FILED WITH LRC: April 15, 1996 at 11 a.m.

**JUSTICE CABINET  
Juvenile Detention Facilities  
(As Amended)**

**500 KAR 6:200. Physical plant.**

RELATES TO: KRS 15A.210(5)

STATUTORY AUTHORITY: KRS 15A.160, 15A.210(5)

NECESSITY AND FUNCTION: KRS 15A.210 requires ~~[mandates that]~~ the Justice Cabinet to promulgate ~~[issue]~~ administrative regulations governing the operation of juvenile detention centers, including the physical plant. This administrative regulation governs the physical plants at juvenile detention centers.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Toilets at a minimum ratio of one (1) for every twelve (12) juveniles in male facilities and one (1) for every eight (8) juveniles in female facilities. Urinals may be substituted for up to one-half (1/2) of the toilets in male facilities. Wash basins shall be provided at a

minimum ratio of one (1) basin for every twelve (12) occupants; [One (1) toilet and one (1) wash basin for every five (5) juveniles;]

(c) Showers accessible to juveniles;

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

(e) Access to a drinking fountain.

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

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

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

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

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

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

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

2. Wash basin and drinking water;

3. Hot and cold running water;

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

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

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

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

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

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

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

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

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

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

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

(27) Space shall be available for religious services.

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

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

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

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

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

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

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

(35) Separate and adequate space shall be provided for mechani-



cal equipment.

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

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

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

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

- (a) Statement of general goals and purposes of the facility;
- (b) Description of the facility, including statutory authority and services to be provided;
- (c) Analysis of projected work load, staffing, programs and operating and capital budgets;
- (d) Assessment of the impact of the facility on overall operation of the parent agency;
- (e) Justification for the facility;
- (f) Analysis of alternative means for achieving the same goals;
- (g) Description of space requirements;
- (h) Outline of budget and time restrictions; and
- (i) Study of alternate ways of satisfying space requirements, including leasing renovation and new construction.

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

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

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

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

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 15, 1996 at 11 a.m.

**DEPARTMENT OF CORRECTIONS  
(As Amended)**

**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 promulgate ~~adopt, amend or rescind~~ administrative regulations ~~necessary and suitable~~ for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the

American Correctional Association. This administrative regulation conforms with those provisions. ~~[These administrative regulations are in conformity with these provisions.]~~

Section 1. **Incorporation by Reference.** (1) "Department of Corrections Policies and Procedures", (April 12, 1996 Edition), Department of Corrections, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Department of Corrections Policies and Procedures include: ~~[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



# ADMINISTRATIVE REGISTER - 131

14.6	Inmate Grievance Procedures	27-11-01	Intensive Supervision ( <u>Amended 5/14/96</u> )
15.1	Hair and Grooming Standards	27-12-01	Supervision: Case Classification
15.2	Offenses and Penalties	27-12-02	Risk Assessment [ <del>(Amended 4/12/96)</del> ]
15.3	Meritorious Good Time	27-12-03	Initial Interview
15-05-01	Restoration of Forfeited Good Time	27-12-04	Conditions of Regular Supervision/Request for Modification
15.6	Adjustment Procedures and Programs		
15.7	Inmate Account Restriction	27-12-05	Releasee's Report
15.8	Unauthorized Substance Abuse Testing	27-12-06	Grievance Procedures for Offenders
16.1	Inmate Visits	27-12-07	Employment, Education/Vocational Referral
16.2	Inmate Correspondence	27-12-08	Supervision Plan
16.3	Telephone Calls	27-12-09	Casebook
16.4	Inmate Packages	27-12-10	Guidelines for Monitoring Supervision Fee
17-01-01	Inmate Personal Property	27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
17.2	Assessment Center Operations		
17.3	Controlled Intake of Inmates	27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
18.1	Classification of the Inmate		
18.5	Custody and Security Guidelines	27-12-13	Community Service Work
18.6	Classification Document	27-12-14	Client Travel Restrictions
18.7	Transfers	27-13-01	Drug and Alcohol Testing of Offenders
18.9	Out-of-state Transfers	27-13-02	Alcohol Detection
18-10-01	Preparole Progress Reports	27-14-01	Interstate Compact Transfers
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures	27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill	27-15-01	Supervision Report; Violations, Unusual Incidents
18.13	Population Categories	27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
18.15	Protective Custody	27-17-01	Absconder Procedures
18.17	Interstate Agreement on Transfers	27-18-01	Probation and Parole Issuance of Detainer/Warrant
18.18	International Transfer of Inmates	27-19-01	Preliminary Revocation Hearing
19.1	Government Services Projects	27-20-01	Division of Probation and Parole Controlled Intake Program
19.2	Community Services Projects	27-20-02	Prisoner Intake Notification
19.3	Inmate Wage Program	27-20-03	Prisoner Status Change
20.1	Educational Programs and Educational Good Time	27-21-01	Apprehension and Transportation of Probation and Parole Violators
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)	27-22-01	Fugitive Unit - Apprehensions
21.2	Phase I: Program Selection Assessment Criteria	27-22-02	Fugitive Unit - Transportation of Fugitives
21.3	Program Schedule - Phase II and Phase III	27-23-01	In-state Transfer
21.4	Platoon Size and Composition	27-24-01	Closing Supervision Report
21.5	Physical Conditions Program Component	27-24-02	Reinstatement of Clients to Active Supervision
21.6	Group and Individual Counseling	27-25-01	Application for Final Discharge from Parole
21.7	Drug and Alcohol Abuse Counseling and Treatment	27-26-01	Assistance to Former Clients and Dischargees
21.8	Work Programs Component	27-27-01	Restoration of Civil Rights
21.9	Education and Life Management	27-28-01	Firearms/Explosives: Application for Relief from Disability
21.10	Auxiliary Services	27-29-01	Parole Review Dates Modification
21.11	Offenses and Penalties	28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
22.1	Privilege Trips		
23.1	Religion		
25.1	Gratuities	28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
25.2	Public Official Notification of Release of an Inmate		
25.3	Prerelease Program	28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
25.4	Inmate Furloughs		
25.6	Community Center Program	28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
25.7	Expedient Release		
25.8	Extended Furloughs		
25.10	Administrative Release of Inmates	28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
25.11	Victim Notification		
27-01-01	Probation and Parole Procedures	28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
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	28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
27-06-01	Availability of Supervision Services		
27-06-02	Equal Access to Services	28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
27-07-01	Cooperation with Law Enforcement Agencies		
27-08-01	Use of Force	28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
27-09-01	Kentucky Community Resources Directory		
27-10-01	Advanced Supervision	28-02-01	Expedient Release Program

## ADMINISTRATIVE REGISTER - 132

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 administra-

tive regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(As Amended)

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

RELATES TO: KRS 160.560

STATUTORY AUTHORITY: KRS 156.070, 160.560

NECESSITY AND FUNCTION: The requirement for a check issuing policy is established in KRS 160.560. 702 KAR 3:040 is repealed because KRS 13A.120(2)(e) and (f) prohibit the promulgation of an administrative regulation if a statute: (1) prescribes the same or similar procedure for a subject matter, or (2) sets forth a comprehensive scheme of regulation of a subject matter. [The requirement for a check issuing policy is mandated in KRS 160.560, making 702 KAR 3:040 unnecessary.] This repeal will make annual approval of a local school board's check issuing policy by the Kentucky Board of Education unnecessary.

Section 1. 702 KAR 3:040, Check issuing policy, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody  
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 5, 1996 at noon

### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(As Amended)

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

RELATES TO: KRS 156.160, 189.540, 49 CFR Part 382 [Sections 382.201 through 382.215, 391]

STATUTORY AUTHORITY: KRS 156.160, 189.540

NECESSITY AND FUNCTION: KRS 156.160 requires the Kentucky Board of [State Board for Elementary and Secondary] Education to promulgate [adopt] administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the state board to promulgate [adopt] administrative regulations to govern the design and operation of school buses. This administrative regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. (1) A local board of education shall require annual medical examination of each school bus driver and drivers of special

vehicles used to transport school children to and from school and events related to the schools.

(2) The medical examination shall include tests for:

- (a) Hearing and vision disorders;
- (b) Emotional instability; and
- (c) Serious medical conditions including:
  - 1. Diabetes;
  - 2. Epilepsy;
  - 3. Heart disease; and

4. Other chronic or communicable diseases if indicated in the opinion of the examining physician.

(3) The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations.

(4) A medical examination of a school bus driver shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent or his designee.

~~[(5) The forms required by subsection (4) of this section, TC 04-35, July 1990, and Supplement to TC 04-35, are incorporated by reference and may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

Section 2. (1)(a) A criminal records and driving history check shall be performed by a local district on new school bus drivers both:

- 1. Prior to initial employment; ~~and~~ ~~or~~
- 2. After a break in service (excluding summers).

(b) Employment shall be contingent upon the requirements of paragraph (a) of this subsection.

(c) A school bus driver shall immediately report to the local superintendent or his designee a:

- 1. Revocation of his driver's license;
- 2. Conviction for DUI; or
- 3. Conviction for reckless driving.

(2)(a) Controlled substance and alcohol use and testing in accordance with KDE - 1530, March, 1996 ~~[September, 1994]~~, shall be a condition of employment for:

- 1. School bus drivers;
- 2. Substitute drivers, coaches, teachers, and volunteers who drive school buses;
- 3. School bus mechanics; and
- 4. Other safety-sensitive jobs requiring a CDL license.

(b) The controlled substance and alcohol use and testing program shall include the following tests:

- 1. Preemployment testing (controlled substance only);
- 2. Postaccident testing;
- 3. Random testing; and
- 4. Reasonable suspicion testing.

(c) Prospective employees who test positive for controlled substances ~~[or register 0.02 or above, on the evidential breath test (EBT)]~~, shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to pupil transportation.

(d) A school bus driver, substitute driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties having a confirmed positive test for controlled substances shall be relieved of those duties immediately.

(e) A school bus driver, substitute driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties who tests above 0.02 percent on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately.

~~(f) [The drug testing procedures found in KDE 1530, March, 1996 [September, 1994], are incorporated herein by reference, a copy of which may be inspected, copied or obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza~~

~~Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.~~

~~(g)]~~ A person shall not be employed as a school bus driver if convicted of driving a motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. A person shall not drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. A driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) A person shall not drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellan) in each eye either without corrective lenses [glasses] or by correction with corrective lenses [glasses];

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by corrective lenses [glasses] shall wear properly prescribed corrective lenses [glasses] at all times while driving.

Section 4. A person shall not drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. ~~[Effective April 1, 1992]~~ School bus drivers shall be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. ~~[Beginning April 1, 1992]~~ Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2)(a) Prior to acceptance into the driver training program, a driver applicant shall be required to demonstrate driving skills judged by a certified driver training instructor to meet acceptable performance standards as outlined in "Preemployment Road Test", July 11, 1989, [the Division of Pupil Transportation curriculum]

(b) The driver applicant's score sheet shall become a part of the driver's training record.

(c) A driver shall demonstrate the following skill levels:

- 1. Vehicle knowledge;
- 2. Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:
  - a. Ninety (90) degree left hand turns;
  - b. Ninety (90) degree right hand turns;
  - c. Straight ahead;
  - d. Irregular surface maneuverability at speeds;
  - e. Backing ability using mirrors only; and
  - f. Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education and two (2)

**driver review, evaluation and instruction components.**

(2) The training course shall consist of the following instructional units and minimum instructional times:

- (a) Laws and regulations - one (1) hour;
- (b) Driving fundamentals - one (1) hour;
- (c) Care and maintenance - one (1) hour;
- (d) Critical situations - one (1) hour;
- (e) Accidents and emergency procedures - one (1) hour;
- (f) Pupil management - one (1) hour;
- (g) First aid - one (1) hour;
- (h) Special education transportation - five-tenths (.5) hour;
- (i) Extracurricular trips - five-tenths (.5) hour; and
- (j) Vehicle operations - three (3) hours.
- (k) Vehicle control at speed - one (1) hour; and
- (l) Bus route identification, driver review and instruction - two (2) hours.

(3) [(2)] Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days the following:

- (a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and
- (b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days of driving.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.

(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) A driver who does not complete the training update and recertification as required by subsection (2) of this section shall be required to complete the beginning training program.

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. ~~If [in case of]~~ an emergency makes ~~[that would make]~~ it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent or his designee any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designee ~~[designate]~~. The driver shall not permit an assigned pupil to leave the bus at a stop other

than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent or his designee.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. (1) If a pupil's conduct on the bus makes it unsafe for the bus to continue on its route, it shall be the duty of the driver to:

(a) Make a determination as to the potential danger to other students on the bus; and

(b) Take action against the student either by:

1. Requesting that the student stop engaging in the prohibited conduct;

2. Ordering the student to leave the bus;

3. Ejecting the pupil from the bus or sending for assistance if the student fails to comply with the driver's order or request.

(2) Ejecting a pupil from the bus shall be done only in the most extreme circumstances.

(3) If a student has been ejected from a bus as the result of conduct specified in subsection (1) of this section, the driver shall notify the following parties of the action taken as soon as possible:

(a) The principal of the school where the pupil attends~~(s)~~ or the district superintendent or his designee; and

(b) The student's parent or legal guardian.

Section 25. (1) The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level.

(a) The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track.

(b) After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding.

(c) When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks.

(2)(a) In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad

tracks.

(b) Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26 The driver may ~~[shall have the authority to]~~ assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this administrative regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment.

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

**Section 35. Incorporation by Reference. (1) The following material is incorporated by reference:**

**(a) Forms TC 94-35, July, 1990, and Supplement to TC 94-35, July, 1990, Division of Pupil Transportation, Department of Education;**

**(b) "Alcohol and Controlled Substance Policy", KDE 1530, March, 1996, Division of Pupil Transportation, Department of Education; and**

**(c) "Preemployment Road Test", July 31, 1989, Division of Pupil Transportation, Department of Education.**

**(2) This material may be inspected, copied, or obtained at the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody  
Commissioner of Education

JOSEPH W. KELLY, Chairman  
APPROVED BY AGENCY: April 4, 1996  
FILED WITH LRC: April 5, 1996 at noon

**WORKFORCE DEVELOPMENT CABINET  
Department of Vocational Rehabilitation  
(As Amended)**

**781 KAR 1:040. Rehabilitation technology services.**

RELATES TO: KRS 151B.190, 29 USC 706(8)(A), 34 CFR 361.31(b)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.195 requires ~~[directs]~~ the Commissioner, Department of Vocational Rehabilitation to promulgate ~~[prescribe rules and]~~ administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation prescribes when, and under what conditions, rehabilitation technology services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

Section 2. Computer Hardware and Software Purchases. The department ~~[of Vocational Rehabilitation]~~ shall not purchase computers, microcomputers, other hardware or software for the personal use of applicants or clients. The agency may consider the provision or upgrade or replacement of computer hardware and software if ~~[when]~~:

(1) The equipment is essential to compensate for the limitations caused by the disability;

(2) The equipment is required for the client to achieve a vocational objective of competitive employment;

(3) In addition, one (1) or more of the following criteria shall be met:

(a) The equipment is required for vocational preparation;

(b) The equipment is required by the job and no provision is made by the employer to supply the equipment; or

(c) The equipment will enable a client to become competitive with nondisabled employees performing the same duties.

Section 3. Computer Upgrades or Replacements. (1) Computer upgrades or replacements may be provided for a client if ~~[when]~~ needed for obtaining and maintaining employment.

(2) Costs of upgrading or replacing computers in excess of \$1,000 shall require the approval of the Director of Program Services or a designee.

(3) Computer upgrades or replacements in excess of \$6,000 may

be provided if the ~~[Division]~~ Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

Section 4. Second Time Upgrades or Replacements. (1) Except as provided in this section, the agency shall provide only one (1) computer upgrade or replacement per individual.

(2) The agency may approve a second time upgrade or replacement under the following conditions:

(a) The client has demonstrated a two (2) year continuous work history; and

(b) The client's employer attests that the upgrade or replacement is needed to maintain employment.

Section 5. Computer Repair. (1) The agency shall not provide repair to computers.

(2) Maintenance and repair of computers beyond the warranty shall be the responsibility of the individual.

Section 6. Vehicle Modification (General). (1) Modification of a van for a client who can be functional in an automobile shall be authorized only to the maximum cost of the automobile modification.

(2) The agency may provide van modifications for clients determined by the agency specialist of the Driver Evaluation/Vehicle Modification Program to be unable to transfer independently into and out of an automobile.

(3) Vehicle modifications shall be provided only on the recommendation of the agency specialist of the Driver Evaluation/Vehicle Modification Program.

(4) Individuals who are not clients of the agency in need of driver evaluation, driver training or vehicle modification may purchase evaluation services on a fee for service basis if ~~[when]~~ all agency applicants and clients have been served.

(5) Vehicle modification shall be provided only after the client completes a driver evaluation and vehicle modification assessment by an agency specialist of the Driver Evaluation/Vehicle Modification Program.

(6) Vehicle modifications shall be inspected and approved by an agency specialist from the Driver Evaluation/Vehicle Modification Program before payment is made.

Section 7. [4-] Specific Modifications Costing Less than \$1,000. Agency staff may approve modifications to a vehicle if ~~[when the following conditions apply]:~~

(1) Modifications is simple and is not related to overall vehicle engine or body condition; and

(2) Modification is not of a substantial structural nature; and

(3) Maintenance records and overall condition of the vehicle can justify modification.

Section 8. [5-] Specific Vehicle Modifications Costing More Than \$1,000. (1) Except as provided in subsection (2) of this section, vehicle modifications costing in excess of \$1,000 shall be provided only for clients whose vocational objective is competitive employment and who are within one (1) year of job placement.

(2) Vehicle modifications may be provided to individuals who are not within one (1) year of job placement if the ~~[division]~~ Director of Program Services determines that documentation exists that the modification would result in a substantial cost savings to the department.

(3) Vehicle modifications costing in excess of \$1,000 shall only be provided on new vehicles except as provided in this section.

(4) The agency may approve vehicle modifications for older vehicles in excess of \$1,000 if ~~[when]~~ maintenance records and overall condition of the vehicle can justify the modification as attested

by an agency specialist of the Driver Evaluation/Vehicle Modification Program. The modification shall ~~[must]~~ demonstrate cost savings to the agency.

Section 9. [6-] Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair may be provided for a client if ~~[when such upgrades are]~~ needed for obtaining or maintaining employment.

(2) Upgrading and repair of vehicle modification in excess of \$1,000 shall require the approval of the Director of Program Services or a designee.

(3) Upgrade or repair of vehicle modifications in excess of \$6,000 may be provided if the ~~[Division]~~ Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

Section 10. [7-] Second Time Modifications. (1) Except as provided in this section, the agency shall provide only one (1) vehicle modification per client.

(2) The agency may approve a second time vehicle modification under the following conditions:

(a) The client has demonstrated a two (2) year continuous work history; and

(b) The client's employer attests that the modification is needed to maintain employment; and

(c) The modification has met a seven (7) year Internal Revenue Service depreciation schedule from the date of first modification.

Section 11. [8-] Vehicle Repair. (1) The agency shall not provide repair to vehicles.

(2) The agency shall not provide or repair any standard or optional automatic equipment. Equipment includes ~~[but is not limited to]~~: power steering, power brakes, automatic transmission, air conditioning, tilt steering, etc.

Section 12. [9-] Property Modification. (1) Permanent, nonrecoverable modification to private homes, businesses or property is an allowable expenditure if determined essential to achieve the employment objective of the individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The individual shall meet economic need qualifications. The counselor shall make every attempt to utilize recoverable, nonpermanent modifications if possible or cost effective.

(2) The agency may provide essential services necessary to alter or adapt the work situation to enable the client to obtain employment or to insure continuation of employment, including ~~[but not limited to]~~ the building of a permanent ramp for a wheelchair, modification of machinery to enable the individual to use that particular machine, or a specially designed safety device.

(3) Except as provided in this section, property modifications in excess of \$6,000 shall not be allowed.

(4) Property modifications in excess of \$6,000 may be provided if the ~~[division]~~ Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

SAM SERRAGLIO, Commissioner

RODNEY CAIN, Secretary

APPROVED BY AGENCY: April 3, 1996

FILED WITH LRC: April 11, 1996 at 1 p.m.

**WORKFORCE DEVELOPMENT CABINET**  
**Department of Vocational Rehabilitation**  
**(As Amended)**

**781 KAR 1:070. Fees for service.**

RELATES TO: KRS 151B.190

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.195(2) authorizes ~~[Chapter 151B]~~ ~~[agrees to comply with federal vocational rehabilitation acts and]~~ ~~[permits]~~ the Commissioner, Department of Vocational Rehabilitation, to promulgate administrative regulations governing fees for vocational rehabilitation services to individuals and entities other than agency clients. This administrative regulation implements that provision.

Section 1. Definitions. (1) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(2) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

Section 2. Carl D. Perkins Comprehensive Rehabilitation Center's ~~[Outpatient]~~ Fees for Services. (1) Except as provided in this section, [Outpatient services rates shall be determined for one (1) year beginning in October of each year.] rates shall be determined by center utilization, ~~[and]~~ budget expenditures and comparable fees charged by other vendors.

(2) The Carl D. Perkins Comprehensive Rehabilitation Center's ~~[outpatient]~~ fees for services shall be:

(a) Vocational evaluation - \$132 per day. ~~[five (5) day evaluations - \$380.]~~

(b) Mobile vocational evaluation - \$100.

(c) Work hardening/conditioning fees based on prevailing market rates in the Kentucky, West Virginia area.

(d) Vocational Adjustment Program - \$48 per day.

(e) Vocational training tuition - \$43 per day or \$150 per month [- \$150].

(f) ~~[(e)]~~ Psychological services based on prevailing market rates in the Kentucky, West Virginia area. ~~[evaluation (complete) - \$160.]~~

(g) ~~[(e)]~~ Psychiatric services - Medicare rate plus ten (10) percent. ~~[evaluation - \$67.50.]~~

(h) ~~[(e)]~~ Physical or [-] occupational ~~[or speech]~~ therapy services - Medicare rate plus ten (10) percent. ~~[(one (1) hour minimum) per hour - \$50.]~~

(i) Speech/language services fees - prevailing market rates in the Kentucky, West Virginia area.

(j) Audiological services - Medicare rate plus ten (10) percent.

(k) Other outpatient therapy per session - \$76.

(l) Brain injury program - \$600 per day.

(m) Physical restoration - \$190 per day.

(n) Dormitory housing - \$31 per day.

(o) Medical housing - \$200 per day.

(p) Nonresidential meals - state per diem rates.

(3) Fees shall include all administrative costs, reports and follow-ups.

Section 3. Rehabilitation Technology [Engineering]. (1) Fees for driver evaluation, driver education, home modification and occupational therapy services shall be based on prevailing market rates in the Kentucky, West Virginia area.

(2) For individuals who desire or need driver evaluation, driver training, occupational therapy services or vehicle modification studies by an agency specialist, the following fees shall apply:

- (a) Evaluation automobile (five (5) hour minimum) - \$50 per hour.
- (b) Evaluation van (ten (10) hour minimum) - \$50 per hour.
- (c) Driver training (one (1) hour minimum) - \$50 per hour.
- (d) Occupational therapy services (one (1) hour minimum) - \$50 per hour.

(3) Fees shall include all administrative costs, reports and follow-up.

Section 4. Fee for Agency Staff Services. ~~[(4)]~~ A fee of \$100 per hour may be charged for agency staff services.

~~[(2) A fee of thirty six (36) dollars per day shall be charged for vocational adjustment services at agency-operated work training centers.]~~

Section 5. The department may negotiate a lesser fee with state/federal programs or a volume discount for private providers.

SAM SERRAGLIO, Commissioner

RODNEY CAIN, Secretary

APPROVED BY AGENCY: April 3, 1996

FILED WITH LRC: April 11, 1996 at 1 p.m.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Insurance**  
**(As Amended)**

**806 KAR 3:160. Life and health reinsurance agreements.**

RELATES TO: KRS ~~[304.3-200,]~~ 304.3-240, 304.5-120~~[-304.33-440]~~

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate ~~[adopt]~~ administrative regulations to implement ~~[necessary for or as an aid to the effectuation of any provision of]~~ the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation restricts the use of life and health reinsurance agreements as ~~[so-called]~~ "surplus relief" if ~~[when]~~ the effect is to distort reporting of the life and health insurer's true financial condition, take credit for or a reduction from liability for reinsurance agreements which do not involve a transfer of risk, and which conceal the fact that the insurer is in hazardous financial condition.

Section 1. Purpose and Scope. (1) ~~[The Department of Insurance recognizes that life and health insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.~~

(2) ~~However, the department has become aware that some life and health insurers, in the capacity of ceding insurers, have at times entered into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer while providing little or no indemnification of policy benefits by the reinsurer. In addition, the Department of Insurance is concerned with reserve credits taken under reinsurance agreements which provide some indemnification of policy benefits where these policy benefits are not included in the gross reserves established by the ceding insurer, such as catastrophic mortality or extraordinary survival. The terms of these agreements and those described in Section 2 of this administrative regulation would violate:~~

~~(a) KRS 304.3-240 relating to financial statements of insurers because they result in distorted financial statements which do not properly reflect the financial condition of the ceding life and health insurer;~~

~~(b) KRS 304.5-120 relating to reinsurance reserve credits because they result in a ceding insurer improperly reducing liabilities or establishing assets for reinsurance ceded; and~~



~~(e) KRS 304.3-200 and 304.33-140 relating to creation of a situation that may be hazardous to policyholders and the people of Kentucky.~~

~~(2) This administrative regulation shall apply to all:~~

~~(a) Domestic life and health insurers;~~

~~(b) [and to all] Other authorized life and health insurers that [which] are not subject to a substantially similar administrative regulation in their domiciliary state; and~~

~~(c) [- This administrative regulation shall also similarly apply to] Licensed property and casualty insurers with respect to their health business.~~

~~(2) This administrative regulation shall not apply to:~~

~~(a) Assumption reinsurance;~~

~~(b) Yearly renewable term reinsurance; or~~

~~(c) Certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.~~

Section 2. Accounting Requirements. (1) An [A-life] insurer [subject to this administrative regulation] shall not, for reinsurance ceded, reduce a [any] liability or establish an [any] asset in a [any] financial statement filed with the Department of Insurance if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(a) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a [risk charge,] and the agreement does not provide for material participation by the reinsurer in one (1) or more of the following risks: mortality, morbidity, investment, or surrender benefit;

(b) The reserve credit taken by the ceding insurer does [is] not comply [in compliance] with:

1. The Kentucky Insurance Code, KRS Chapter 304; or

2. Department of Insurance administrative regulations; or

3. Actuarial Standards of Practice of the Actuarial Standards Board [actuarial interpretations or standards approved by the Department of Insurance];

(c) The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding insurer supporting the policy obligations transferred under the reinsurance agreement;

(d)1. Except as provided by subparagraphs 2 and 3 of this paragraph, the ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement;

2. [except that neither] Offsetting experience refunds against the current and prior years' losses, or [nor] payment by the ceding insurer of an amount equal to the current and prior years' losses upon voluntary termination of in-force reinsurance by the ceding insurer shall not be considered a reimbursement to the reinsurer for negative experience.

3. Voluntary termination shall [does] not include a [situations where] termination that occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement.

(e)1. Except as provided by subparagraph 2 of this paragraph, the ceding insurer may be deprived of surplus at the reinsurer's option or automatically upon occurrence of some event, such as insolvency of the ceding insurer.

2. [-except that] Termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due such as [-including but not limited to] modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be a deprivation of surplus.

(f) The ceding insurer must, at specific points in time scheduled in the agreement, terminate, or automatically recapture, all or part of the reinsurance ceded;

(g) No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account", and no funds in this account are available for the payment

of benefits; [or]

(h) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies. ~~[It is improper for] A ceding company shall not [to] pay reinsurance premiums, or other fees or charges, to a reinsurer that [which] are greater than the direct premiums collected by the ceding company.~~

(i) The reinsurance agreement [treaty] does not transfer all of the significant risk inherent in the business being reinsured.

A risk shall be considered significant if it is:

1. Identified in the representative sampling of products or types of businesses in the "Risk Categories Table"; or

2. Consistent with the representative sampling of products or types of business identified in the "Risk Categories Table". [The table found in Appendix A identifies the risks which are considered to be significant for a representative sampling of products or types of business. For products not specifically included, the risks determined to be significant shall be consistent with the table found in Appendix A;]

(j)1. Except as provided by subparagraph 2 of this paragraph, the credit quality, reinvestment, or disintermediation risk is significant for the business reinsured, and the ceding company does not ~~[either than for the classes of businesses excepted in subparagraph 2 of this paragraph]~~ transfer the underlying assets to the reinsurer, legally segregate the assets in a trust or escrow account, or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

2. [Notwithstanding the requirements of subparagraph 1 of this paragraph, the] Assets supporting the reserves for the following classes of business and any classes of business that [which] do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation [of such assets]:

a. Health insurance - LTC/LTD;

b. Traditional nonpar permanent;

c. Traditional par permanent;

d. Adjustable premium permanent;

e. Indeterminate premium permanent;

f. Universal life fixed premium excluding dump-in premiums [no dump-in premiums allowed].

3. The [associated] formula for determining the reserve interest rate adjustment shall:

a. Reflect the ceding company's investment earnings;

b. [and] Incorporate all realized and unrealized gains and losses reflected in the statutory statement; and

c. Be calculated as follows: [-The following is an acceptable formula:]

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: I is the net investment income.

CG is capital gains less capital losses.

X is the current year cash and invested assets plus investment income due and accrued less borrowed money.

Y is the same as X but for the prior year.

(k) Settlements are made less frequently than quarterly, or payments due from the reinsurer are not made in cash within ninety (90) days of the settlement date;

(l) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured;

(m) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured;

(n) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer. All of the significant risks inherent in the business reinsured are not transferred and, in substance or effect, the expected potential liability

to the ceding insurer remains basically unchanged.

(o)1. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewable expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall.

2. The liability shall be established by [f] using assumptions equal to the applicable statutory reserve basis on the business reinsured[f].

3. Anticipated allocable renewal [These] expenses shall include commissions, premium taxes and direct expenses such as [including, but not limited to,] billing, valuation, claims and maintenance expected by the company at the time the business is reinsured;

(2) An [A-life] insurer [subject to this administrative regulation] may, with prior approval of the Commissioner of Insurance, take reserve credit or establish any asset that [as] the Commissioner of Insurance has determined is [may deem] consistent with the:

(a) Insurance code;

(b) Administrative regulations of the Department of Insurance;

(c) Actuarial Standards of Practice of the Actuarial Standards Board, [or actuarial interpretation or standards approved by the Department of Insurance.]

Section 3. (1)(a) An agreement, including a subsequent amendment to an agreement, [Agreements] entered into after the effective date of this administrative regulation that involves [which involve] the reinsurance of business issued prior to the effective date of the agreement[e along with any subsequent amendments] shall be filed by the ceding company with the commissioner within thirty (30) days from its date of execution.

(b) A [Each] filing shall include data detailing the financial impact of the transaction.

(c) The ceding insurer's actuary who signs the financial statement actuarial opinion in the annual statement with respect to valuation of reserves shall consider this administrative regulation and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the [this] department.

(d) The actuary shall:

1. Maintain adequate documentation;

2. [and be prepared] Upon request, [te] describe the actuarial work performed for inclusion in the annual and quarterly financial statements; and

3. Upon request, [te] demonstrate that such work conforms to this administrative regulation.

(2)(a) An [Any] increase in surplus net of federal income tax resulting from arrangements described in subsection (1) of this section shall be identified separately on the insurer's statutory annual and quarterly financial statement as a surplus item; "[f] aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account" [y].

(b) Recognition of the surplus increase as income shall be reflected on a net of tax basis in the "reinsurance ceded" line as earnings emerge from the business reinsured.

Section 4. [3-] Written Agreements. (1) If an agreement, amendment, or letter of intent has not been duly executed by both parties no later than the "as of date" of a financial statement, a reinsurance agreement, or amendment to an agreement, shall not be used to reduce a liability or establish an asset in a financial statement filed with the department. [Reinsurance agreements or amendments to any agreements shall not be used to reduce any liability or establish any asset in any financial statement filed with the Department of Insurance unless the agreement, amendment, or letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.]

(2) [In the case of a letter of intent,] A reinsurance agreement or

an amendment to a reinsurance agreement shall [must] be executed within a reasonable period of time not exceeding ninety (90) days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(3) The reinsurance agreement shall contain provisions which provide that:

1. The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured and that there are no understandings between the parties other than as expressed in the agreement; and

2. Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by both parties.

Section 5. [4-] Existing Agreements. [Life] An insurer [Insurers subject to this administrative regulation] may continue to reduce liabilities or establish assets in financial statements filed with the Department of Insurance for reinsurance ceded under types of reinsurance agreements described in Sections 1(2) and 2 of this administrative regulation if:

(1) The agreements were executed and in force prior to the effective date of this administrative regulation;

(2) A [No] new business is not ceded under the agreements after the effective date of this administrative regulation;

(3) The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero;

(a) 1994 by December 31, 1994; or

(b) A later date approved by the Commissioner of Insurance pursuant to [as a result of] an application made by the ceding insurer prior to December 31 of the year in which this administrative regulation becomes effective;

(4) The reduction of the liability or establishment of the asset is otherwise permissible under all other applicable provisions of the insurance code, administrative regulations of the Department of Insurance, or Actuarial Standard of Practice of the Actuarial Standards Board [actuarial interpretations or standards approved by the Department of Insurance]; and

(5) The Department of Insurance is notified within ninety (90) days following the effective date of this administrative regulation of the existence of the reinsurance agreements and all corresponding credits taken in the ceding insurer's 1990 annual statement.

Section 6. Risk Categories Table. (1) Significance or risk categories shall be determined by the Risk Categories Table established by this section. [APPENDIX A]

Risk Categories]

(a) [A-] Morbidity.

(b) [B-] Mortality.

(c) [C-] Lapse.

(d) [D-] Credit Quality.

(e) [E-] Reinvestment.

(f) [F-] Disintermediation.

(2) Classes of Insurance Business

Risk Categories

	a	b	c	d	e	f
[	A	B	C	D	E	F
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Nonpar Permanent	0	+	+	+	+	+
Traditional Nonpar Term	0	+	+	0	0	0

# ADMINISTRATIVE REGISTER - 140

Traditional Par Permanent	0 + + + + +
Traditional Par Term	0 + + 0 0 0
Adjustable Premium Permanent	0 + + + + +
Indeterminate Premium Permanent	0 + + + + +
Universal Life Flexible Premium	0 + + + + +
Universal Life Fixed Premium	0 + + + + +

## Where:

- + = significant risk
- 0 = insignificant risk
- \*LTC = long-term care
- \*LTD = long-term disability

a. Lapse is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

b. Credit Quality is the risk that invested assets supporting the reinsured business will decrease in value. Credit Quality does not include market value declines due to changes in interest rates.

c. Reinvestment is the risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will earn less than expected.

d. Disintermediation is the risk that policy loans and surrenders increase, or maturing contracts do not renew at anticipated rates of renewal, during a period of increasing interest rates.

THEODORE RICH, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 4, 1996 at 4 p.m.

## PUBLIC PROTECTION & REGULATION CABINET Department of Insurance (As Amended)

### 806 KAR 5:025. Credit for reinsurance.

RELATES TO: KRS 304.5-140

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate [make] administrative regulations necessary to implement [for or as an aid to the effectuation of any provision of] the Kentucky Insurance Code, KRS Chapter 304. This [The proposed] administrative regulation implements KRS 304.5-140 by establishing credit for reinsurance. [sets forth rules and procedural requirements for carrying out the provisions of KRS 304.5-140.]

#### Section 1. Definitions. As used in this section:

(1) "Beneficiary" means:

(a) The entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law; and

(b) If a court of law appoints a successor in interest to the named beneficiary, [then] the named beneficiary shall be [includes and is limited to] the court appointed domiciliary receiver, [including the conservator, rehabilitator or liquidator{ }].

(2) "Grantor" means:

(a) The entity that has established a trust for the sole benefit of the beneficiary; and

(b) If the trust is [When] established in conjunction with a reinsurance agreement, [the grantor is] the unlicensed, unaccredited assuming insurer.

(3) "Evergreen clause" mans a provision in a letter of credit or its confirmation that prevents the expiration of the letter of credit or its confirmation without written notice to the beneficiary from the issuing or confirming bank or trust company as

#### provided by this administrative regulation.

(4) "Obligations", as used in Section 2(11)(c) of this administrative regulation, means:

- (a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
- (b) Reserves for reinsured losses reported and outstanding;
- (c) Reserves for reinsured losses incurred but not reported; and
- (d) Reserves for allocated reinsured loss expenses and unearned premiums.

Section 2. Requirements for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in KRS 304.5-140(1)(a).

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3)(a) Except as provided by paragraph (b) of this subsection, [All] assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(b) [except that] A bank may apply for the commissioner's permission to use a foreign branch office of the [such] bank as trustee for trust agreements. If the commissioner approves the use of a [the] foreign branch office as trustee, [then] its use shall be approved by the beneficiary in writing. The trust agreement shall provide that the written notice described in subsection (4)(a) of this section shall [also] be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(4) The trust agreement shall provide that:

(a) The beneficiary shall:

1. Have the right to withdraw assets from the trust account at any time after giving written notice to the trustee; and

2. [However, The beneficiary is] Not be required to give notice to the grantor;

(b) The beneficiary:

1. May be required to acknowledge receipt of withdrawn assets; and

2. Shall not be required to present other statements or documents in order to withdraw assets. [Other statements or documents shall not be required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;]

(c) The agreement shall not be subject to [any] conditions or qualifications outside of the trust agreement; and

(d) The agreement shall not contain references to [any] other agreements or documents except as provided by [for under] subsection (11) of this section.

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) Receive and hold all assets in a safe place;

(b) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may negotiate any assets whenever necessary, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account both at the inception and at intervals no less frequent than the end of each calendar quarter;

(d) Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

(e) Upon written demand of the beneficiary, immediately take [any and] all steps necessary to:

1. Transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary; and

2. Deliver physical custody of the assets to the beneficiary; and

(f) Allow no substitutions or withdrawals of assets from the trust account, except upon:

1. Written instructions from the beneficiary; or

**2. The call or maturity of a trust asset, the trustee may withdraw the asset so long as the proceeds are paid into the trust account without the consent of the beneficiary and after notice to the beneficiary.** [~~except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.~~]

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

**(11)(a) The trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer for the purposes permitted by paragraphs (b) through (d) of this subsection, if:**

**1. A trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health; and**

**2. It is customary practice to provide a trust agreement for a specific purpose.** [Notwithstanding other provisions of this administrative regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:]

**(b) [(a)] To pay or reimburse the ceding insurer for the:**

**1. Assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer; or**

**2. [for] Unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;**

**(c) [(b)] To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or**

**(d)1. To withdraw amounts equal to the obligations and deposit them in a separate account as provided by subparagraph 2 of this paragraph, if the:**

**a. Ceding insurer has received notification of termination of the trust account; and**

**b. Assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date.**

**2. Amounts withdrawn pursuant to subparagraph 1 of this paragraph shall be deposited:**

**a. In the name of the ceding insurer; and**

**b. In a qualified United States financial institution as defined in KRS 304.5-140(1) apart from its general assets; and**

**c. In trust for the uses and purposes specified in paragraphs (a) and (b) of this subsection that may remain executory after the withdrawal for any period after the termination date.**

**[(e) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination**

**date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in KRS 304.5-140(1) apart from its general assets, in trust for such uses and purposes specified in paragraphs (a) and (b) of this subsection as may remain executory after such withdrawal and for any period after the termination date.]**

(12) The reinsurance agreement entered into in conjunction with the trust agreement may contain the provisions required by Section 4(1)(b) of this administrative regulation, **so long as the conditions required by this section** [~~as long as these required conditions~~] are included in the trust agreement.

Section 3. Permitted Conditions for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust agreement may provide that the:

**(a) Trustee may resign only if written notice of resignation is:**

**1. Given to the beneficiary and grantor; and**

**2. [of the notice which shall be] Effective not less than ninety (90) days after receipt of the notice.**

**(b) [The trust agreement may provide that the] Grantor may remove the trustee [only] if written notice is:**

**1. Given to the trustee and beneficiary;**

**2. [which shall be] Effective not less than ninety (90) days after receipt of the notice;**

**(c) [The] Resignation or removal of the trustee shall not be effective until:**

**1. A successor trustee has been duly appointed and approved by the beneficiary and the grantor; and**

**2. All assets in the trust have been duly transferred to the new trustee.**

**(2)(a) The grantor may have the full and unqualified right to:**

**1. Vote any shares of stock in the trust account; and**

**2. [to] Receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account.**

**(b) [Any] Interest or dividends shall be:**

**1. [either] Forwarded promptly upon receipt to the grantor; or**

**2. Deposited in a separate account established in the grantor's name.**

**(3) The trustee may be given authority to invest and accept substitutions of funds in the account with prior approval of the beneficiary, unless the trust agreement:**

**(a) Specifies categories of investments acceptable to the beneficiary; and**

**(b) Authorizes the trustee to invest funds, and accept substitutions that the trustee determines are:**

**1. At least equal in market value to the assets withdrawn; and**

**2. Consistent with the restrictions in Section 4(1)(b) of this administrative regulation.** [Unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Section 4(1)(b) of this administrative regulation, the trustee may be given authority to invest and accept substitutions of any funds in the account provided that no investment or substitution shall be made without prior approval of the beneficiary.]

**(4) The trust agreement may:**

**(a) Provide that the beneficiary may designate a party to which all or part of the trust assets are to be transferred; and**

**(b) Condition [-] the transfer [may be conditioned] upon the trustee receiving, prior to or simultaneously, other specified assets.**

**(5) The trust agreement may provide upon termination of the trust account that all assets not previously withdrawn by the beneficiary shall be delivered over to the grantor with written approval by the beneficiary.**

Section 4. Additional Conditions for Reinsurance Agreements Qualified under KRS 304.5-140(3). (1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

(a) Require the assuming insurer to:

1. Enter into a trust agreement;

2. Establish a trust account for the benefit of the ceding insurer; and

3. Specify what the agreement is to cover.

(b) Except as provided by paragraph (e) of this subsection, stipulate that assets deposited in the trust account shall:

1. Be valued according to the current fair market value of the assets; and

2. Consist of:

a. Cash that is United States legal tender;

b. Certificates of deposit, issued by a United States bank and payable in United States legal tender;

c. Investments permitted by the insurance code; or

d. A combination of the items specified in subparagraphs a through c of this paragraph;

(c) As provided by paragraph (b) of this subsection, specify the types of investments to be deposited.

(d) Investments permitted by paragraph (b) of this subsection shall be issued by an institution that is not the parent, subsidiary, or affiliate of the grantor or beneficiary.

(e) If a trust agreement is entered into in conjunction with a reinsurance agreement that covers risks other than life, annuities and accident and health, the trust agreement, rather than the reinsurance agreement, may contain the provisions required by paragraphs (c) and (d) of this subsection.

(f) Require the assuming insurer, prior to depositing assets with the trustee, to:

1. Execute assignments or endorsements in blank; or

2. Transfer legal title to the trustee of shares, obligations, or other assets requiring assignments, so that the ceding insurer, or the trustee on the direction of the ceding insurer, may negotiate the assets without the consent or signature of the assuming insurer or any other entity whenever necessary. [Require the assuming insurer to enter into a trust agreement, to establish a trust account for the benefit of the ceding insurer, and to specify what the agreement is to cover;

~~(b) Stipulate that assets deposited in the trust account shall be valued according to the assets current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), investments of the types permitted by the Insurance Code, or any combination of the above. The investments shall be issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;~~

~~(e) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments. This, provides that the ceding insurer or the trustee, upon the direction of the ceding insurer, may negotiate these assets without consent or signature from the assuming insurer or any other entity whenever necessary;~~

~~(f) [(d)] Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and~~

~~(g)1. As provided by subparagraph 2 of this paragraph, [(e)] stipulate that the assuming insurer and the ceding insurer agree that~~

the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement.

2. The assets shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

a. [4-] To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

b. [2-] To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

c. [3-] To fund an account with the ceding insurer in an amount at least equal to the deduction for reinsurance ceded from the ceding insurer liabilities for policies ceded under the agreement. The account shall include but not be limited to amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and

d. [4-] To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

(a) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw all or a [any] part of the trust assets from the trust account and transfer the withdrawn [these] assets to the assuming insurer provided that:

1. The assuming insurer shall at the time of withdrawal replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain the deposit in the required amount at all times; or

2. After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

3. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(b) Provide for:

1. The return of any amount withdrawn in excess of the actual amounts required for subsection (1)(g[e])1, 2 and 3 of this section or for payments under [in the case of] subsection (1)(g[e])4 of this section, [any] amounts that are subsequently determined not to be due; and

2. Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (1)(e)3.

(c) Permit the award by an [any] arbitration panel or court of competent jurisdiction of:

1. Interest at a rate different from that provided in paragraph (b)2 of this subsection;

2. Court of arbitration costs;

3. Attorney's fees; and

4. [Any] Other reasonable expenses.

(3)(a) If established on or before the date of filing the financial statement of the ceding insurer, a trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements that are required to be filed with the department pursuant to this administrative regulation.

(b) The amount of a reduction for the existence of an acceptable trust account:

1. May be lesser than or equal to the current fair market value of acceptable assets that are available to be withdrawn from the trust account at the time of withdrawal; and

2. Shall not be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure. [Financial reporting. A trust agreement may be used to

~~reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this administrative regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.]~~

**(4) A trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996, shall:**

**(a) Be acceptable until January 1, 1997; and**

**(b) Beginning January 1, 1997, not be acceptable if it does not comply with the provisions of this administrative regulation.** [Existing agreements. Notwithstanding the effective date of this administrative regulation, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996 will continue to be acceptable until January 1, 1997, at which time the agreements will have to be in full compliance with this administrative regulation for the trust agreement to be acceptable.]

(5) The failure of a [any] trust agreement to specifically identify the beneficiary shall not be construed to affect [any] actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

Section 5. Letters of Credit Qualified under KRS 304.5-140(3). (1)

**A letter of credit shall:**

**(a) Be clean, irrevocable and unconditional;**

**(b) Issued or confirmed by a qualified United States financial institution;**

**(c) Contain an issue date, and date of expiration;**

**(d) State that it is not subject to a condition or qualification not contained in the letter of credit;**

**(e) Stipulate that in order to obtain funds, the beneficiary need only draw and present a sight draft under the letter of credit, and**

**(f) Except as provided by subsection (9)(a) of this section, not contain a reference to other agreements, documents, or entities.** [The letter of credit shall be clean, irrevocable and unconditional, and issued or confirmed by a qualified United States financial institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit, present it in order to obtain funds, and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit shall not contain reference to any other agreements, documents, or entities, except as provided in subsection (9)(a) of this section.]

**(2) The heading of a letter of credit may include a boxed section that:**

**(a) Contains the name of the applicant, and other appropriate notations that provide a reference for the letter of credit; and**

**(b) Is clearly marked to indicate that the information is only for internal identification purposes.** [The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that the information is for internal identification purposes only.]

(3) The letter of credit shall contain a statement ~~[to the effect]~~ that the obligation of the qualified United States financial institution under the letter of credit is **not [in no way]** contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least one (1) year and shall contain an ~~["evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer].~~

The ~~["evergreen clause"]~~ shall provide for a period of not less than thirty (30) days' notice prior to the date of expiration or nonrenewal.

**(5) The letter of credit shall state:**

**(a) Whether it is governed by the:**

**1. Laws of Kentucky; or**

**2. "Publication 500", of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce; and**

**(b) That a draft drawn under the letter of credit shall be presentable at an office in the United States of a qualified United States financial institution.** [The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500 [400]), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.]

**(6) A letter of credit shall provide for an extension of time to draw against it if it:**

**(a) Is made subject to "Publication 500" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce; and**

**(b) An occurrence specified in Article 19 of "Publication 500" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce occurs.** [If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500 [400]), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one (1) or more of the occurrences specified in Article 19 of Publication 500 [400] occur.]

(7) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to KRS 304.5-140(1)(a).

(8) If a [the] letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution ~~[as]~~ described in subsection (7) of this section, ~~[then]~~ the following additional requirements shall be met:

(a) The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) The ~~["evergreen clause"]~~ shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

(9) Reinsurance agreement provisions.

(a) The reinsurance agreement for which the letter of credit is obtained may contain provisions **that [which]:**

1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

2. **Stipulate that the assuming insurer and ceding insurer shall agree that, the letter of credit provided by the assuming insure pursuant to the provisions of the reinsurance:**

**a. May be drawn upon at any time, notwithstanding other provisions in the agreement; and**

**b. Shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the reasons specified in subparagraph 3 of this paragraph.**

3. [Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the following reasons:]

a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

b. To reimburse the ceding insurer for the assuming insurer's



share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

c. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement [~~(such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves)~~]; and

d. To pay ~~[any]~~ other amounts the ceding insurer claims are due under the reinsurance agreement.

4. ~~[3. All of]~~ The ~~[foregoing]~~ provisions of paragraph (a) of this subsection shall ~~[should]~~ be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in paragraph (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph (a) ~~3~~ 2 c of this subsection; or

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of paragraph (a) ~~3~~ 2 d of this subsection, any amounts that are subsequently determined not to be due.

(c) In lieu of the stipulation permitted by paragraph (a) 2 of this subsection, a reinsurance agreement may require that the parties enter into a "Trust Agreement", that may be incorporated into the reinsurance agreement or be a separate document, if:

1. A letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health; and

2. It is customary practice to provide a letter of credit for a specific purpose. [When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of paragraph (a) 2 of this subsection, require that the parties enter into a "trust agreement" which may be incorporated into the reinsurance agreement or be a separate document.]

(10) ~~(a)~~ A letter of credit shall ~~[may]~~ not be used to reduce a ~~[any]~~ liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the ~~[this]~~ department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.

~~(b) [Further:]~~ The reduction for the letter of credit may be up to the amount available under the letter of credit but not greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

Section 6. Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Section 7. Reinsurance Contract. Upon the effective date of this administrative regulation, credit shall not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of KRS 304.5-140 ~~[after the adoption of this administrative regulation]~~ unless the reinsurance agreement includes a:

(1) ~~[Includes a]~~ Proper insolvency clause pursuant to KRS 304.5-140(5) and 304.33-350 of the Insurance Code; and

(2) ~~[Includes a]~~ Provision pursuant to KRS 304.5-140(2) ~~(f)~~, if [whereby] the assuming insurer, is ~~[if]~~ an unauthorized assuming insurer, and has:

(a) Submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;

(b) [-has] Agreed to comply with all requirements necessary to

give the ~~[such]~~ court or panel jurisdiction;

(c) [-has] Designated an agent upon whom service of process may be effected; and

(d) [has] Agreed to abide by the final decision of the ~~[such]~~ court or panel.

Section 8. ~~[(4)]~~ An assuming reinsurer shall file a "Certificate of Assuming Insurer", Form AR-1:

(1) To become accredited pursuant to KRS 304.5-140; and

(2) As evidence of its submission to the ~~[this state's]~~ jurisdiction of Kentucky and to its ~~[this state's]~~ authority to examine its books and records pursuant to KRS 304.5-140(2)(b)1.

Section 9. Incorporation by Reference. (1) "Certificate of Assuming Insurer, Form AR-1 December 95" is incorporated by reference.

(2) It may be inspected, copied, or ~~[The form AR-1, revised December 1995, shall be incorporated by reference. Copies may be]~~ obtained from the Department of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m to 4:30 p.m.

Section 10. ~~[9-]~~ Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of the administrative regulation shall conform to the requirements of the Act and this administrative regulation if credit is to be given to the ceding insurer for such reinsurance.

THEODORE RICH, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 4, 1996 at 4 p.m.

**CABINET FOR HEALTH SERVICES**  
Department for Health Services  
Division of Health Systems Development  
(As Amended)

**902 KAR 13:010. Definitions for 902 KAR Chapter 13.**

RELATES TO: KRS 211.952, 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, EO 95-79

NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 requires [directs] the Cabinet for Health Services [Human Resources] to promulgate [adopt] administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to define terms that are used in administrative regulations promulgated by the cabinet relating to emergency medical technicians.

Section 1. Definitions. ~~[As used in cabinet administrative regulations relating to EMTs, the following terms shall have the meanings set forth below unless the context requires otherwise:]~~

(1) "Applicant" means a person applying for training or certification as an EMT, EMT-instructor, or EMT-first responder under this administrative regulation.

(2) "Cabinet" means the Cabinet for Health Services ~~[Human Resources]~~.

(3) "Certificate" means the certificate issued by the cabinet to an individual qualified to perform the duties of an EMT, EMT-instructor, or EMT-first responder.

(4) "Certified" means a person who holds a certificate issued pursuant to this administrative regulation.

(5) "Conviction" means the result of a criminal trial which ends in



a final judgment or sentence that the accused is guilty as charged. A finding of guilty shall also include a plea of guilty, or a plea of nolo contendere. A conviction shall be considered a final judgment until it has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory.

(6) "Council" [~~"Committee"~~] means the Kentucky Emergency Medical Services Council established by KRS 211.952 and ~~[emergency medical services advisory committee (EMSAC)]~~, appointed by the secretary of the cabinet to act in an advisory capacity.

(7) [(6)] "Emergency medical technician-first responder (EMT-first responder)" means an individual certified by the cabinet to perform a portion of the patient care skills of certified EMTs in order to stabilize a patient's condition until an EMT or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.

(8) [(7)] "Emergency medical technician-first responder instructor" means a person, other than an emergency medical technician instructor or emergency medical technician instructor trainer, who is qualified to teach EMT-first responder courses and who is approved [~~certified~~] by the cabinet to teach EMT-first responder courses.

(9) [(8)] "Emergency medical technician (EMT)" means an individual certified by the cabinet as an emergency medical technician [~~or as an emergency medical technician ambulance and~~] who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency and en route to definitive medical care.

(10) [(9)] "Emergency medical technician instructor" means a person certified by the cabinet to teach emergency medical technician and EMT-first responder courses.

(11) [(10)] "Emergency medical technician instructor candidate" [~~trainee~~] means a certified emergency medical technician undergoing approved instruction and evaluation for eligibility to become certified as an emergency medical technician instructor while under the supervision of a certified emergency medical technician instructor.

(12) [(11)] "Emergency medical technician instructor trainer" means a person certified by the cabinet to teach emergency medical technician instructor courses and evaluate emergency medical technician instructor candidates [~~trainees~~].

(13) [(12)] "Emergency situation" means an unforeseen circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate and continuing medical response and intervention to safeguard the life, or physical well-being of a patient.

(14) [(13)] "Implementing agency" means a public or private organization, other than an instructor, instructor trainee, or instructor candidate [~~trainer~~], approved by the cabinet to conduct, supervise, coordinate, and operate an emergency medical technician or EMT-first responder training course.

(15) "The National Registry of Emergency Medical Technicians" means the national professional organization that specializes in written and practical skills testing of EMTs. Their service may be utilized for implementing the EMT certification written and practical examination process for participating states.

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

CABINET FOR HEALTH SERVICES  
Department for Health Services  
Division of Health Systems Development  
(As Amended)

902 KAR 13:020. Applicant[s] requirements[~~;~~ priority] for EMT training and certification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, EO 95-79

NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 requires [directs] the Cabinet for Health Services [Human Resources] to promulgate [adopt] administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish applicant requirements for EMT [applicants and priority of applicants for] training and certification.

Section 1. Applicant Requirements for Training. An [Applicants-Each] applicant for EMT training who desires to apply for certification shall:

(1) Be at least eighteen (18) years of age by the completion of the EMT course in which the student is enrolled [~~or older~~];

(2) Understand and be able to read, speak, and write the English language; and

(3) Submit a signed application on the "Application for Emergency Medical Technician Certification" form (EMS Branch-2/96).

(4) [~~Effective July 1, 1996,~~] An applicant shall:

(a) Hold at least a high school diploma or equivalent; or

(b) Provide documentation to the training implementing agency that the applicant meets the reading and educational levels outlined in the Emergency Medical Technician/Basic Functional Position Description (4/93).

Section 2. Applicant Requirements for Certification. An applicant for certification shall not:

(1) [(2)(a) Not] Have been convicted of a felony or misdemeanor described in KRS 335B.010(4); [~~or~~]

(2) [(b) Not] Have been convicted of other crimes directly relating to the applicant's ability to perform the duties of an EMT;

(3) [Not] Be a person who compulsively and habitually uses drugs or controlled substances to the extent that it may effect his ability to perform the duties of an EMT; or [and]

(4) [Not] Be a person who compulsively and habitually uses alcohol to the extent that it may affect his ability to perform the duties of an EMT;

(5) Understand and be able to read, speak, and write the English language;

(6)(a) Submit a signed application on the "Application for Emergency Medical Technician (0-30-01)" form.

(b) "Application for Emergency Medical Technician (0-30-01)" is incorporated by reference.

(c) This form may be inspected, copied, or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 3. Relevant Criminal Offenses. [(2)] (1) In determining whether a crime directly relates to the ability of an applicant[~~;~~ ability] to become certified to perform the duties of an EMT, the cabinet shall apply the test set out in KRS 335B.020(2).

(2) The following crimes shall be considered by the cabinet as directly relating to the ability of an applicant[~~;~~ ability] to perform the duties of an EMT:

(a) Offenses under KRS Chapter 189 (traffic regulations punishable by fine or imprisonment or both);  
(b) Offenses under KRS Chapter 189A (driving under the influence);

(c) Offenses under KRS Chapters:

1. 218A (controlled substances);
2. 507 (criminal homicide);
3. 508 (assault and related offenses);
4. 509 (kidnapping and related offenses);
5. 510 (sexual offenses);
6. 511 (burglary and related offenses);
7. 512 (criminal damage to property);
8. 513 (arson and related offenses);
9. 514 (theft and related offenses);
10. 515 (robbery);
11. 521 (bribery and corrupt influences);
12. 523 (perjury and related offenses);
13. 525 (riot, disorderly conduct and related offenses);
14. 527 (offenses relating to firearms and weapons);
15. 528 (gambling);
16. 529 (prostitution offenses);
17. 506 (~~Inchoate offenses [of attempts, conspiracy, or complicity to commit the offenses specified in this subsection].~~)

(3) The cabinet shall also consider convictions of other offenses if they directly relate to an applicant's ability to perform as an EMT [the duties of an EMT].

Section 4. Denial of Certification. [3.] The cabinet may deny an application for certification if it determines that an applicant:

(1) Does not meet the requirements specified in Sections 1 and 2 of this administrative regulation;

(2) Has been convicted of a crime described in KRS 335B.010(4); or

(3) Has been convicted of other crimes directly relating to the applicants ability to perform the duties of an EMT.

(4) Pursuant to 902 KAR 13:090, Section 5, an applicant who is denied certification shall have the right to have an administrative hearing.

~~[Section 4. Priority of Applicants for Training. Applicants for training in courses offered to the public by implementing agencies shall be accepted according to the following priorities:~~

- ~~(1) First priority: ambulance personnel;~~
- ~~(2) Second priority: emergency room personnel and related emergency medical service personnel, such as public safety agencies, rescue and extrication, industrial safety, nursing personnel, and certified public school teachers designated as first aid personnel; and~~
- ~~(3) Third priority: all others.~~

~~(4) Applications shall be filed with the implementing agency ten (10) working days prior to the beginning of the course. The final selection of applicants for each course shall be made by the implementing agency.]~~

Section 5. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

(1) Application For Emergency Medical Technician Certification, form (EMS Branch-2/96).

(2) Emergency Medical Technician Basic Functional Position Description, 4/93.

RICE C. LEACH, MD, Commissioner  
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Health Services**  
**(As Amended)**

**902 KAR 13:050. Training, examination, certification and recertification of the emergency medical technician.**

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, EO 95-79

NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 requires [directs] the Cabinet for Health Services [Human Resources] to promulgate [adopt] administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for training, examination, certification and recertification of the basic level of emergency medical technicians.

Section 1. EMT Training Course Requirements. (1) The EMT training course shall follow [The training course shall:

(1) Include] the United States Department of Transportation (DOT) 1984 [Basic] Emergency Medical Technician: National Standard Curriculum (NSC) (Third Edition, [1984] of the U.S. Department of Transportation and the accompanying text "Emergency Care" (Fifth Edition, 1990), The Brady Company, Prentice Hall, Inc., Englewood Cliffs, N.J. 07632. Each of these publications is incorporated by reference. They shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection and copying Monday through Friday from 8 a.m. until 4:30 p.m.;

(2) [Effective July 1, 1996,] An EMT training course shall follow the DOT, National Highway Traffic Administration, 1994 NSC, EMT-Basic.

(3) Prior to the effective date of this administrative regulation [July 1, 1996], an implementing agency may:

(a) Apply to the cabinet, utilizing the "Emergency Medical Technician Basic Course Inventory Pilot Program" form 10/95, to make application to be approved to conduct a pilot program utilizing the 1994 NSC, EMT-Basic; or

(b) Be considered to begin teaching the 1994 curriculum if:  
1. The implementing agency is ready to teach the 1994 curriculum;

2. An application is submitted in writing to the cabinet;  
3. The required materials are in place for the cabinet to process the application; and

4. The cabinet approves and assigns a course approval number.

(4) An implementing agency shall assume all responsibilities for conducting a 1994 EMT basic training course.

(5) Prior to commencing the course, the implementing agency shall substantiate that:

(a) An "Emergency Medical Technician Basic Course Application" (EMS Branch-5/96) [A "Basic Course Inventory Pilot Program", (10/95)] form has been submitted to the cabinet; and

(b) A course number has been assigned by the cabinet.

(6) During the time the course is being conducted, the implementing agency shall substantiate that [the course]:

(a) The course is at least [(2) Be not less than] 119 hours in duration;

(b) Lessons are [(3) Be] taught by a lead instructor, who as a minimum is an EMT-instructor certified by the cabinet, and at least one (1) assistant to the lead instructor who shall minimally be a Kentucky certified EMT who meets the criteria of the lead instructor and the implementing agency or who is [may also be] a Kentucky certified [EMT instructor trainee, or one (1) additional] EMT instructor;

(c) In the absence of the lead instructor, lessons shall not be

conducted without the presence of an EMT-instructor certified by the cabinet;

(d) The course is ~~((4) Have, prior to commencement of the class, a class number assigned by the cabinet;~~

~~(5) Be~~ limited to twenty-eight (28) ~~(thirty (30))~~ students; and

(e) The course utilizes texts as chosen by the lead instructor and approved by the implementing agency.

(7) Approved texts shall be:

(a) Currently in publication;

(b) The most current edition available at the time the course begins which meets the appropriate 1984 or 1994 NSC;

(c) Maintained on file in the office of the implementing agency and at the course location; and

(d) Available upon request for public inspection during normal office hours or during course hours.

(8) The training course shall ~~((6))~~ Utilize equipment, ~~(texts,)~~ audiovisuals and other materials approved by the cabinet;

(9) The training course shall ~~((7))~~ Have all required equipment available at the training site for the scheduled lessons and not permit sharing of equipment between courses ~~(classes)~~ unless ~~(the classes are conducted at the same location and)~~ the equipment is equally available to all course lessons as needed ~~(classes)~~; and

(10) The training course shall ~~((9))~~ Not permit a student to be on call while course lessons ~~(classes)~~ are in session.

Section 2. Responsibilities of the Lead Instructor. (1) The EMT course lead ~~(class)~~ instructor shall:

(a) Require each student to sign in, on the same date as the lesson to be presented, on an attendance sheet approved ~~(provided)~~ by the cabinet;

(b) Submit to the cabinet, at least two (2) weeks prior to the starting date of the class:

1. A syllabus for the course showing course lesson dates and the materials to be covered; and

2. A "Basic Course Inventory" form (12/93) verifying that all equipment, texts, audiovisuals ~~(television tapes),~~ and other materials specified are on hand, in proper working order and available as specified in Section 1(9) ((9)) of this administrative regulation; (placed in secure storage);

(c) Submit to the cabinet, within two (2) weeks following the completion of each course:

1. The master "Grade Sheet", (1/96);

2. "Answer Sheets", (9/94) for each of the four (4) certification

written examinations;

3. "Score Sheets for the Certification [Final] Practical Examination" for each student who completed the class;

4. "Master Attendance Sheet", (3/95);

5. "Attendance Sheet", (1/96), or cabinet approved equivalent for each lesson;

6. "Application for Emergency Medical Technician", (2/96) for each eligible student ~~(for each student)~~ desiring EMT certification; and

7. The fee prescribed by 902 KAR 13:030, Section 1(1) for each student desiring EMT certification.

(2) ~~((a))~~ The following forms are incorporated by reference:

1. "Basic Course Inventory" (1992);

2. "Grade Sheet" (10/74);

3. "Answer Sheet", number one (1), two (2), three (3) and four (4) (1992);

4. "Master Attendance Sheet" (1992);

5. "Attendance Sheet" (EHS 4-9/74);

6. "Application for Emergency Medical Technician" (1992).

~~(b) They may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.~~

~~((3))~~ The EMT course lead ~~(class)~~ instructor shall:

(a) Establish, with the approval of the implementing agency, the

course standards for training and examinations, including development and procurement of examination materials, and course absenteeism;

(b) Require that remediation or makeup of missed eligible lessons be completed within the course in which the EMT is enrolled. ~~(may permit more than one (1) lesson absence per student, if the absence is made up:~~

~~(a) With the approval of the instructor; or~~

~~(b) In a subsequent EMT training course provided the lesson made up is the same one that was missed.)~~

Section 3. EMT Certification Examination. (1) The cabinet shall prescribe the format and content of the EMT certification examination which shall consist of two (2) parts:

(a) ~~((1))~~ Written.

1. ~~(Until July 1, 1996,)~~ ~~((a))~~ The Kentucky certification written examination for eligible applicants trained according to the 1984 NSC EMT-Basic shall consist of four (4) separate examinations, the fourth to be inclusive of the entire course.

2. ~~((b))~~ An absolute overall passing grade of not less than eighty (80) percent~~(s)~~ shall be required for successful completion of the written portion of the certification examination.

3. The Kentucky certification examination for eligible applicants trained according to the 1994 NSC EMT-Basic shall follow the format described in subsection (3)(a) of this section.

~~(b) (courses which begin after the effective date of this administrative regulation.~~

~~((2))~~ Practical.

1. ~~((a))~~ The applicant shall pass all required stations of the Kentucky certification ~~(final)~~ practical examination. The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination.

2. ~~((b))~~ If an applicant ~~((he))~~ fails to pass all required stations, he shall be permitted, within one (1) year from the date of the first testing, one (1) opportunity to retake and complete the required stations which he failed to pass.

3. ~~((c))~~ If the applicant fails again to pass the required stations, he shall be required to retake the entire Kentucky EMT training course before being eligible for reexamination.

(2) ~~((3))~~ An instructor who is employed by the same ambulance service, public service or industrial organization for whom an EMT course ~~(class)~~ is conducted shall not evaluate in the practical examination of the students from that course ~~(that class)~~.

(3) The format for the EMT two (2) part examination for Kentucky initial certification for an eligible applicant who has successfully completed a 1994 NSC EMT-Basic course shall be as follows:

(a) Written.

1. The written portion of the certification examination shall be a single examination that is comprehensive and compatible with the 1994 NSC EMT-Basic, utilizing the National Registry of EMTs (NREMT) (1/96) written examination.

2. In order to be eligible for Kentucky certification, a student who has successfully completed a Kentucky 1994 NSC EMT-Basic course and is recommended as eligible to take the NREMT written examination shall obtain an absolute score according to the following schedule:

a. Prior to the effective date of this administrative regulation [July 1, 1996], for an EMT Basic Pilot Program, sixty-five (65) percent;

b. After the effective date of this administrative regulation [Effective July 1, 1996], sixty-six (66) percent; and

c. [Effective January 1, 1998, sixty-eight (68) percent; and d.] Effective July 1, 1997 [January 1, 1999], seventy (70) percent or whatever is equivalent to the current score required for passing the

National Registry of EMTs written examination.

3. Standards and eligibility for retesting of the written examination shall be consistent with the rules and regulations of the NREMT.

(b) Practical.

1. The Kentucky practical skills portion of the initial certification examination shall be compatible with the 1994 NSC EMT-Basic, utilizing the 1994 NREMT EMT-Basic Practical Examination Users Guide for the practical examination.

2. An eligible student who passes the practical examination according to the NREMT guidelines and passes the written examination referenced in paragraph (a)2 of this subsection shall be eligible for Kentucky EMT certification.

3. Standards and eligibility for retesting of the practical skills examination shall be consistent with the rules and regulations of the NREMT.

(4) An EMT student, who does not become Kentucky certified within two (2) years after completion of the EMT course, shall repeat the EMT course before he may become Kentucky certified.

Section 4. Expiration of Certification. (1) An EMT certificate shall expire two (2) years from the date of issuance.

(2) Upon expiration of certification, an EMT shall not perform any of the authorized procedures for certified EMTs described in 902 KAR 13:080, until he has met the conditions described in Section 9 of this administrative regulation and has been recertified by the cabinet as evidenced by having been issued a new certificate by the cabinet.

Section 5. Recertification and Continuing Education Requirements. (1) During his period of certification, an EMT shall attain at least twenty-four (24) continuing education hours, with no less than twelve (12) hours being practical skills in a structured instructional setting. ~~[Effective July 1, 1992,]~~ A minimum of two (2) of the twenty-four (24) contact hours shall be in Acquired Immune Deficiency Syndrome (AIDS) education as required by KRS 214.610.

(2) An EMT shall:

(a) Maintain evidence in the form of a certificate of completion of current training ~~[of current certification]~~ in cardiopulmonary resuscitation (CPR) as required by:

1. The American Heart Association; or
2. The American National Red Cross; or
3. The National Safety Council; and

(b) Submit evidence of continuing education and a current certificate of completion in CPR training ~~[certification]~~ to the cabinet prior to the expiration of his EMT certification.

(3) An applicant for EMT recertification shall receive credit for completion of continuing education on a subject:

(a) Covered by the United States Department of Transportation basic emergency medical technician curriculum, outlined in Section 1 of this administrative regulation; or

(b) For which instruction is:

1. Preapproved; and
2. Authorized by the cabinet.

(4) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(5) Training received as a requirement for continuing education as a physician, registered nurse, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for continuing education credit if it meets the criteria of subsection (3) ~~[(2)]~~ of this section.

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least six (6) different subject areas, with a maximum of four (4) hours per subject area, of emergency medical technician course lecture subject matter ~~[instruction]~~ or practice of skills ~~[instruction]~~.

(7) Hours earned in a transition course, as described in Section 12(1) of this administrative regulation, may be applied toward renewal of certification for an EMT who either:

(a) Attends the entire minimum twenty-five (25) hour transition course, but does not successfully pass the accompanying practical skills examination. These hours may be utilized hour for hour toward the required twenty-four (24) continuing education hours described in subsection (1) of this section, except that these hours shall not apply toward the required two (2) hours of cabinet approved AIDS education. Additionally, these hours shall not apply as credit for update training to the 1994 NSC referenced in Section 12(1) of this administrative regulation; or

(b) Attends the entire minimum twenty-five (25) hour transition course and successfully passes the accompanying practical skills examination. The EMT may utilize the hours earned in the transition course as described in paragraph (a) of this subsection, and may additionally receive credit for the required update training to the 1994 NSC; or

(c) Attends the minimally required first two (2) modules, "Introduction" and "Patient Assessment", of the minimum twenty-five (25) hour transition course, successfully completes the eleven (11) psychomotor competency objectives, and successfully passes the accompanying practical skills examination. The EMT may:

1. Apply the hours hour for hour for the first two (2) modules, and any additional modules attended when the total hours attended are less than twenty-five (25) hours; and

2. Receive credit for update training referenced in paragraph (b) of this subsection.

(8) An EMT shall be issued a certificate of completion, signed by the lead instructor, which specifies the hours earned as outlined in subsection (7)(a), (b), or (c) of this section.

(9) An ~~[(7)(a) The]~~ EMT shall submit to the cabinet:

(a) A signed "Application for Emergency Medical Technician and EMT-Instructor Certification Renewal"; and

(b) A signed record of his continuing education on an "EMT Official Record of Continuing Education/Inservice" (EMT/R-90) form which:-

(b) The form shall:

1. Has been [Be] signed by the EMT;
2. Contains a certification as to the truth of the information supplied; and
3. Includes a statement that misrepresentation of the information may be cause for suspension or loss of certification.

~~[(c) "EMT Official Record of Continuing Education/Inservice", (EMT/R-90), is incorporated by reference and may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m. Monday through Friday.]~~

(10) ~~[(8)]~~ The following shall not be eligible for credit as continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities.

(b) Instruction in material, techniques, or procedures not authorized to be performed by emergency medical technicians.

(11) Upon the effective date of this administrative regulation, an EMT applicant for Kentucky certification renewal shall be deemed as meeting the Kentucky certification requirements addressed in subsections (1) and (6) of this section if he:

(a) Is able to validate that he has currently met the renewal requirements for the NREMT;

(b) Meets the Acquired Immune Deficiency Syndrome (AIDS) education required by KRS 214.610 and subsection (1) ~~[(2)]~~ of this section; and

(c) Meets the requirements outlined in Section 12 of this administrative regulation.

Section 6. EMT Instructors for Continuing Education. (1) The following persons shall be qualified to conduct continuing education courses for emergency medical technicians:

- (a) A physician licensed pursuant to KRS Chapter 311;
  - (b) A registered nurse licensed pursuant to KRS Chapter 314;
  - (c) A paramedic certified by the State Board of Medical Licensure;
  - (d) An emergency medical technician instructor or instructor trainer certified by the cabinet;
  - (e) An instructor who:
    1. Is certified by a state or federal agency to teach a subject; and
    2. Teaches a course which qualifies for emergency medical technician in-service training or continuing education; or
  - (f) Other presenters who are preapproved by the cabinet as persons who are uniquely qualified by experience or education.
- (2) As applicable, a physician, registered nurse, paramedic or emergency medical technician instructor currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section.

Section 7. Cardiopulmonary Resuscitation Requirement. (1) During the two (2) year certification period, the EMT shall maintain current ~~training~~ ~~[certification]~~ in cardiopulmonary resuscitation and related techniques as follows:

- (a) The course shall be conducted:
  1. by, or under the authority of:
    1. The American Heart Association; ~~or~~
    2. The American National Red Cross; or
    3. The National Safety Council; or
  2. ~~[2.]~~ By an instructor certified by the American Heart Association or the American National Red Cross; or
  3. ~~[3.]~~ By an instructor certified by the National Safety Council;
- (b) The course shall be:
  1. Taught for record; and
  2. Certified by the instructor as meeting all applicable standards of the organization to:
    - a. The American Heart Association; or
    - b. The American National Red Cross; or
    - c. The National Safety Council. ~~(as meeting all applicable standards of the organization);~~
- (c) The course shall provide instruction and testing in:
  1. One (1) rescuer cardiopulmonary resuscitation;
  2. Two (2) rescuer cardiopulmonary resuscitation;
  3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;
  4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;
  5. Techniques for relief of obstruction of the airway;
  6. Cardiopulmonary resuscitation of infants and small children; and
  7. Barrier ~~[Mouth]~~ to mouth, barrier ~~[mouth]~~ to nose or barrier ~~[mouth]~~ to stoma resuscitation for adults, small children, and infants.
- (d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1)(c) of this section.
- (2) The applicant for renewal of certification shall forward to the cabinet a copy of both sides of the certificate of completion issued to him indicating successful completion of the CPR course as required in Section 5(2)(b) ~~(4)(d)~~ of this administrative regulation.

Section 8. Continuing Education Requirements for Emergency Medical Technician Instructors and Instructor Trainers. (1) An EMT instructor and an EMT instructor trainer shall attain twenty-four (24) continuing education hours during his certification period.

(2) An emergency medical technician instructor or instructor trainer may meet the continuing education requirements for recertification by:

- (a) Conducting an emergency medical technician course;
- (b) Teaching one (1) or more lessons of an emergency medical technician course;
- (c) Teaching one (1) or more lessons of an in-service training or

continuing education course;

(d) Evaluating an EMT certification ~~[Conducting a final]~~ practical examination ~~[or challenge examination for an emergency medical technician course]; or~~

(e) Conducting an EMT instructor training course.

(3) During his two (2) year certification period an emergency medical technician instructor or instructor trainer shall attend:

(a) At least one (1) annual emergency medical technician instructor conference; or

(b) At least one (1) annual training session for newly appointed instructors.

(4) Continuing education hours obtained at these conferences may be used as credit toward the time required in subsection (2) of this section.

(5) An emergency medical technician instructor or instructor trainer shall meet the CPR requirement in one (1) of the following ways:

(a) Meet the cardiopulmonary resuscitation requirement outlined in Section 7(1) of this administrative regulation;

(b) Teach a cardiopulmonary resuscitation course for record; or

(c) Teach the cardiopulmonary resuscitation portion of the emergency medical technician course to emergency medical technician students.

Section 9. ~~[Temporary Extension of]~~ Certification Renewal. (1) All requirements of certification renewal, including ~~[Upon submission of a written request prior to the certification expiration date, an EMT or EMT instructor may be granted one (1) six (6) month extension per certification period. Six (6) months following the effective date of this administrative regulation, the cabinet shall grant only a thirty (30) day grace period following a certification expiration date to allow for administrative processing.~~

~~(2)]~~ continuing education hours, shall be obtained prior to the certification expiration date.

(2) Effective January 1, 1997, if all requirements were met prior to the certification expiration date of the applicant, a recertification application postmarked to the cabinet or received by the cabinet within three (3) months after the certification expiration date of the applicant may be considered for renewal.

(3) Effective January 1, 1997, an application for recertification postmarked to the cabinet or received by the cabinet more than three (3) months after the certification expiration date of the applicant shall not be considered for renewal and shall be returned to the applicant.

~~(4) [(3)]~~ Upon written application to the cabinet, an EMT or EMT instructor who is a member of a National Guard or military reserve unit and who is called to active duty by presidential order under sections 121 and 673b of Title 10 U.S. Code, may be given an extension for a period up to one (1) year after the individual's release from active duty or return to the United States, whichever occurs first.

~~(5) [(4)]~~ An EMT who has not renewed his EMT certification within the time limitations specified in subsection (1) or (2) of this section may be eligible for certification by:

(a) Successfully completing the reentry challenge examination as outlined in Section 10 of this administrative regulation; or

(b) By retaking and successfully completing the entire EMT training course.

Section 10. Challenge Examination Procedure. (1) For those persons specified in subsection (3) of this section, a challenge examination may be taken in order to qualify or requalify the person as an EMT ~~[emergency medical technician]~~. This challenge examination shall be in lieu of the requirement for completion of the Kentucky EMT course and the passing of the Kentucky EMT examinations. The provisions of this section shall not prohibit a ~~[any]~~ person listed in subsection (3) of this section from taking and successfully completing the Kentucky EMT course and the Kentucky EMT examinations.

(2) The cabinet shall prescribe the format and content of the EMT

challenge certification examination which shall consist of two (2) parts:

(a) Written.

1. The Kentucky challenge written certification examination shall consist of one (1) examination inclusive of the entire EMT basic course curriculum content.

2. An absolute overall passing grade of not less than eighty (80) percent, shall be required for successful completion of the written portion of the challenge certification examination. The challenge candidate shall successfully complete the written certification examination before being eligible to take the certification practical examination.

3. If an applicant fails to pass the written examination, the applicant may be allowed one (1) retest, which shall be completed within thirty (30) days from the completion of the first testing.

4. [Effective July 1, 1996,] The initial EMT certification written examination for a challenge candidate shall utilize the NREMT written examination as referenced in Section 3(3)(a) of this administrative regulation.

(b) Practical.

1. The applicant shall pass all required stations of the Kentucky challenge practical certification examination. The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination.

2. If an applicant fails to pass all required stations, he shall be permitted, within one (1) year from the date of the first testing, one (1) opportunity to retake and complete the required stations which he failed to pass.

3. If the applicant fails again to pass the required stations, he shall be required to retake the entire Kentucky EMT training course before being eligible for reexamination.

4. [Effective July 1, 1996,] The initial EMT certification challenge practical skills examination shall utilize the NREMT skills examination as referenced in Section 3(3)(b) of this administration regulation.

[(2) The standards for the Kentucky Challenge Examination shall be the same as the standards for the EMT certification examination outlined in Section 3 of this administrative regulation.]

(3) The following shall be eligible to take the Kentucky Challenge Examination:

(a) U.S. military personnel on active duty, or within a period of one (1) year from the date of discharge, who submit:

1. Proof of having successfully completed training equivalent to the Department of Transportation EMT curriculum outlined in Section 1 of this administrative regulation; and

2. Proof of current CPR certification.

(b) An EMT certified or licensed in another state or country, who submits proof of current EMT certification, or foreign equivalent, and CPR certification. An out-of-state or foreign license or certification shall be maintained current until the date of the first attempt to pass the practical skills examination.

(c) An EMT whose Kentucky certification has not been expired for more than five (5) years and who was in good standing when his certification expired.

(d) A challenge applicant, who does not become Kentucky certified within two (2) years from the date the cabinet receives his application to challenge, shall repeat the EMT course before he may become Kentucky certified.

(e) An applicant shall be exempt from the challenge examination requirements and shall be eligible for direct reciprocity for initial Kentucky certification if he:

1. Meets the eligibility requirements in this subsection;

2. Submits evidence of current NREMT registration; and

3. Meets the requirements of subsection (6)(b) of this section related to AIDS education required by KRS 214.610;

(f) An applicant who is not eligible for the exemption outlined in Section 12(3) of this administrative regulation shall have until July 1, 1999 to complete the requirements of Section 12 of this administrative regulation.

(4) An applicant [application] for the Kentucky Challenge Examination shall submit:

(a) A letter of request to take the examination;

(b) The fee prescribed by 902 KAR 13:030, Section 1(2); and

(c) A completed "Application for Emergency Medical Technician Challenge Only", (1992).

(5) [The "Application for Emergency Medical Technician Challenge Only" form (1992) is incorporated by reference and may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

(6) An applicant whose Kentucky emergency medical technician certification has not been expired for more than five (5) years and who was in good standing when his certification expired, shall submit the following additional documentation at the time of application:

(a) Proof of previous Kentucky emergency medical technician certification; and

(b) Proof of current CPR certification which meets the requirements of Section 7(1)(a) and (b) of this administrative regulation; and

(c) Proof of having completed four (4) hours of MAST Trouser training, taught by an instructor who meets the criteria in Section 6 of this administrative regulation; and

(d) Proof of completion of at least twenty-four (24) hours of continuing education taught by an instructor who meets criteria in Section 6 of this administrative regulation.

(6) [(7)] Continuing education hours shall include:

(a) A minimum of one (1) hour in each of the following areas:

1. Airway management;

2. Diabetic emergencies;

3. Cardiovascular emergencies;

4. Multiple trauma;

5. Overdose and poisoning;

6. EMS related legal issues; and

7. Patient assessment.

(b) No less than two (2) continuing education hours in Acquired Immune Deficiency Syndrome (AIDS) education equivalent to the requirement specified in Section 5(1)(b) of this administrative regulation.

Section 11. Exemptions from EMT Administrative Regulations. The Kentucky certification requirements for an EMT shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT certified in another state who comes into Kentucky:

(a) To transport patients into or through the state; or

(b) For the purpose of returning a patient to his out-of-state residence.

Section 12. Kentucky EMT Transition Course. (1) The EMT update training to the 1994 NSC, the United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program", shall be referred to as the Transition Course (TC).

(2) The TC shall be completed by July 1, 1999 by EMTs currently certified in Kentucky who completed their EMT basic training in a course initiated prior to the effective date of this administrative regulation [July 1, 1996].

(3) If a Kentucky certified EMT who also holds out-of-state certification can provide evidence that he has completed equivalent training in another state prior to July 1, 1999, he may be exempt from the Kentucky TC in part, or in its entirety based upon the equivalency



training he has received.

(4) The TC shall not be required of EMTs currently certified in Kentucky who completed their EMT basic training in a Kentucky 1994 NSC EMT- Basic Pilot Program course prior to the effective date of this administrative regulation [July 1, 1996].

(5) The TC shall be coordinated by a sponsoring agency or organization such as a Kentucky EMT training implementing agency, licensed ambulance service, acute care facility, or other agency or organization approved by the cabinet.

(6) A sponsoring agency shall have filed an application, "For Approval as an Agency to Sponsor 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (10/95) if it has not been already approved.

(7) If an agency has already been approved to sponsor a TC, the agency shall have filed a "Cabinet Approved Agency/Organization Application to Sponsor a 1994 NSC EMT-Basic Transition Course for Kentucky Certified Emergency Medical Technicians", (10/95).

(8) An agency shall:

(a) File an application to sponsor a TC at least two (2) weeks prior to the planned starting date of the course; and

(b) Have received approval from the cabinet for coordinating the training.

(9) An approved sponsoring agency shall assume all responsibilities for conducting the TC.

(10) The TC course shall:

(a) Have, prior to the commencement of the course, a course number assigned by the cabinet;

(b) Be at least twenty-five (25) hours in duration except for the alternatives outlined in Section 5(7)(c) of this administrative regulation. This shall not include time for the course practical examination;

(c) Be limited to twenty-eight (28) certified EMT students;

(d) Utilize texts as outlined in Section 1(7) [(5)(d) and (6)] of this administrative regulation, which are compatible with the 1994 NSC;

(e) Meet cabinet requirements regarding supplies, equipment and other materials, which shall be available when needed during course lessons and as needed for skills practice and examination by the enrolled EMTs;

(f) Not permit an enrolled EMT to be on call while classes are in session;

(g) Not permit an enrolled EMT to take the course practical skills examination if the EMT has not completed the eleven (11) course psychomotor skills and objectives before the scheduled examination;

(h) Have a designated lead instructor for lectures who:

1. Is an EMT-Instructor certified by the cabinet; and

2. Has completed a Kentucky EMT-Instructor roll-out training program on the 1994 NSC;

(i) Have a minimum ratio of one (1) faculty, including lead instructor and assistants, to seven (7) enrolled EMTs for skills practice sessions; and

(j) Have assistants to the lead instructor who shall:

1. Assist the lead instructor in the skills practice sessions of the course; and

2. Assist as an evaluator for the course practical examination.

(11) The assistants to the lead instructor shall meet at least one (1) of the following requirements:

(a) Be an EMT-instructor certified by the cabinet who has completed the requirements outlined in 902 KAR 13:070, Section 4;

(b) Be a physician licensed by the Kentucky Board of Medical Licensure (KBML);

(c) Be a Kentucky certified paramedic who has successfully completed a TC who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support;

2. Is a level I fire service instructor; or

3. Has earned a bachelor's or higher degree; or

(d) Be a Kentucky licensed registered nurse who has completed

a TC and is a certified emergency nurse or has evidence of three (3) consecutive years experience in an acute medical facility emergency department who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support;

2. Is a level I fire service instructor; or

3. Has earned a bachelor's or higher degree.

(12) The lead instructor shall be required to:

(a) Assist the sponsoring agency in filing an application for cabinet approval to conduct each TC;

(b) Maintain the following records for each enrolled EMT. These records shall remain as property of the sponsoring agency for a period of at least five (5) years or until July 1, 2004, whichever comes first:

1. Lesson attendance;

2. Required remediation;

3. Validation of competency for eleven (11) psychomotor skill objectives before an EMT is allowed to take the accompanying course practical skills examination;

4. A copy of the cabinet TC master attendance form. The original shall be submitted to the cabinet;

5. A copy of the cabinet master grade sheet. The original shall be submitted to the cabinet; and

6. The results of the course skills station examination. The original completed score sheets shall be submitted to the cabinet.

(c) Provide a certificate of completion to each EMT which specifies the hours earned toward certification renewal and if the TC was successfully completed by passing the accompanying skill examination;

(d) Assure that the accompanying course skill examination shall be administered as follows:

1. With at least two (2) evaluators assigned per station, the enrolled EMT shall pass one (1) skill station featuring patient assessment and intervention.

2. The skill station shall be designed to test one (1) or more skills. On the date of the examination, the EMT shall randomly choose whether the station to be tested shall feature a medical or trauma patient condition, and at the same time the EMT shall randomly choose the scenario which shall be tested.

3. At the completion of the skill examination, the EMT shall not be informed of his pass or fail status. After all enrolled EMTs who are eligible to test have completed the testing process, all participating evaluators shall meet to review all skill testing results and shall determine the pass or fail status of each EMT as a consensus from all evaluators.

(13) If an EMT fails to pass the required station, the EMT shall be permitted one (1) opportunity to retest the same medical or trauma patient condition station which he failed, but he shall randomly choose the scenario on the date of the retest. The retest shall be administered by the same agency that sponsored the TC in which the EMT was enrolled, but the two (2) evaluators shall not be the same two (2) evaluators who evaluated the EMT during the first examination.

(14) If an EMT again fails to pass the required skill station examination, he shall be required to retake the entire TC before being eligible for reexamination.

(15) Until July 1, 1999, an EMT may be allowed a maximum of two (2) attempts, with a maximum of one (1) retest on each attempt, to pass the accompanying practical skills examination.

(16) An EMT who has not been successful in passing the skill examination retest on the second attempt by July 1, 1999, shall not be eligible for Kentucky EMT certification renewal.

Section 13. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied, unless prohibited by copyright, at the Office of the Commissioner, Department for Health Services, 275 East Main Street,



Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

(1) The United States Department of Transportation "1984 Emergency Medical Technician: National Standard Curriculum", (Third Edition).

(2) The United States Department of Transportation, National Highway Traffic Administration, "1994 National Standard Curriculum, Emergency Medical Technician-Basic".

(3) The "Emergency Medical Technician Basic Course Inventory Pilot Program" form (10/95).

(4) The "Emergency Medical Technician Basic Course Application (EMS Branch-5/96) [Inventory] form (12/93)].

(5) The master "Grade Sheet" (1/96) [5].

(6) "Kentucky EMT Examination Answer Sheet", number one (1), two (2), three (3), and four (4) (9/94).

(7) The "Master Attendance Sheet" (3/95).

(8) The "Attendance Sheet" (EMS Branch -01/96).

(9) The "Application for Emergency Medical Technician", (2/96).

(10) The "National Registration, Registered EMT-Basic", (1/96), published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229.

(11) The "1994 National Registry of EMT-Basic Practical Examination Users Guide" published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229.

(12) The "EMT Official Record of Continuing Education/Inservice" (EMT/R 92).

(13) The "Application for Emergency Medical Technician/Emergency Medical Technician-Instructor Certification Renewal" (2/96).

(14) The "Application for Emergency Medical Technician Challenge Only" (EMS Branch-2/96).

(15) The United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program".

(16) The application "For Approval as an Agency to Sponsor 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (10/95).

(17) The "Cabinet Approved Agency/Organization Application to Sponsor a 1994 NSC EMT-Basic Transition Course for Kentucky Certified Emergency Medical Technicians" (10/95).

(18) The "1994 EMT-Basic Transition Course Equipment Requirements" (10/95).

(19) The "Participant Competency Record Kentucky EMT-Basic Transition Course" (10/95).

(20) The "Master Attendance Sheet EMT-Basic Transition Course" (10/95).

(21) The "Emergency Medical Technician Transition Course Master Grade Sheet", (10/95).

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Health Services**  
**Division of Health Systems Development**  
**(As Amended)**

902 KAR 13:070. EMT-instructors and EMT-instructor trainers.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, EO 95-79

NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 requires ~~(directs)~~ the Cabinet for

Health Services ~~(Human Resources)~~ to promulgate ~~(adopt)~~ administrative ~~(rules and)~~ regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for attaining certification as an EMT ~~(emergency medical technician)~~ instructor and EMT- ~~(emergency medical technician)~~ instructor trainer.

Section 1. Emergency Medical Technician Instructor. A person shall be certified ~~(not hold himself out)~~ as an EMT-instructor if ~~(unless)~~ he has:

(1) Been certified as an EMT by the cabinet;

(2) ~~(Been recommended by a certified EMT instructor as having outstanding ability in the EMT field;~~

~~(3) Attended an approved EMT training seminar and successfully passed a written proficiency examination;~~

~~(4) Assisted a Kentucky (an) EMT-instructor for a minimum of one (1) complete EMT basic training course in which he:~~

~~(a) Participated in the conduct of each lesson;~~

~~(b) Conducted, under supervision of the course lead EMT-instructor, at least one (1) complete lesson during the course;~~

~~(c) Served as a small-group assistant to the course lead EMT-instructor during practical skill exercises;~~

~~(d) Conducted class demonstrations of manipulative skills;~~

~~(e) Performed other related duties as directed by the course lead EMT-instructor;~~

~~(f) Was (Been) recommended for final evaluation, in writing to the cabinet, (for final evaluation) by the lead EMT-instructor whom the candidate (applicant) assisted in teaching the complete EMT basic training course; and~~

~~(g) Assisted throughout an EMT basic course that was completed no more than one (1) year prior to the date of the written recommendation submitted by the EMT-instructor.~~

~~(3) Been (Has) ((6)) been evaluated by a panel of EMT-instructor trainers; (and)~~

~~(4) (Has) ((6)) Received an evaluation score of no less than an absolute eighty (80) percent (or higher);~~

~~(5) (Has) Attended a later scheduled annual training session for EMT-instructor candidates who have successfully completed the requirements outlined in subsections (1) through (4) of this section; and~~

~~(6) (Has) Completed an application for EMT-instructor certification.~~

Section 2. Reevaluation of EMT Instructor Candidates (trainees) by Panel. (1) If an EMT-instructor candidate ~~(trainee)~~ fails to score at least eighty (80) percent ~~(or higher)~~ on his initial evaluation, he shall be given another opportunity, upon application, to be reevaluated.

(2) An EMT-instructor candidate who fails to score at least eighty (80) percent on the second attempt ~~(trainee)~~ shall, upon application, be given another opportunity to be reevaluated if he:

~~(a) Drops out for a year, or one (1) evaluation course, if more than one (1) is held in a given year;~~

~~(b) Reapplies by having a current recommendation for evaluation submitted in writing by the lead EMT-instructor for whom the EMT-instructor candidate has assisted throughout an entire EMT basic course; and~~

~~(c) Assisted throughout an EMT-basic course that was completed no more than two (2) years previous to the date of the updated written recommendation submitted by the lead EMT-instructor. (Again fails to obtain a score of eighty (80) percent or higher; and~~

~~(b) Scores at least seventy (70) percent or higher;]~~

~~(3) A candidate who is not successful on two (2) attempts, but reapplies after meeting the requirements of subsection (2)(a), (b), and (c) of this section shall be allowed two (2) additional attempts to successfully complete the EMT-instructor evaluation course.~~

Section 3. Certification of an EMT-instructor-trainers. A person

shall not be certified as an EMT-instructor-trainer unless he has:

- (1) Complied with all requirements of Section 1 of this administrative regulation; and
- (2) Been evaluated by the Kentucky EMS Council [advisory committee] and recommended to the cabinet for certification as an EMT-instructor-trainer.

Section 4. Renewal of EMT-instructor Certification. (1) If the certification of an EMT-instructor is not renewed, it shall become invalid two (2) years from the date of issue. In order to obtain renewal, the EMT-instructor shall meet all requirements of 902 KAR 13:050, Section 8 [5(4)].

(2) ~~[Effective July 1, 1996,]~~ A Kentucky (KY) EMT-instructor who was certified before the effective date of this administrative regulation [prior to that date] shall have completed a 1995 Kentucky EMT-Instructor Roll-Out Training Program on the 1994 National Standard Curriculum (NSC) EMT Basic. A Kentucky certified EMT-instructor who has not completed a 1995 Kentucky EMT-instructor Roll-out Training Program on the 1994 NSC EMT basic shall not:

- (a) Teach an EMT basic course;
- (b) Teach an EMT continuing education class;
- (c) Serve as an EMT certification practical skills advisor;
- (d) Serve as a lead instructor or assistant to the lead instructor;
- (e) Evaluate the accompanying practical skills examination for an EMT transition course as outlined in 902 KAR 13:050, Section 12; or

(f) Be eligible for renewal of the EMT-instructor certification. [A Kentucky certified EMT-instructor who:

(a) By July 1, 1996 has not completed a 1995 Kentucky EMT-Instructor Roll Out Training Program on the 1994 NSC EMT Basic shall not be authorized to:

1. Teach an EMT basic course;
2. Teach an EMT continuing education class;
3. Serve as an EMT certification practical skills evaluator; or
4. Serve as a lead instructor or assistant to the lead instructor, or evaluate the accompanying practical skills examination for an EMT transition course as outlined in 902 KAR 13:050, Section 12; and

(b) By July 1, 1996 is found deficient as outlined in paragraph (a) of this subsection shall be an instructor whose Kentucky EMT-instructor certification is not eligible for renewal on the date of their certification expiration.]

(3) After the last scheduled [1995] Kentucky EMT-Instructor Roll-Out Training Program, a candidate accepted for evaluation in [1996] shall not be eligible for EMT-instructor certification until he has:

- (a) Successfully completed a KY EMT transition course as outlined in 902 KAR 13:050, Section 12; and
- (b) Completed the requirements of Sections 1 and 2 of this administrative regulation. The conference referenced in Section 1(5) of this administrative regulation shall include the methods of instruction related to the 1994 NSC.

(4) Effective January 1, 1997, future candidates eligible for evaluation shall have:

- (a) Met the requirements in Section 1(2) of this administrative regulation by participating in an EMT basic course conducted according to the 1994 NSC; and
- (b) Completed the requirements in subsection (3)(a) of this section.

(5) An instructor who obtained Kentucky EMT-instructor certification [prior to July 1, 1996] and whose certification is not eligible for renewal due to the conditions outlined in subsection (2)(a) of this section, may regain certification status if:

- (a) He repeats the requirements of Section 1 and 2 of this administrative regulation; and
- (b) The EMT course in which he assisted was in accordance with the 1994 NSC EMT Basic.

(6) A Kentucky EMT-instructor who is denied renewal of his certification for not meeting [having not met] the requirements in subsection (2)(a) of this section, may request an administrative hearing in accordance with the guidelines specified in 902 KAR 13:090, Section 5.

Section 5. [EMT] Instructors Certified in Other States. A person who is certified in another state as an EMT-instructor and who wishes to become certified in Kentucky as an EMT-instructor, shall:

(1) Comply with the challenge examination procedures outlined in 902 KAR 13:050, Section 10 [requirements of Sections 1 and 2 of this administrative regulation]; and

(2) Comply with the requirements of Sections 1 and 2 of this administrative regulation. [challenge examination procedures outlined in 902 KAR 13:050, Section 7.]

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Health Services**  
**Division of Health Systems Development**  
**(As Amended)**

**902 KAR 13:080. Authorized procedures.**

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, EO 95-79

NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 requires [directs] the Cabinet for Health Services [Human Resources] to promulgate [adopt] [rules and] administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish procedures which EMTs are authorized to perform.

Section 1. Authorized Certified EMT Procedures. (1) Except as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum (NSC)," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, incorporated by reference in 902 KAR 13:050, and in the accompanying texts which have been chosen by the lead instructor and approved by the implementing agency. Texts utilized shall be:

- (a) Currently in publication;
- (b) The most current edition available at the time the course begins. Courses initiated prior to the effective date of this administrative regulation [July 1, 1996] shall utilize a text which meets the 1984 NSC standards. Pilot programs of the 1994 NSC and statewide courses initiated on or after the effective date of this administrative regulation [July 1, 1996] shall utilize a text which meets the 1994 NSC standards;
- (c) Maintained on file in the office of the implementing agency; and

(d) Available, upon request, for public inspection during normal office hours or during course hours. [entitled "Emergency Care," Fifth Edition, 1990, published by The Brady Company, Prentice Hall, Inc., Englewood Cliffs, N.J. 07632. A copy of both publications, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main

Street, Frankfort, Kentucky 40621, and shall be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday.]

(2) An EMT may [shall not]:

(a) ~~(Perform the initiation of intravenous (I.V.) fluid infusion, but may:~~

4.] Transport a stable patient with an I.V. infusion entry point maintained patent by a heparin lock placement, to which no I.V. infusion fluid is attached;

(b) ~~(2.)~~ Transport interfacility or facility to home a stable patient who has a preestablished peripheral I.V. infusion; and as authorized by local medical control may perform procedures for the maintenance and, if needed, discontinuation of the preestablished peripheral I.V. infusion if he has completed ~~(according to)~~ the training requirements specified in 902 KAR 13:130;

(c) ~~(3.)~~ Transport a patient having a preestablished I.V. infusion who is encountered in a prehospital setting to the nearest appropriate medical facility based on local protocol; and

(d) ~~(but may not)~~ Discontinue the preestablished I.V. infusion by closing the flow valve.

(3) An EMT shall not:

(a) Perform the initiation of intravenous (I.V.) fluid infusion;

(b) Remove a preestablished I.V. needle or catheter from a patient;

(c) ~~(or shall not:~~

~~(b))~~ Perform a cricothyrotomy;

(d) ~~(a))~~ Relieve a tension pneumothorax through the use of needles;

(e) ~~(4))~~ Insert an endotracheal airway, an esophageal obturator airway, or an esophageal gastric tube airway;

(f) ~~(e))~~ Perform external cardiac defibrillation except by use of automatic or semiautomatic defibrillation equipment authorized according to the requirements specified in 902 KAR 13:120; or

(g) ~~(f))~~ Use medical antishock trousers unless:

1. The EMT ~~(He)~~ has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught ~~(after July 1, 1985); or~~

2. The EMT ~~(He)~~ is currently certified as an emergency medical technician and has completed ~~(completes the four (4)-hour)~~ training ~~(session)~~ on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. ~~[The standards for such examinations shall be the same as for an EMT course.]~~ The training and examination shall be conducted by an EMT instructor or instructor trainer in accordance with the criteria set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, on or after the effective date of this administrative regulation ~~(or effective July 1, 1986)~~, the 1994 National Standard Curriculum EMT-Basic, which is incorporated by reference in 902 KAR 13:050, and the standards and protocols of the cabinet ~~(for Human Resources); or~~

3. The EMT ~~(He)~~ has completed an emergency medical technician course in another state or country which included the use of medical antishock trousers and has taken and passed ~~(as a part of his Kentucky challenge examination;)~~ an examination in the use of medical antishock trousers; and

4. The EMT ~~(He)~~ uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

(4) ~~(3.)~~ An EMT who successfully completes a transition course and passes the accompanying practical skills examination, as outlined in 902 KAR 13:050, Section 12(11)(d) ~~(43)~~, may perform the procedures requiring physician medical oversight (e.g. assistance in the administration of certain prescribed medications or automatic defibrillation) if:

(a) The EMT works with a basic life support (BLS) ambulance service that:

1. Chooses to provide the procedures and has a written contract with a physician medical director, licensed to practice in Kentucky; or

2. Has an alternate method for ambulance service physician medical oversight that has been approved by the cabinet.

(b) These procedures may also be performed by an EMT who:

1. Meets the transition course requirements; and

2. Works with a public safety organization that is affiliated with a BLS ambulance service which meets the physician medical oversight requirements.

Section 2. 1994 National Standard Curriculum (NSC) EMT-Basic Pilot Program. (1) As outlined in 902 KAR 13:050, Section 1, prior to the ~~(July 1, 1986)~~ statewide implementation of the 1994 NSC, EMT-Basic, a cabinet approved implementing agency may participate in a pilot program to conduct and evaluate the 1994 NSC EMT-Basic.

(2) Each approved pilot program shall agree to abide by the requirements of the cabinet, outlined in 902 KAR 13:050, for EMT training and certification.

(3) In addition to the requirements of the cabinet, outlined in 902 KAR 13:050, an implementing agency conducting a 1994 NSC EMT-Basic Pilot Program shall be responsible for:

(a) Establishing applicant requirements;

(b) Establishing EMT student training and examination standards; and

(c) Submitting summary reports to the cabinet as requested, but minimally at the midpoint and at the completion of the 1994 NSC Pilot Program.

(4) A student successfully completing a pilot program shall be eligible to apply for the Kentucky certification examination utilizing the National Registry of EMTs written and practical examination in lieu of the Kentucky four (4) part written examination and practical examination outlined in 902 KAR 13:050, Section 3. Scoring standards for the examination shall be consistent with the policy of the National Registry of EMTs.

(5) For a candidate who has successfully completed a Kentucky 1994 NSC EMT-Basic Pilot Program, the passing score for the Kentucky written examination utilizing the National Registry of EMTs written examination shall be sixty-five (65) percent. Scoring standards and eligibility for retesting of the National Registry of EMTs written and practical examinations shall be consistent with the policy of the National Registry of EMTs.

(6) An EMT student who completes a cabinet approved 1994 NSC EMT-Basic Pilot Program and is Kentucky certified by utilization of the National Registry examination shall be subject to the standards for disciplinary actions specified in 902 KAR 13:090.

(7) A cabinet approved 1994 NSC EMT-Basic Kentucky Pilot Program shall not be initiated after the effective date of this administrative regulation. ~~(July 1, 1986)~~ [EMT defibrillation Pilot Program. An EMT who has successfully completed the cabinet's ten (10)-hour training course for the semiautomatic defibrillation pilot program and has successfully passed an examination consisting of both written and practical application examinations, shall be authorized to perform defibrillation procedures in accordance with the standards and protocols established by the cabinet. Such authorization shall expire on June 30, 1991. Following June 30, 1991, the pilot program EMTs may perform automatic or semiautomatic defibrillation authorized according to the requirements specified in 902 KAR 13:120.]

Section 3. Other Requested Pilot Programs. (1) A cabinet approved Kentucky EMT training implementing agency or Kentucky licensed ambulance service desiring to pilot test an EMT procedure not previously authorized in this administrative regulation shall:

(a) Apply to the cabinet for approval before initiating a pilot program; and

(b) Provide a written description of how the procedure shall be implemented and monitored, and how the procedure, if used by an EMT, shall benefit patient care.

(2) An agency approved by the cabinet to conduct a pilot program

shall agree, in writing, to submit periodic reports to the cabinet related to the progress of the pilot program and to abide by the requirements of the cabinet.

(3) An EMT who completes a cabinet approved pilot program may perform the procedures relevant to the training received in the pilot program in accordance with requirements established by the cabinet including limitations on:

(a) The geographic area or service location where the procedure may be performed;

(b) The performance of the procedure to specific events, disasters, or directives;

(c) The performance of the procedure under a physician medical director oversight and protocol directed authority; or

(d) Other limited or broad scope practice as approved by the cabinet.

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

PUBLIC PROTECTION AND REGULATION CABINET  
Public Service Commission  
(Amended After Hearing)

807 KAR 5:062. Changing primary interexchange carrier; verification procedures.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.280(2)

NECESSITY AND FUNCTION: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.280(2) provides that the commission shall prescribe rules for performing any service or furnishing any commodity of the character furnished or supplied by any utility. This administrative regulation establishes procedures by which customer-ordered changes of presubscribed long distance telecommunications carriers shall be confirmed.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Interexchange carrier" (IXC) means a provider of long distance telecommunications services. Facilities-based carriers of long distance service, resellers of long distance service, and local exchange carriers providing long distance service are included in this definition.

(2) "Letter of agency" means a customer's written statement that authorizes a primary interexchange carrier change and bears the customer's signature.

(3) "Local exchange carrier" means a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.

(4) "Long distance telecommunications service" means service that carries calls to exchanges that are not within the local calling area of the originating number.

(5) "PIC freeze order" means an order submitted by a customer stating he does not want his PIC to be changed until further notice.

(6) "Primary interexchange carrier" (PIC) means a carrier to which a customer has presubscribed for long distance service.

(7) ~~[(6)]~~ "Two (2) PIC system" means a system which enables a customer to presubscribe to one (1) primary interexchange carrier for interLATA (long haul) long distance service and to another for intraLATA (short haul) long distance service.

Section 2. Verification Procedures. No IXC shall submit to a local exchange carrier a PIC change order ~~[and no local exchange carrier shall change a customer's PIC]~~ unless the customer's authorization to change his PIC has been confirmed by one (1) of the three (3) procedures prescribed in this administrative regulation.

(1) The IXC has obtained a letter of agency from the customer that:

- (a) Authorizes the change;
- (b) Demonstrates that the customer understands what occurs when a PIC is changed;
- (c) States the customer's billing name and address and each telephone number to be covered by the PIC change order;
- (d) Demonstrates that the customer understands the PIC change fee; and
- (e) If the PIC change order applies to a number in an area with a two (2) PIC system, clearly states whether the customer has authorized the change of his intraLATA PIC, his interLATA PIC, or both; or

(2) The IXC has obtained the customer's electronic authorization, placed from a telephone number on which the customer's PIC is to be changed, to submit a PIC change order. The electronic authorization shall include the information described in subsection (1)(a) through (e) of this section. IXCs electing to confirm sales electronically shall establish one (1) or more toll-free telephone numbers exclusively for that purpose. A call to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information and automatically records the originating number; or

(3) An appropriately qualified and independent third party operating in a location physically separate from the IXC's telemarketing representative has obtained the customer's electronic authorization to submit the PIC change order. The electronic authorization shall include the information described in subsection (1)(a) through (e) of this section and appropriate verification data such as the customer's date of birth or Social Security number.

Section 3. Prohibition of Additional LEC Verification. ~~[Unless] A local exchange carrier [solicited the PIC change, it] shall not seek independent verification of [its customers' authorizations of PIC changes.]~~ PIC changes properly submitted to it by IXCs unless the customer whose PIC is to be changed has previously submitted to the local exchange carrier a PIC freeze order that has not been revoked. Nothing in this administrative regulation shall be construed to impose upon a local exchange carrier a duty to verify a PIC change it did not solicit or to change a PIC that is the subject of a PIC freeze order until the customer has, by notice given directly to the LEC, revoked the PIC freeze order. [shall be made promptly by the local exchange carrier.]

Section 4. Records to be Retained. All written and electronic evidence of PIC change orders shall be retained by the soliciting carrier for one (1) year after the date the PIC has been changed.

Section 5. Letters of Agency. (1) Letters of agency shall be separate or severable from inducements or promotions of any kind, except as provided in subsection (2) of this section.

(2) A letter of agency may be combined with a check which states in bold-face type on its front and near the signature line on its back that the customer is authorizing a long distance carrier change by signing the check. A letter of agency check shall contain only the information prescribed in Section 2(1) of this administrative regulation and the language necessary to make the check a negotiable instrument.

PAUL E. PATTON, Governor

LINDA K. BREATHITT, Chairman

APPROVED BY AGENCY: May 30, 1996

FILED WITH LRC: June 4, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Don Mills

(1) Type and number of entities affected: Current PSC records show that 20 local exchange carriers, 170 resellers of long distance service, and 6 facilities-based long distance telecommunications companies will be affected by 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 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 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: Compliance, reporting, and paperwork requirements should not increase as a result of this regulation.

2. Second and subsequent years: See answer to (2)(c)1, above.

(3) Effects on the promulgating administrative body: Since this regulation will be enforced within the normal business activities of the commission, there are no expected significant direct or indirect costs or savings.

(a) Direct and indirect costs or savings:

1. First year: See answer to (3) above.

2. Continuing costs or savings: See answer to (3) above.

3. Additional factors increasing or decreasing costs: See answer to (3) above.

(b) Reporting and paperwork requirements: See answer to (3) above.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated impact on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be necessary for implementation and enforcement of this regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this issue were received. However, no economic impact in any particular geographical area is expected.

(b) Kentucky: No comments on this issue were received. However, no economic impact on Kentucky is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method of verifying PIC changes that was suggested, or advocated, by anyone offering comments was a method whereby a carrier may switch a customer's service 14 days after having mailed an information package. This method authorizes a PIC change absent any sort of objective evidence that the customer actually wanted it. The commission rejected this method for two reasons: (1) detection of fraud on the part of carriers using this option would be difficult, if not impossible, and consumers would thereby be deprived of the very protection the regulation is designed to provide; (2) the lack of objective evidence as to whether the customer authorized the switch would result in insurmountable proof problems in commission proceedings regarding "slamming" complaints.

(8) Assessment of expected benefits: The regulation as proposed is expected to protect consumers and to discourage fraud and misrepresentation on the part of competing long distance carriers. The regulation should also enable honest carriers to defend themselves against frivolous charges of "slamming."

(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: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: The proposed regulation does not conflict with, overlap, or duplicate any current Kentucky statute, administrative regulation, or government policy. It will overlap in part with 47 CFR §64.1100 (verification of PIC change orders generated by telemarketing) and §64.1150 (form and content of letters of agency).

(a) Necessity of proposed regulation if in conflict: No conflict exists.

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

(10) Any additional information or comments: No additional comments.

(11) TIERING: Is tiering applied? Tiering was not used in this regulation because the size of a carrier that "slams" a consumer is immaterial.

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 14, 1996

KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(Amendment)

## 11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.7535, 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), 164.7535

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation prescribes the form to be used by students to apply for and establish financial need for KHEAA grant programs. This amendment is necessary to reflect the application form for KHEAA grants for use in 1996-97 [~~1995-96~~].

Section 1. In order to receive KHEAA grants, the 1996-97 [~~1995-96~~] Free Application for Federal Student Aid (FAFSA), incorporated herein by reference, for the pertinent academic year, shall be completed and submitted in accordance with the instructions provided on the FAFSA. The application and instructions are available from the authority at its office at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award. An individual who completes and files a FAFSA shall not have applied for a KHEAA grant for an academic year in which he indicates on the application a choice of educational institutions, none of which participate in the KHEAA grant programs; or that he is not a United States citizen, eligible noncitizen, or resident of Kentucky; or that he is a graduate student or will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking student financial assistance.

Section 2. If the student provides written notification of change of first choice educational institution, on or before August 1 or December 1, prior to the commencement of the respective fall or spring semester for which a KHEAA grant is sought, grant program eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution. If the student changes his or her choice of educational institution after those dates, any KHEAA grant award for the succeeding academic term shall be revoked, and grant program eligibility shall be recomputed and depend upon the availability of funds.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: March 29, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 30, 1996 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, July 25, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written

comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: A total of 81 Kentucky schools are eligible for attendance by recipients of KHEAA grants. In the school year ending June 30, 1995, there were 100,900 applicants and 25,700 students received KHEAA grants.

(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: Neither cost of living nor employment will be affected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Cost of doing business will not be affected.

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

1. First year following implementation: There will be no increase in reporting or paperwork, nor any increase or decrease in cost. There is no effect upon competition.

2. Second and subsequent years: Same as (2)(c)(1) above.

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: There will be no significant direct or indirect costs or savings.

2. Continuing costs or savings: Same as (3)(a)(1) above.

3. Additional factors increasing or decreasing costs: None. The application is processed free of charge for the student, and the information is provided to the promulgating administrative body free of charge, electronically from the central processor.

(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received. No economic impact is anticipated. The amendment merely prescribes the application form to be used which is processed at no charge to the student or promulgating body.

(b) Kentucky: Same as (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This amendment to the administrative regulation 11 KAR 5:130 would identify the appropriate application form that is revised merely to reflect the 1996-97 academic year.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on the environmental or 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: KHEAA uses the Free Application for Federal Student Assistance (FAFSA) as the application for KHEAA grants. Use of that form provides a uniform application process for students at no cost and makes administration of student aid more efficient for KHEAA and participating schools. The form is therefore incorporated by reference into this administrative regulation. Each year the form is revised to reflect the new academic year. Amendment of the administrative regulation is necessary to incorporate the revised form. There are no substantive changes in the new form.

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(Amendment)**

**11 KAR 8:030. Teacher scholarships.**

RELATES TO: KRS 164.744(2), 164.753(3), 164.769(5), (6)(f) [1994 Ky. Acts ch. 163]

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f) [1994 Ky. Acts ch. 163]

NECESSITY AND FUNCTION: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) prescribes certain standards for scholarship programs. The General Assembly has expressed a desire, in KRS 164.769(6)(e) [1994 Ky. Acts ch. 163 Section 1(6)(e)] and in previous budget memoranda prepared under KRS 48.300(2) to accompany previous biennial budgets, that prior recipients of loans pursuant to KRS 156.611, 156.613, 164.768 and 164.770 should be eligible for benefits under this program. This administrative regulation delineates selection [eligibility] criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program. This amendment is necessary to reflect changes in the program made by SB 152 enacted in the 1996 Regular Session of the General Assembly. [1994 Ky. Acts ch. 163.]

Section 1. Definitions. As used in this administrative regulation, the terms listed below shall have the following meanings:

(1) The definition of "critical shortage area" is governed by KRS 164.769(2)(a). [1994 Ky. Acts ch. 163 Sec. 1(2)(a).]

(2) The definition of "eligible program of study" is governed by KRS 164.769(2)(b). [1994 Ky. Acts ch. 163 Sec. 1(2)(b).]

(3) The definition of "expected family contribution" is governed by KRS 164.769(2)(c). ["Minority" means American Indian, Alaskan native, African American, Hispanic (including persons of Mexican, Puerto Rican, Cuban, and South or Central American descent), Pacific Islander, or other ethnic group that constitutes eight (8)

~~percent or less of the population of the Commonwealth.~~]

(4) The definition of "participating institution" is governed by KRS 164.769(2)(d). [1994 Ky. Acts ch. 163 Sec. 1(2)(d).]

(5) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, and secondary instruction.

(6) The definition of "qualified teaching service" is governed by KRS 164.769(2)(e). [1994 Ky. Acts ch. 163 Sec. 1(2)(e).]

(7) The definition of "semester" is governed by KRS 164.769(2)(f). [1994 Ky. Acts ch. 163 Sec. 1(2)(f).]

(8) The definition of "summer term" is governed by KRS 164.769(2)(g).

(9) "Teaching" means performing classroom instruction in a position for which teacher certification is a prerequisite to perform such instruction.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Eligibility of renewal applicants. Persons who previously received loans or scholarships pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be eligible to apply for and be awarded a teacher scholarship pursuant to this administrative regulation without consideration of expected family contribution if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution. [Ineligibility of any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 may be waived by the executive director of the authority.]

(2) After awards are made to qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients [who agree to render qualified teaching service] in the following [descending] order until funds are depleted:

(a) [Qualified renewal applicants who have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution. If funds are insufficient to award full scholarships to all renewal applicants each scholarship shall be reduced by a percent necessary to prevent overexpenditure of funds;

(b) Certified teachers seeking recertification in a critical shortage area, ranked in descending order by cumulative postsecondary grade point average;

(c) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be [(including currently enrolled postsecondary students and high school seniors)] ranked in ascending order by expected family contribution. [by weighted selection scores that include rank in high school class (thirty (30) percent), high school grade point average (forty (40) percent), and American College Test (ACT) Composite Standard Score (thirty (30) percent).]

(b) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been conditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(d) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

[(3) Following the selection pursuant to subsection (2)(a) of this section, awards shall be made, pursuant to subsection (2)(b) and (c) of this section, to minority applicants, identified based upon informa-

~~tion provided by the applicant on the application, in at least the same ratio to all awards made pursuant to subsection (2)(b) and (c) of this section as the ratio of initial applications by minority applicants bears to all initial applications.]~~

Section 3. Award Maximums. (1) The maximum teacher scholarship award shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session).

(2) Awards to eligible students enrolled less than full time in the semester or summer term in which the eligible program of study will be completed shall be a maximum of \$210 per semester hour.

Section 4. Disbursements. Disbursement of teacher scholarships shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. (1) If a recipient renders qualified teaching service in a designated critical shortage area, then, as long as the recipient continues to render qualified teaching service in that area, the recipient shall continue to benefit from the designation, notwithstanding a subsequent change in the critical shortage area designation. A recipient of a teacher scholarship pursuant to Section 2(2)(a) ~~[(b)]~~ of this administrative regulation, who obtained recertification to teach in an area designated as a critical shortage area at the time of the teacher scholarship award to that recipient, shall receive cancellation of the repayment obligation only if the recipient renders qualified teaching service in that designated area or in another area designated as a critical shortage area at the time the qualified teaching service is rendered.

(2) ~~If [in the event that] a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, such teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.~~

(3) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

~~Section 6. Repayment. (1) [If a recipient ceases to be enrolled on a full time basis in an eligible program of study at a participating institution prior to completion of the program of study or otherwise fails to attain certification after completion of the eligible program of study, he shall immediately become liable to the authority to pay the sum of all teacher scholarships received and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.~~

~~(2) Recipients failing to attain certification after completion of the eligible program of study or render qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all outstanding teacher scholarships and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.~~

(2) [(3)] The interest rate applicable to repayment of a teacher

scholarship under this section shall be twelve (12) percent per annum.

Section 7. Notifications. Recipients shall notify the authority within thirty (30) days of:

- (1) Change in enrollment status;
- (2) Cessation of full-time enrollment in an eligible program of study;
- (3) Employment in a qualified teaching service position; or
- (4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of students receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's published refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. Participating institutions shall provide assurances that program information will be disseminated to students enrolled at their institutions. Participating institutions shall actively recruit students from minority population groups for participation in this program.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: March 29, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 30, 1996 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, July 25, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: This regulation affects schools and students participating in the Teacher Scholarships Program. Thirty public two- and four-year colleges and universities,

twenty private colleges and 300-400 college students are affected annually.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. Neither cost of living nor employment will be affected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. The amendment is anticipated to have no impact on the cost of doing business of any entity.

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

1. First year following implementation: There will be no increase in reporting or paperwork, nor any increase or decrease in cost. There is no effect upon competition.

2. Second and subsequent years: Same as (2)(c)1 above.

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: There will be no significant direct or indirect costs or savings.

2. Continuing costs or savings: Same as (3)(a)1 above.

3. Additional factors increasing or decreasing costs: There will be no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Scholarship awards are made to students from General Fund appropriations. Administration costs for the program are funded by agency receipts.

(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: This amendment merely conforms the administrative regulation to a statutory change.

(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 the environmental or public health would result if not implemented: No

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

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

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

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

(10) Any additional information or comments: The proposed amendment reflects program changes resulting from statutory changes. Principally the selection process for recipients is changed from selection based on academic criteria to selection based on financial need.

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which

certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(Amendment)**

**11 KAR 12:050. Substitution of a beneficiary.**

RELATES TO: KRS 164A.325(5), 164A.330(7), (8) [~~164A.340~~]  
STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY AND FUNCTION: KRS 164A.330(7), (8) [~~and 164A.340~~] establishes the statutory framework for the substitution of a beneficiary, and KRS 164A.325(5) provides, in pertinent part, that the trust may promulgate, impose and collect administrative fees and charges in connection with the transactions of the trust. [~~KRS 164A.340 provides, in pertinent part, that the trust may require adjustment of either payments or benefits in the event that a substituted beneficiary is eligible for enrollment at an institution on a date earlier than the original beneficiary.~~] This administrative regulation establishes the notice provision for substitution of a beneficiary and administrative fee in the event of multiple substitutions. In addition, this administrative regulation is necessary to clarify and establish, respectively, the obligations of the participant and the trust in the event that the substituted beneficiary is older or younger than the original. This amendment is necessary to permit a participant that has separate accounts for more than one (1) beneficiary to substitute one (1) of the existing beneficiaries on the account on which the other beneficiary was designated in lieu of requiring the participant to cancel one (1) of the accounts and incur cancellation fees. [~~eliminate definitions common to multiple administrative regulations, which definitions are being added to a separate administrative regulation.~~]

Section 1. Substitution. (1) A participant may substitute a beneficiary at any time. If a participant desires to substitute the beneficiary, then a participant shall give written notice to the program administrator by submitting a "notice to substitute beneficiary." No administrative fee shall be charged for the first two (2) substitutions of beneficiary.

(2) ~~Older beneficiary. If a substituted beneficiary would be eligible for enrollment at an institution of higher education on a date earlier than the original beneficiary, a participant shall submit a notice to substitute beneficiary to the program administrator not less than ninety (90) days before the date on which the substituted beneficiary attains age fifteen (15). The benefits shall be paid at a reduced rate equal to the rate of return generated by the program fund during such lesser time period.~~

(3) Multiple. If a participant substitutes a beneficiary under a participation agreement more than twice, then the trust shall require the participant to pay an administrative fee of twenty-five (25) dollars.

(3) (4) In order for a substitution of beneficiary to be effective, the substituted beneficiary shall be already designated as a beneficiary on another account or eligible, pursuant to 11 KAR 12:030, on the date that the notice to substitute beneficiary is submitted.

MARY JO YOUNG, Chairperson

APPROVED BY AGENCY: March 29, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 30, 1996 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in

attending this hearing shall notify this agency in writing by Thursday, July 25, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have either not attained the age of 15 as of the designation date or who already have an established trust account. There are currently approximately 2300 accounts established. Only those participants who wish to substitute beneficiaries in accounts would be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. The proposed amendment will provide savings to participants of trust accounts who wish to substitute older beneficiaries by removing the "administrative fee", defined by 11 KAR 12:010 as the lesser of two percent of the amount refunded or twenty-five dollars, currently charged for such service due to the currently-used method of cancelling accounts and transferring proceeds.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. The amendment is anticipated to have no impact on the cost of doing business of any entity.

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

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant or beneficiary and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effects on the promulgating 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 amendment affects no change in the reporting or paperwork requirements of the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: None. Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(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: An alternative method would have required a statutory change, a more cumbersome, costly and time-consuming approach.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the amendment of this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

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

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

(a) Necessity of proposed regulation if in conflict: 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 concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Amendment)

**11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.**

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335 ~~{4}~~

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY AND FUNCTION: KRS 164A.310(8), 164A.330(5) ~~{4}~~ and 164A.335~~{4}~~ establish the statutory framework for payment of benefits to an institution from the program fund. This administrative regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund. This amendment is necessary to expand the uses of funds payable to a beneficiary residing off campus to conform with the amendment of the definition of "educational costs" in KRS 164A.305 by HB 104, enacted in the 1996 Regular Session of the General Assembly. [clarify aspects of the disbursement process.]

Section 1. Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic

period by notifying the program administrator in writing.

(2) Distribution of benefits shall begin after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.

(3) In the event a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwithstanding KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

(4) Except as provided in Section 3 of this administrative regulation, each distribution of benefits shall be paid directly to the beneficiary's institution of higher education.

**Section 2. Beneficiary Residing Off Campus.** If a beneficiary resides off campus, then, upon written request of the participant the program administrator may pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of room and board, transportation, books and supplies, and miscellaneous personal expenses for an academic period as established by the institution for on-campus students. However, the amounts paid to the institution and the beneficiary shall not exceed the amount payable in any academic period from the program fund or exceed the higher education costs for that institution.

**Section 3. Nonenrollment.** If the trust does not receive a completed notice to use trust benefits or a notice to delay trust benefits by the first academic period of the academic year, beginning July 1 and ending June 30 of the following year, that begins after the beneficiary attains the age of eighteen (18), or if the beneficiary interrupts enrollment (other than normal intersemester vacation periods), and the trust does not receive a notice to delay benefits, then the program administrator shall refund the balance of payments and the earnings from the investments in the program fund remaining in the account in accordance with KRS 164A.350. A participant may delay distribution of benefits no more than a total of eight (8) academic periods. After delay of distribution of benefits for eight (8) academic periods, distributions shall be made each academic period until the beneficiary graduates from an institution of higher education or the account balance has been exhausted, whichever occurs first, or the balance shall be refunded to the participant pursuant to KRS 164A.350.

**Section 4. Unused Benefits.** (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for any academic period, then that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in any academic period not exceeding the higher education costs may be paid to the institution for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance in the beneficiary's account, then the program administrator shall pay the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant. The program administrator shall make the payment from the program fund within sixty (60) days from the date of the beneficiary's graduation. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

MARY JO YOUNG, Chairperson

APPROVED BY AGENCY: March 29, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on Tuesday, July 30, 1996 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, July 25, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have not attained the age of 15 as of the designation date. The extent of those who will be participants and beneficiaries is unknown. During the 1996 fiscal year, this regulation will affect 120 eligible beneficiaries. Although the number of accounts grows daily, there are currently over 2300 accounts established and all will eventually be affected by this amendment.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. The proposed amendment to Section 2 will impose no new costs or provide savings to participants. The net impact, is to broaden, in accordance with statutory changes, the items of educational expense for which the participant's trust account may be used to include transportation expenses, books and supplies and other expenses incurred by the beneficiary. The amendment does not require the participant to save more in the trust account, nor does it result in a reduction in the amount that a participant contributes or the beneficiary receives.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. The amendment is anticipated to have no impact on the cost of doing business of any entity.

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

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant or beneficiary and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effects on the promulgating 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: This amendment does not affect any change in the reporting or paperwork of the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: None. Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

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

(a) Geographical area in which administrative regulation will be implemented: There is no anticipated economic impact from the amendment. The amendment simply allows utilization of a static amount (the balance of the trust account owned by the participant for additional items of education related expenses incurred by the beneficiary. The expenditure by the beneficiary for these items is anticipated to be negligible in terms of economic impact upon anyone receiving the payments.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment merely conforms the administrative regulation to a statutory change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the amendment of this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

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

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

(a) Necessity of proposed regulation if in conflict: 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 concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### COUNCIL ON HIGHER EDUCATION (Amendment)

#### 13 KAR 2:060. Degree program approval; equal opportunity goals.

RELATES TO: KRS 164.020(8)

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY AND FUNCTION: The Council on Higher Education approves the offering of all degree programs at the state-supported institutions of higher education. Unless a temporary waiver is granted by the Council on Higher Education, approval of any new degree program is contingent upon an institution's having met its equal opportunities goals. As required by KRS 164.020(8), this administrative regulation sets forth the terms for determining compliance with an institution's equal opportunity goals and for the granting of temporary waivers to the state-supported institutions of higher education which have not met their goals.

Section 1. Institutional Objectives. (1) The objective for the enrollment of African-American students at a state-supported institution of higher education shall be equal to the percentage of African-American high school graduates within the institution's market area. The market area shall be the geographic area of Kentucky contributing ninety (90) percent of the entering Kentucky resident undergraduate enrollment at the state-supported institution of higher education during the fall semester, 1990.

(2) Each institution's objective for the retention of first-year undergraduate Kentucky resident African-American students shall be equal to the institution's 1987 retention rate for first-year undergraduate Kentucky resident white students.

(3) Each institution's objective for the retention of all undergraduate Kentucky resident African-American undergraduate students shall be equal to the institution's 1987 retention rate for all Kentucky resident white undergraduate students.

(4) Each institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students shall be calculated by multiplying the institution's enrollment objective by the institution's retention objective for all undergraduates. However, the objective for Kentucky State University shall be to maintain the level achieved in the 1986-87 school year.

(5) Each institution's objective for the enrollment of Kentucky resident African-American graduate students shall be equal to the institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students. However, Kentucky State University and the community colleges shall be exempt from this objective.

(6) Each institution's objective for the employment of African-Americans in executive, administrative, and managerial positions shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

(7) Each institution's objective for the employment of African-American faculty shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

(8) Each institution's objective for the employment of African-Americans in the category of professional nonfaculty not within subsections (6) and (7) of this section shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

Section 2. Annual Progress. (1) Incremental progress toward achievement of all objectives by school year 1994-95 shall be measured annually. Incremental progress toward achievement of all objectives by school year 1995-96 shall be measured annually. Data from 1987 shall be used as a baseline for measurement.

(2) For each objective, annual progress shall be calculated using one (1) of the following two (2) methods:

(a) When the level of achievement for a particular objective exceeds that of the 1987 baseline, the following equation shall be applied:

1.  $100, \text{multiplied by the difference between the percentage attained in the year being measured and the percentage attained in 1987, divided by the difference between the percentage expected by 1995-96 [1994-96] and the percentage attained in 1987.}$

2. Example of the use of the equation identified in subparagraph 1 of this paragraph:

1987	1991-92	1994-95
5.0%	6.0%	8.0%



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$$\begin{aligned}\text{annual progress} &= 100 ((6.0 - 5.0)/(8.0 - 5.0)) \\ &= 100 (1.0/3.0) \\ &= 100 (0.333) \\ &= 33.3\%\end{aligned}$$

(b) When the level of achievement for a particular objective falls below that of the 1987 baseline, the following equation shall be applied:

1. 100, multiplied by the difference between the percentage attained in the year being measured divided by the percentage attained in 1987 and one (1).

2. Example of the use of the equation identified in subparagraph 1 of this paragraph:

1987	1991-92	1994-95	1995-96
5.0%	4.0%	8.0%	<u>8.0%</u>

$$\begin{aligned}\text{annual progress} &= 100 ((4.0/5.0) - 1) \\ &= 100 (0.8 - 1) \\ &= 100 (-0.2) \\ &= -20\%\end{aligned}$$

Section 3. Average Annual Progress. An overall level of annual achievement for an institution shall be established by calculating a simple average of annual progress toward all of the objectives.

Section 4. Automatic Eligibility. (1) Automatic eligibility for the consideration of new degree programs shall exist when:

(a) An institution exhibits progress in six (6) of the eight (8) objectives established in Section 1 of this administrative regulation except for:

1. Kentucky State University which shall exhibit progress in five (5) of the seven (7) objectives; and

2. Community colleges which shall exhibit progress in three (3) of the four (4) objectives; and

(b) Average annual progress meets or exceeds forty (40) percent for fiscal year 1991-92; sixty (60) percent for fiscal year 1992-93; eighty (80) percent for fiscal year 1993-94; and, 100 percent for fiscal year 1995-96 [~~1994-95~~].

(2) Qualifying for automatic eligibility based on the analysis of fiscal year 1991-92 data shall mean that an institution may submit degree programs for approval in calendar year 1993.

(3) Qualifying for automatic eligibility based on the analysis of fiscal year 1992-93 data shall mean that an institution may submit degree programs for approval in calendar year 1994.

(4) Qualifying for automatic eligibility based on the analysis of fiscal year 1993-94 data shall mean that an institution may submit degree programs for approval in calendar year 1995.

(5) Qualifying for automatic eligibility based on the analysis of fiscal year 1994-95 data shall mean that an institution may submit degree programs for approval in calendar year 1996.

(6) Qualifying for automatic eligibility based on the analysis of fiscal year 1995-96 data shall mean that an institution may submit degree programs for approval in calendar year 1997.

Section 5. Waivers. (1) If an institution is not automatically eligible under Section 4 of this administrative regulation and intends to submit degree programs to the Council on Higher Education for approval, the institution may request a one (1) year waiver.

(2) A waiver request shall include a resolution submitted to the Council on Higher Education by the institution's governing board and shall be based upon either a quantitative or qualitative assessment of the institution's efforts.

(a) Quantitative basis. A waiver may be granted based upon:

1. Progress in five (5) of the eight (8) objectives established in Section 1 of this administrative regulation except for:

a. Kentucky State University which shall exhibit progress in four

(4) of the seven (7) objectives; and

b. Community colleges which shall exhibit progress in two (2) of the four (4) objectives; and

2. Average annual progress which meets or exceeds thirty (30) percent for fiscal year 1991-92; forty-five (45) percent for fiscal year 1992-93; sixty (60) percent for fiscal year 1993-94, [~~and~~] eighty (80) percent for fiscal year 1994-95, and eighty (80) percent for fiscal year 1995-96.

(b) Qualitative basis.

1. A waiver may be granted based upon the submission of information in support of outstanding efforts that were attempted which have not yet proven to be successful or extraordinary circumstances that precluded success.

2. The submission shall indicate how the institution's revised plans for recruitment and retention of African-American students or employees show promise of future success.

3. The submission shall also include specific and quantifiable aspects of the institution's efforts to meet the equal opportunity objectives.

4. Student-related data or plans may include:

a. Commitment of funds to equal opportunity related activities;

b. Financial aid distribution;

c. Student services activities;

d. High school visitations and results; and

e. Academic support services.

5. Employee-related data or plans may include:

a. Number of interviews;

b. Offers made that are accepted or rejected;

c. Utilization of funds to stimulate units to improve their employment data;

d. Special actions for units within the institutions where additional efforts are required; and

e. An evaluation of long-range data trends for those objectives that fell below expectations.

(3) Receiving a waiver based on the analysis of fiscal year 1991-92 data shall mean that an institution may submit degree programs for approval in calendar year 1993.

(4) Receiving a waiver based on the analysis of fiscal year 1992-93 data shall mean that an institution may submit degree programs for approval in calendar year 1994.

(5) Receiving a waiver based on the analysis of fiscal year 1993-94 data shall mean that an institution may submit degree programs for approval in calendar year 1995.

(6) Receiving a waiver based on the analysis of fiscal year 1994-95 data shall mean that an institution may submit degree programs for approval in calendar year 1996.

(7) Receiving a waiver based on the analysis of fiscal year 1995-96 data shall mean that an institution may submit degree programs for approval in calendar year 1997.

(8) A waiver shall not be granted in consecutive years.

JAMES M. MILLER, Chair

APPROVED BY AGENCY: May 20, 1996

FILED WITH LRC: June 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:060, Degree program approval; equal opportunity goals, will be held on Wednesday, July 31, 1996, at 10 a.m. at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Council on Higher Education in writing by Friday, July 26, 1996. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent



to attend the public hearing or written comments on the proposed amendment to the administrative regulation to: Mr. Dennis L. Taulbee, General Counsel, Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, (502) 573-1555, FAX (502) 573-1535.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) There are 8 public universities and 14 community colleges affected by this administrative regulation. The administrative regulation relates to the eligibility of these institutions to request and receive approval for new academic degree programs.

(2) Direct and indirect costs or savings:

(a) There are no direct or indirect costs or savings on cost of living or employment within the geographical area covered by this administrative regulation.

(b) There is no direct or indirect cost of doing business in the geographical area in which the administrative regulation is to be implemented.

(c) There are no additional compliance, reporting, nor are there paperwork requirements that would increase or decrease costs.

1. First year: No additional costs.

2. Second and subsequent years: No additional costs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: There are no effects or direct or indirect cost or savings which will result from this change in the administrative regulation.

2. Continuing costs or savings: Same as (3)(a)1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Annual progress reports are prepared by the staff from information provided by the institutions. No additional information is required as a result of the changes in the administrative regulation.

(4) Impact on state or local revenue. This administrative regulation has no impact, direct or indirect on state revenue.

(5) Source of revenue. State general funds will be used to administer this administrative regulation. No additional state general funds will be required as a result of the changes in this administrative regulation.

(6) Economic impact on Kentucky.

(a) Geographical area. No impact.

(b) Kentucky. No impact.

(7) Alternative measures to implement the equal opportunity plan are under discussion. The proposed changes in the administrative regulation will permit continuance of the current approach to determining program eligibility until a new plan is approved.

(8) Assessment of expected benefits:

(a) Impact on public health and environmental welfare is not applicable.

(b) Same as (a).

(c) Same as (a).

(9) There are no statutes, regulations or policies in conflict.

(10) No additional comments are offered.

(11) Tiering is not being applied.

## GENERAL GOVERNMENT CABINET Kentucky Commission on Human Rights (Amendment)

104 KAR 1:020. Administrative proceeding.

RELATES TO: KRS 13B.010, 344.010 to 344.500, 344.600 to 344.680, 344.990

STATUTORY AUTHORITY: KRS 344.190, 446.030

NECESSITY AND FUNCTION: This administrative regulation informs the public of the procedures followed by the Kentucky Commission on Human Rights in processing and resolving [~~complaints~~] complaints of unlawful discrimination under KRS 344.010 to 344.500, 344.600 to 344.680 and 344.990.

### Section 1. Complaint. (1) Filing.

(a) Assistance in filing complaints shall be available to complainants at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

(b) Complainants may provide information to be contained in a complaint by telephone to the Kentucky Commission on Human Rights.

(c) The Kentucky Commission on Human Rights may reduce information received by telephone to writing on the prescribed complaint form and may send it to the complainant to be signed unless the information fails to establish a violation of KRS 344.010 to 344.500, 344.600 to 344.680, and 344.990.

(d) Upon the receipt of a communication from the Federal Equal Employment Opportunity Commission (EEOC) or the United States Department of Housing and Urban Development (HUD) that a complaint has been submitted, the executive director may issue a complaint in writing and attach any materials transmitted from the federal government.

(2) Complaint form. The complaint:

(a) Shall be in writing.

(b) The commission shall provide a complainant with a "Complaint Form".

(c) The complaint shall be signed and affirmed or sworn before a notary public or other person duly authorized by law to administer oaths and take acknowledgments.

(d) Notarial service shall be furnished without charge by the commission.

(3) Computation of time.

(a) If the alleged discriminatory act is part of a continuing discriminatory practice, it shall be deemed to have occurred on a date subsequent to the commencement of the discriminatory practice.

(b) The date of the occurrence shall include the date on which the:

1. Practice shall have ceased; or

2. Complaint shall have been filed, if the unlawful practice continues.

(c) In computing the time for timely filing of a complaint, the following shall apply:

1. The day of the occurrence of the alleged discriminatory practice shall not be included;

2. The last day of the occurrence of the alleged discriminatory practice shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the computation period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(4) Place of filing. A complaint shall be filed with the commission at its office in Louisville.

(5) Manner of filing.

(a) The complaint may be filed by personal delivery or mail to the commission's office in Louisville.

(b) A complaint may be delivered to:

1. A commissioner;

2. A member of the commission's staff; or

3. Any other commission office. It shall be the responsibility of the person or office with whom a complaint is filed to timely file the complaint at the commission's Louisville office.

(6) Amendment of complaint.

(a) The commission, the presiding hearing officer [~~commissioner~~], or the complainant shall have the power reasonably and fairly to amend a complaint.

(b) Amendments may include amendments to:

1. Cure technical defects or omissions;
2. Amplify the allegations in the complaint; or
3. The joinder of additional or substitute respondents.

(c) The presiding hearing officer ~~[commissioner]~~ shall determine which amendments not specified in this subsection are reasonable or fair amendments.

(d) Prior to the issuance of a notice of hearing:

1. A complainant may have the complaint amended; or
2. With the consent of the complainant, the complaint may be amended by the commission.

(e) After the issuance of a notice of hearing, a complaint may be amended if the presiding hearing officer approves.

(f) 1. If a complaint is amended, the respondent may request that the hearing be postponed.

2. A hearing shall not be postponed for more than ten (10) days after the original hearing date.

(7) Withdrawal of complaint. A complainant may withdraw the complaint, or any part of the complaint, without prejudice if the complainant:

- (a) Files a written request stating the reasons for withdrawal; and
- (b) Written consent is obtained from the:

1. Executive director, if the request is made before the issuance of a notice of hearing; or

2. Chairperson of the commission or presiding officer, if the request is made after the issuance of a notice of hearing.

Section 2. Notice of Hearing. (1) The executive director shall schedule a hearing and report to the chairperson.

(2) Notice of hearing. If a party is represented by an attorney, a copy of the notice of hearing, complaint, any other documents, and any other amendments to documents, shall be furnished to the attorney.

(3) Place of hearing.

(a) A hearing shall be held at an office of the commission or any other place designated by the commission. A complainant or respondent may request that the location of a hearing be changed.

Section 3. Answer to Complaint. (1) Filing of answer.

(a) The respondent or the respondent's attorney of record shall answer the complaint or amended complaint.

(b) The answer shall be:

1. In writing;
2. Signed by the respondent or respondent's attorney of record; and

3. Filed with two (2) copies at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

(2) Content.

(a) The answer shall state in short and plain language the defenses to each claim asserted.

(b) The answer also shall admit or deny the allegations in the complaint.

(c) A defense of lack of jurisdiction shall be specifically stated in the answer. The defense shall include a brief statement of facts upon which the respondent relies for this defense.

(d) If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the answer shall so state.

(e) The answer shall contain the mailing address of:

1. The respondent; and
  2. If applicable, respondent's attorney of record.
- (3) Manner of filing. The answer shall be filed by:
1. Registered or certified mail addressed to the office of the commission in Louisville; or
  2. Delivery to the office.
  - (4) Failure to deny or admit. Failure to state in respondent's

answer that respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation shall be deemed an admission of the allegation.

(5) Defense and new matter. Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply.

(6) Extension of time for filing. Upon application, the chairperson or the presiding hearing officer ~~[commissioner]~~ may for good cause shown extend the time within which an answer may be filed.

(7) Amendments of answer. An original amended answer with two (2) copies shall be filed with the commission as provided in subsection (3) of this section.

Section 4. Hearing Procedures. (1) Appearances.

(a) If possible, the complainant or the party on whose behalf the complaint was filed, and the represented attorney shall appear at the hearing to testify.

(b) The complainant, the Attorney General, and other permitted persons or the presiding hearing officer ~~[commissioner]~~ may intervene, examine and cross-examine witnesses, and present evidence.

(2) Who shall conduct.

(a) Hearings shall be conducted before one (1) or more hearing officers ~~[commissioners]~~ appointed by the chairperson. The hearing officer may be a commissioner or may be a person appointed by the chair.

(b) If more than one (1) hearing officer ~~[commissioner]~~ is appointed, the chairperson shall designate one (1) of them to act as presiding hearing officer ~~[commissioner]~~.

(3) Power and duties of the presiding hearing officer ~~[commissioner]~~. The presiding hearing officer ~~[commissioner]~~ shall:

- (a) Control the procedure of a hearing;
- (b) Admit or exclude testimony or other evidence;
- (c) Rule upon motions and objections;
- (d) Make full inquiry into the facts in issue;
- (e) Obtain a full and complete record of facts necessary for a fair determination of the issues.

(4) Procedure.

(a) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(b) Two (2) or more proceedings may be joined by the commission.

(5) Stipulations. The parties may file a stipulation as to any relevant matter. A stipulation shall not preclude the offering of additional evidence by any party.

(6) Continuation and adjournments.

(a) A hearing officer ~~[commissioner]~~ may:

1. Continue a hearing from day to day;
2. Adjourn a hearing to a later date or to a different place.

(b) A hearing officer ~~[commissioner]~~ may continue or adjourn a hearing by:

1. Announcement at the hearing; or
2. Other notice to all parties.

(7) Motions and objections. A motion or objection made during a hearing, including objections to the introduction of evidence, shall be:

- (a) Made in writing or orally; and
- (b) Included in the record of a hearing.

(8) Oral arguments and briefs. The presiding hearing officer ~~[commissioner]~~ shall permit the parties, their attorneys, or the members of the commission's staff presenting the case in support of the complaint, to present oral argument and to file briefs.

(9) Improper conduct. The presiding hearing officer ~~[commissioner]~~ may exclude from the hearing room or from further participation in the proceeding a person who engages in improper conduct before the hearing officer ~~[commissioner]~~.

(10) Waiver of hearing. If a hearing has not been held, or if

findings of fact or conclusions of law have not been made, an order may be entered if:

- (a) The respondent has consented in writing; and
- (b) Written notice has been given to all parties.

(1) Written transcript of the record. The written transcript of the record of a hearing shall consist of:

- (a) The notice of the hearing;
- (b) The sworn complaint and amended complaint if applicable;
- (c) The answer and amended answer if applicable;
- (d) The transcript of the testimony taken at the hearing;
- (e) Exhibits and depositions offered in evidence;
- (f) Written applications;
- (g) Briefs;
- (h) Orders;
- (i) Motions;
- (j) Oral arguments;
- (k) Stipulations;
- (l) The findings of fact;
- (m) Conclusions of law; and
- (n) The final order of the commission.

Section 5. Issuance of Subpoena. (1) If a subpoena or subpoena duces tecum is issued at the request of a party to a hearing or other proceeding, the cost of service, witness and mileage fees shall be borne by the party who requested the subpoena.

(2) If a subpoena or subpoena duces tecum is issued by order of a commissioner, hearing officer or the executive director, the cost of service, witness, and mileage fees shall be borne by the commission.

Section 6. Disclosure of Conciliation Discussions and Agreements. (1) Each party's written consent shall be obtained prior to the release of information relating to conciliation discussions.

(2) The commission may make public a conciliation agreement or any part thereof.

Section 7. Filing of Orders. An order issued by the commission after a hearing shall be filed in the commission's office in Louisville.

Section 8. Certification. The chairperson or the executive director shall certify documents or records which are a part of the files and records of the commission.

Section 9. General Investigations. The commission may conduct general investigations into the problems of discrimination and may study and report upon the problems of the effect of discrimination on any field of human relationships.

Section 10. Material Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) "Complaint Form (February, 1993)"; and
  - (b) "Instructions for Completing the Complaint Form (February, 1993)".
- (2) This material may be inspected, copied or obtained:
- (a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or
  - (b) By calling:
    - 1. (502) 595-4024;
    - 2. (800) 295-5566;
    - 3. (502) 595-4084, (TDD), for the hearing impaired;
    - 4. Kentucky Relay Service, (800) 648-6056 (TTY/TDD), (800) 648-6057 (voice).

BEVERLY L. WATTS, Executive Director

HOWARD O. MANN, Chairperson

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: June 14, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 31, 1996 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 26, 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. 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, (502) 595-4024 (V), (502) 595-4084 (TDD), (502) 595-4801 (Fax), 1-800-292-5566.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Beverly L. Watts, Executive Director

(1) Type and number of entities affected: Any person filing or responding to a complaint of discrimination filed with the Kentucky Commission on Human Rights.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment received. This administrative regulation will have no effect on cost of living and employment on geographical area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment received. This administrative regulation will have no impact on the cost of doing business.

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

1. First year following implementation: This administrative regulation will impose no new reporting or paperwork requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating body: This administrative regulation will allow for a more expeditious processing of the administrative hearing procedure.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will cause the commission to incur additional cost associated with conducting hearing because in some instances hearing officers from the Attorney General's Office will conduct the commission's administrative proceedings.

2. Continuing costs or savings: The costs will fluctuate from year to year.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: No additional reporting or paperwork is necessitated by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General and federal funds were allocated for fiscal years 96-97 and 97-98 by the General Assembly.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None received.

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

(b) Kentucky: Entire Commonwealth of Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method of only allowing commissioners to be hearing officers would be inconsistent with KRS 344.190 and would delay the processing of hearings.

(8) Assessment of expected benefits: This administrative regulation will allow hearings to be expedited.

(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 the environmental or public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: Not applicable.

(11) Tiering: Was tiering applied? No. Tiering was not applied because the administrative regulation has the same effect upon all affected parties. To differentiate would violate equal protection and due process.

**GENERAL GOVERNMENT CABINET  
State Board of Accountancy  
(Amendment)**

**201 KAR 1:040. Procedures for conducting examination.**

RELATES TO: KRS 325.270

STATUTORY AUTHORITY: KRS 325.240

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: June 11, 1996

FILED WITH LRC: June 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1996, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by July 24, 1996, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, (502) 595-3037.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected: 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:

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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.

### GENERAL GOVERNMENT CABINET Board of Examiners and Registration of Landscape Architects (Amendment)

#### 201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.100(1), (4)

STATUTORY AUTHORITY: KRS 323A.060, 323A.210(2)(b)

NECESSITY AND FUNCTION: The board is authorized by KRS 323A.060 to promulgate administrative regulations to establish [by rules the] fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall be paid:

(1) Renewal fees: ~~[\$400-]~~

(a) Active license - \$150.

(b) Inactive license - twenty-five (25) dollars.

(2) Duplicate certificate: ten (10) dollars.

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

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

~~(5) Restoration of a suspended license; [revoked for failure to renew:]~~

~~(a) renewal fee established in subsection (1) of this section; plus an amount calculated pursuant to [fee for delayed renewal established by] KRS 323A.100(1).~~

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

~~(5) [(6)]~~ Issuance of a license on reciprocity basis: \$200.

~~(6) [(7)]~~ Examination: ~~[\$100 per section.]~~

(a) Processing fee. A fifty (50) dollar nonrefundable processing fee shall be:

1. Submitted with a new application for examination; and

2. Deducted from the total exam fee.

(b) Examination sections:

1. Section 1: forty-eight (48) dollars.

2. Section 2: seventy-eight (78) dollars.

3. Section 3: \$126.

4. Section 4: \$126.

5. Section 5: \$126.

6. Section 6: \$126.

7. Section 7: fifty-seven (57) dollars.

JOHN L. CARMAN, President

APPROVED BY AGENCY: May 27, 1996

FILED WITH LRC: May 28, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 30, 1996, at 10 a.m., at the Board Office located at the Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jane Alexander Gardner, Board of Examiners and Registration of Landscape Architects, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263.

#### REGULATORY IMPACT ANALYSIS

Contact person: Jane A. Gardner

(1) Type and number of entities affected: This administrative regulation will affect approximately 220 individuals per year. The individuals affected are those candidates who will take the Landscape Architectural Registration Examination (approximately 20) and those individuals who maintain a landscape architect license (approximately 200).

(2) Direct and indirect costs or savings on the: The direct cost to the candidates for the entire examination will increase \$177. The cost of the annual renewal fee for individuals who hold a license will increase \$50.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: This administrative regulation amendment will allow the Landscape Architect Board to cover the increasing fees of examination administration as well as the costs associated with the implementation of continuing education.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

This administrative regulation amendment will increase fees to the board, however will be offset by the costs of administration of the examinations and continuing education.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will require no revenue to implement or enforce.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There will be no economic impact in any specific geographical areas as this regulation applies to any examination candidate and all licensees.

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were needed as addresses a cost increase by the provider of the examination currently administered and the costs associated with licensing.

(8) Assessment of expected benefits: This regulation will have no effect on public health or environmental welfare.

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

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts or duplications within the statutes or government policy. KRS 323A.060 and 323A.210(2)(b) provides statutory authority to determine fees and adopt necessary regulations.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: No additional information or comments.

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation as uniformity has been set for all examination candidates and licensees.

**GENERAL GOVERNMENT CABINET  
Board of Physical Therapy  
(Amendment)**

**201 KAR 22:031. Therapist's licensing procedure.**

RELATES TO: KRS 327.050, 327.060, 327.080

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to define clearly the procedure for issuing licenses. This administrative regulation standardizes the administrative procedures involved in granting a physical therapy license through the various means of qualifying.

Section 1. Any candidate for licensure by examination shall first satisfy all application requirements, including payment of application and examination fees established in 201 KAR 22:135.

(1) The initial examination fee covers the first scheduled examination.

(2) The cost of the examination to the board plus an administrative fee of ten (10) [twenty-five (25)] dollars shall be paid by the applicant for reexamination or for an examination which was obtained ~~[by the board]~~ upon application by a candidate but was not completed by the candidate.

(3) Upon approval as a candidate by the board, the board shall forward the candidate's computer-based testing application to the Professional Examination Service (PES). The PES shall register the person for licensure by examination, and shall notify the person [be notified] of the method to select the date, place and time of the National Physical Therapy Examination (NPTE), a computer-based examination [to be held at the time and location set by the board].

(4) ~~[The board shall administer the National Physical Therapy Examination (NPTE) to those candidates permitted to sit for the examination. Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE.]~~

~~(5)~~ An examination candidate may make a written request to the board to be granted a one (1) time exemption from taking their scheduled examination due to an undue hardship. If the request is granted, the candidate may continue to practice until the next [regularly scheduled] examination can be scheduled.

Section 2. ~~When [The examination filing deadline shall be eight (8) weeks prior to the next examination. If by that time] the credentials of the applicant are in order, application and examination fees submitted and the board is in receipt of a completed "Supervisory Agreement Statement", then a temporary permit shall be issued to be in force until the results of that examination are received by the candidate, [or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first].~~

Section 3. (1) A temporary permit requires that the physical therapist applicant shall work only under the supervision of a physical therapist licensed and practicing in Kentucky.

(2) Supervision requires the responsible therapist to be available and accessible by telecommunications at all times during the working hours of the person with a temporary permit.

(3) The supervising therapist shall be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit including cosigning all evaluations and physical therapy recordings within fourteen (14) days.

(4) The date of the record review shall be noted.

(5) The board may issue a temporary permit only to:

(a) Graduates who have applied for licensure by examination, have met all requirements and are sitting for the NPTE [next examination or who have taken that examination and have not yet been notified of the results].

(b) Foreign-trained physical therapist applicants who have met all requirements for licensure application provided for in KRS 327.060(2), except that the applicant has not yet taken the NPTE or has not yet begun or completed one (1) year of board approved, supervised employment as a physical therapist.

(c) Graduates who have been accepted as a candidate for licensure by computer-based examination in another state and who have met all requirements for Kentucky application but who have not yet taken ~~[or been notified of the results of]~~ that examination.

(6) The board may require any applicant for a temporary permit to submit, or cause to be submitted, a NPTE test verification history service report with the board before the applicant is eligible to receive a temporary permit.

Section 4. The following candidates shall be ineligible to practice as a physical therapist in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:

- (1) A person who has failed the NPTE in this or another state or country.
- (2) A person who had qualified as an examination candidate but who did not sit for or complete the scheduled examination; and
- (3) An endorsement candidate whose NPTE scores do not meet Kentucky's requirements.

Section 5. Candidates examined by boards of other states and territories shall have registered with the Interstate Reporting Service of the Professional Examination Service to have their examination results submitted to the board.

Section 6. The candidate for licensure by endorsement shall submit the regular license application form and pay the application fee established in 201 KAR 22:135.

(1) The Kentucky State Board of Physical Therapy shall endorse a candidate who has taken the NPTE prepared before July 7, 1989 or beginning in 1993 by the Professional Examination Service, or between November 1989 and December 1992 by Assessment Systems, Incorporated, whose score meets the board's requirements and whose physical therapy license has never been revoked or suspended, and is currently not on probation or under disciplinary review in another state.

(2) To be considered for licensure, a person examined prior to July 1, 1993 shall have achieved a score on the NPTE at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600.

(3) Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE.

Section 7. The candidate for licensure through reinstatement may receive renewal of his license without further examination upon requesting reinstatement, furnishing all information required of a license renewal applicant in 201 KAR 22:040, payment of the reinstatement fee established in 201 KAR 22:135. Therapists who have not been licensed for three (3) years shall, in addition, be required to show evidence of professional competency, and provide verification that any license to practice in another state has not been disciplined or is not under current disciplinary review. Reinstatement of the candidate shall [with] be at the board's discretion after evaluation of said evidence.

Section 8. A license, which shall be in effect until March 31st of the next uneven numbered year shall be issued by the board when it receives notice from the Professional Examination Service that the candidate by examination has received a passing grade which shall be set based on the criterion referenced passing point set equal to a scaled score of 600, and when candidates by endorsement and foreign trained candidates have met all requirements.

Section 9. The executive secretary of the board may function administratively to review, process and interpret all applications received by the board and correspond with the applicants accordingly.

Section 10. (1) "Supervisory Agreement Statement for Physical Therapists 04-12-90" is incorporated by reference.

(2) This form may be inspected, copied, or obtained at the board office at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, between 8 a.m. to 4:30 p.m.

TOM A. PENNINGTON, Chairman

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: June 13, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment to an administrative regulation shall be held on July 30, 1996 at 9 a.m., in the office of the Board of Physical Therapy at 9110 Leesgate Road, Suite 6, Louisville, Kentucky, 40222. Persons interested in attending this hearing shall notify the agency representative designated below no later than five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received, the hearing may be canceled. The hearing will be open to the public, and any person who attends will be given any opportunity to comment of the proposed administrative regulation. A transcript of the public hearing will not be made unless it is requested in writing with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the hearing, you may still submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy Brinly, Executive Secretary, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 595-4687.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Nancy Brinly

(1) Type and number of entities affected: Approximately 150 physical therapist applicants/year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No 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. Not applicable.

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

1. First year following implementation: No change.

2. Second and subsequent years: No change.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: cost of renting space to give exam (\$600/yr), but increase to \$1.24 from \$.78 to mail instructions, plus other additional correspondence needs will partly offset savings. Any ADA requirements of exam applicants will be costly to the agency with computer based testing.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change.

(4) Assessment of anticipated effect on state and local revenue: Not applicable.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable. Applicants shall pay for additional cost of computer based testing.

(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: Not applicable.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented on Kentucky: Not applicable.



(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(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: These amendments are necessary to delete filing deadlines necessary in paper and pencil exams, and to otherwise implement computer based testing. Computer based testing provides increased consumer protection by requiring a person to sit for the exam within 60 days of being registered; receiving results and licensure faster; and permits failing candidates the opportunity to retake the exam nearly immediately versus waiting several months before being able to work as a physical therapist.

(11) TIERING: Is tiering applied? No, all physical therapists and physical therapist's assistant s are treated uniformly by the Board of Physical Therapy.

**GENERAL GOVERNMENT CABINET  
Board of Physical Therapy  
(Amendment)**

**201 KAR 22:106. Assistant's certification procedure.**

RELATES TO: KRS 327.040

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: Because certification may be achieved in several ways, this administrative regulation defines the types of candidates, and procedure for making application to the State Board of Physical Therapy as a candidate for certification as a physical therapist's assistant.

Section 1. The fee for application for certification and the examination fee are established in 201 KAR 22:135. Upon approval as a candidate by the board, the board shall forward the candidate's computer-based testing application to the Professional Examination Service (PES). The PES shall register the person for certification by examination, and shall notify the person ~~[shall be notified]~~ of the method to select the date, place and time of the National Physical Therapy Examination (NPTE), a computer-based examination ~~[to be held at the time and location set by the board. The board shall administer the National Physical Therapy Examination (NPTE). Other examinations as determined by the board may be administered in lieu of, or in addition to, the NPTE to those qualified candidates permitted to sit for the examination].~~

Section 2. When ~~[The examination filing deadline shall be eight (8) weeks prior to the next examination. If by that time]~~ the credentials of the applicant are in order, application and examination fees submitted and the board is in receipt of a completed "Supervisory Agreement Statement", then a temporary permit shall be issued to be in force until the results of that examination are received, processed, and the candidate has been notified of the results~~], or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first.~~

(1) A temporary permit requires that the physical therapist's assistant candidate work only with on-site supervision of a physical therapist licensed in Kentucky who shall cosign and date all of the physical therapist's assistant's physical therapy patient records within seven (7) days of the recording.

(2) The board may issue a temporary permit to:

(a) Graduates who have applied for certification by examination,

have met all requirements and are sitting for the NPTE ~~[next examination or who have taken that examination and have not yet been notified of the results].~~

(b) Graduates who have been accepted as a candidate for certification by NPTE in another state which participates in computer-based testing and who have met all requirements for Kentucky application, but ~~[and are sitting for the next examination, or who]~~ have not yet taken the examination ~~[but have not yet been notified of the results].~~

(3) The board may require any applicant for a temporary permit to submit, or cause to be submitted, a NPTE test verification history service report with the board before the applicant is eligible to receive a temporary permit.

Section 3. (1) The following candidates shall be ineligible to practice as a physical therapist's assistant in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:

(a) A person who has failed the NPTE in this or another state or country.

(b) A person who had qualified as an examination candidate but who failed to take or complete the scheduled examination; and

(c) An endorsement candidate whose NPTE results do not meet Kentucky's requirements.

(2) An examination candidate may make a written request to the board to be granted one (1) time exemption from taking the scheduled examination without loss of practice privileges. The board shall consider requests which document undue hardship.

(3) To be examined, or reexamined in Kentucky, any candidate listed in subsection (1) of this section shall have applied for certification by examination and have met all application requirements, including payment of the applicable examination and application fees. The original examination fee covers the first scheduled examination. The cost of the examination to the board plus an administrative fee of ten (10) ~~[twenty-five (25)]~~ dollars shall be paid by the applicant for reexamination or for an examination not completed.

Section 4. Candidates examined by boards of other states or territories shall have registered with the Interstate Reporting Service of the Professional Examination Service to have their examination results submitted to the board.

Section 5. The candidate for certification by endorsement shall submit the regular application form.

(1) The Kentucky State Board of Physical Therapy shall endorse a candidate who has taken the NPTE prepared before July 7, 1989 and beginning in 1993 by the Professional Examination Service (PES) or between November 1989 and December 1992 by Assessment Systems, Incorporated (ASI), has achieved an examination score which meets the Kentucky board's requirements, and has never had a physical therapist's assistant certificate revoked or suspended or whose certificate is currently not on probation or under disciplinary review in another state.

(2) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993 shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600.

(3) The application fee, which shall be submitted to the executive secretary of the board is established in 201 KAR 22:135.

(4) Other examinations as determined by the board can be administered in lieu of, or in addition to, the NPTE.

Section 6. The candidate for reinstatement may have his certificate reinstated without further examination upon payment of the reinstatement fee established in 201 KAR 22:135, and furnishing all

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information required of a certification renewal applicant in 201 KAR 22:110 to the executive secretary of the board.

(1) Assistants applying for reinstatement who have not been certified for three (3) or more years and who have not been lawfully employed as an assistant in another state shall, in addition, be required to work with on-site supervision for a maximum period of time of up to six (6) months, and after an evaluation of the period of supervision, the board may require the applicant to be reexamined.

(2) An assistant who has been licensed and working in another state shall be required to provide verification that his license to practice in that state has not been disciplined or is not under current disciplinary review.

(3) Reinstatement of the candidate shall be at the board's discretion after evaluation of all evidence.

Section 7. Physical therapist candidates who fail to pass the physical therapists' licensure examination may become special candidates for physical therapist's assistant certification by applying for certification by examination and successful completion of that examination.

Section 8. Certification, which shall be in effect until March 31 of the next uneven numbered year shall be issued by the board when candidates for certification by endorsement and reinstatement have met all requirements and the board has received notice from the Professional Examination Service that the candidate by examination has received a passing grade of at least the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600.

Section 9. (1) "Supervisory Agreement Statement for Physical Therapist's Assistants 04-12-90" is incorporated by reference.

(2) This form may be inspected, copied, or obtained at the board office at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, between 8 a.m. to 4:30 p.m.

TOM A. PENNINGTON, Chairman

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: June 13, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment to an administrative regulation shall be held on July 30, 1996 at 9 a.m., in the office of the Board of Physical Therapy at 9110 Leesgate Road, Suite 6, Louisville, Kentucky, 40222. Persons interested in attending this hearing shall notify the agency representative designated below no later than five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received, the hearing may be canceled. The hearing will be open to the public, and any person who attends will be given any opportunity to comment of the proposed administrative regulation. A transcript of the public hearing will not be made unless it is requested in writing with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the hearing, you may still submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy Brinly, Executive Secretary, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 595-4687.

### REGULATORY IMPACT ANALYSIS

Contact Person: Nancy Brinly

(1) Type and number of entities affected: Approximately 75 physical therapist's assistant applicants/year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: No 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. Not applicable.

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

1. First year following implementation: No change.

2. Second and subsequent years: No change.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: cost of renting space to give exam (\$600/yr), but increase to \$1.24 from \$.78 to mail instructions, plus other additional correspondence needs will partly offset savings. Any ADA requirements of exam applicants will be costly to the agency with computer based testing.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change.

(4) Assessment of anticipated effect on state and local revenue: Not applicable.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable. Applicants shall pay for additional cost (\$45) of computer based testing.

(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: Not applicable.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented on Kentucky: Not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(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: These amendments are necessary to delete filing deadlines necessary in paper and pencil exams, and to otherwise implement computer based testing. Computer based testing provides increased consumer protection by requiring a person to sit for the exam within 60 days of being registered; receive results and licensure faster; and permits failing candidates the opportunity to retake the exam nearly immediately versus waiting several months before being able to work as a physical therapist's assistant.

(11) TIERING: Is tiering applied? No, all physical therapists and physical therapist's assistants are treated uniformly by the Board of Physical Therapy.

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### GENERAL GOVERNMENT CABINET Board of Physical Therapy (Amendment)

#### 201 KAR 22:135. Fees.

RELATES TO: KRS 327.040(12), 327.050

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish fees required to apply for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification, for examination, reinstatement, renewal or reexamination.

Section 1. Payment of Fees. (1) A renewal application may be paid by personal check.

(2) Other application fees shall be:

(a) Paid by:

1. Cashier's check; or

2. Certified check; or

3. Money order; and

(b) Made payable to the Kentucky State Treasurer; and

(3) Application fees shall not be refundable.

Section 2. Fees. The fee for:

(1) Physical therapist licensure and for physical therapist's assistant certification application shall be \$140;

(2) Reinstatement application shall be \$125 ~~140~~;

(3) Renewal application shall be \$100 ~~80~~;

(4) Physical therapist examination shall be \$245 ~~185~~; and

(5) Physical therapist's assistant examination shall be \$230;

(6) Physical therapist reexamination shall be \$255 ~~240~~; and

(7) Physical therapist's assistant reexamination shall be \$240.

TOM A. PENNINGTON, Chairman

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: June 13, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment to an administrative regulation shall be held on July 30, 1996 at 9 a.m., in the office of the Board of Physical Therapy at 9110 Leesgate Road, Suite 6, Louisville, Kentucky, 40222. Persons interested in attending this hearing shall notify the agency representative designated below no later than five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received, the hearing may be canceled. The hearing will be open to the public, and any person who attends will be given any opportunity to comment of the proposed administrative regulation. A transcript of the public hearing will not be made unless it is requested in writing with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the hearing, you may still submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy Brinly, Executive Secretary, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 595-4687.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Nancy Brinly

(1) Type and number of entities affected: Approximately 250 examination applicants per year, and 2,400 license renewal and reinstatement applicant every two years.

(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: Licensed physical therapists and physical therapist's assistants will be more available for

employment following graduation with computer based testing. An additional \$20 renewal fee every two years should not be burdensome to licensees.

(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. Not applicable.

(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: Anticipate approximately \$43,000 additional in biennial renewal income.

2. Continuing costs or savings: Ongoing income every two years.

3. Additional factors increasing or decreasing costs: None. The money from increased examination fees is merely "pass through", and will be paid quarterly to the examination and testing companies.

(b) Reporting and paperwork requirements: No change.

(4) Assessment of anticipated effect on state and local revenue: Not applicable.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(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: Not applicable.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented on Kentucky: Not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(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: These amendments are required: a) to provide the board the additional license renewal revenue needed to operate effectively on a long range basis; and b) provide for additional fees required to pay the computer test site per examinee.

(11) TIERING: Is tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly by the Board of Physical Therapy.

#### 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 promulgate administrative regulations for the proper administration of the

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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. This administrative regulation conforms with those provisions.

Section 1. Incorporation by Reference: (1) "Department of Corrections Policies and Procedures", (June 13 [April 12], 1996 Edition), Department of Corrections, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Department of Corrections Policies and Procedures include:

1.1	Legal Assistance for Corrections Staff	15.8	Unauthorized Substance Abuse Testing
1.2	News Media	16.1	Inmate Visits
01-04-01	The operation of Contracted Adult Correctional Facilities	16.2	Inmate Correspondence
1.6	Extraordinary Occurrence Reports	16.3	Telephone Calls
1.9	Institutional Duty Officer	16.4	Inmate Packages ( <u>Amended June 13, 1996</u> )
1.11	Population Counts and Reporting Procedures	17-01-01	Inmate Personal Property
1.12	Operation of Motor Vehicles by Department of Corrections Employees	17.2	Assessment Center Operations
2.1	Inmate Canteen	17.3	Controlled Intake of Inmates
2.2	Warden's Fund	18.1	Classification of the Inmate
2.10	Surplus Property	18.5	Custody and Security Guidelines
3.12	Institutional Staff Housing	18.6	Classification Document
4.2	Staff Training and Development	18.7	Transfers
4.3	Firearms and Chemical Agents Training	18.9	Out-of-state Transfers
6.1	Open Records Law	18-10-01	Parole Progress Reports
7.2	Asbestos Abatement	18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
8.1	Occupational Exposure to Bloodborne Pathogens	18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
8.4	Emergency Preparedness	18.13	Population Categories
9.1	Use of Force	18.15	Protective Custody
9.4	Transportation of Inmates to Funerals or Bedside Visits	18.17	Interstate Agreement on Transfers
9.5	Execution	18.18	International Transfer of Inmates
9.6	Contraband	19.1	Government Services Projects
9.7	Storage, Issue and Use of Weapons Including Chemical Agents	19.2	Community Services Projects
9.8	Search Policy	19.3	Inmate Wage Program
9.9	Transportation of Inmates	20.1	Educational Programs and Educational Good Time
9.10	Security Inspections	21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
9.11	Tool Control	21.2	Phase I: Program Selection Assessment Criteria
9.18	Informants	21.3	Program Schedule - Phase II and Phase III
9.19	Found Lost or Abandoned Property	21.4	Platoon Size and Composition
10.2	Special Management Inmates	21.5	Physical Conditions Program Component
10.3	Safekeepers	21.6	Group and Individual Counseling
10.4	Special Needs Inmates	21.7	Drug and Alcohol Abuse Counseling and Treatment
11.2	Nutritional Adequacy of the Diet for Inmates	21.8	Work Programs Component
11.3	Special Diet Procedures	21.9	Education and Life Management
13.1	Pharmacy Policy and Formulary	21.10	Auxiliary Services
13.2	Health Maintenance Services	21.11	Offenses and Penalties
13.3	Medical Alert System	22.1	Privilege Trips
13.4	Health Program Audits	23.1	Religion
13.5	Acquired Immune Deficiency Syndrome	25.1	Gratuities
13.6	Sex Offender Treatment Program	25.2	Public Official Notification of Release of an Inmate
13.7	Involuntary Psychotropic Medication Policy	25.3	Prerelease Program
13.9	Dental Services	25.4	Inmate Furloughs
14.2	Personal Hygiene Items	25.6	Community Center Program
14.3	Marriage of Inmates	25.7	Expedient Release
14.4	Legal Services Program	25.8	Extended Furloughs
14.6	Inmate Grievance Procedures	25.10	Administrative Release of Inmates
15.1	Hair and Grooming Standards	25.11	Victim Notification
15.2	Offenses and Penalties	27-01-01	Probation and Parole Procedures
15.3	Meritorious Good Time	27-02-01	Duties of Probation and Parole Officers
15-05-01	Restoration of Forfeited Good Time	27-03-01	Workload Formula Supervisor/Staff Ratio
15.6	Adjustment Procedures and Programs	27-05-01	Testimony, Court Demeanor and Availability of Legal Services
15.7	Inmate Account Restriction	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
		<del>27-10-01</del>	<del>Advanced Supervision (Deleted 6/13/96)</del>
		27-11-01	Intensive Supervision ( <u>Amended 5/14/96</u> )
		27-12-01	Supervision: Case Classification
		27-12-02	Risk Assessment
		27-12-03	Initial Interview
		27-12-04	Conditions of Regular Supervision/Request for Modification
		27-12-05	Releasee's Report

## ADMINISTRATIVE REGISTER - 177

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: June 13, 1996

FILED WITH LRC: June 13, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for July 23, 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.

TRANSPORTATION CABINET  
Department of Highways  
Permits Branch  
(Amendment)

**603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.**

RELATES TO: KRS 189.337

STATUTORY AUTHORITY: KRS 189.337

NECESSITY AND FUNCTION: KRS 189.337 requires the Department of Highways to establish standards for the placement of signs within highway right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdiction to establish policies for those areas not covered in the manual. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of TODS.

Section 1. Definitions. (1) "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road but thirty (30) feet (9.12 meters) away from the road.

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 1:101 to administer the tourist oriented directional signs program in Kentucky. The activities of the contractor shall include but not be limited to marketing, determination of business eligibility, maintenance, erection and removal of the information panels and TODS.

(3) "Contractor year" means a one (1) year period beginning January 1, of each calendar year.

(4) "Cover" means a protective shield over a TODS sign which prohibits viewing of the sign.

(5) "Department" means the Kentucky Department of Highways.

(6) "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the business.

(7) "Illegal sign" means an advertising device which has been determined to be illegal according to the provisions of 603 KAR 3:080.

(8) "Information panel" means an official sign placed within the highway right-of-way with space for one (1) or more individual TODS to be attached to it and which may display the legend "TOURIST ACTIVITIES".

(9) "Interstate or parkway" means a highway that has fully-controlled access and is part of the National Interstate and Defense System of Highways or is now or once was a toll road ~~(as defined in 603 KAR 5:025).~~

(10) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(11) "MUTCD" means the Federal Highway Administration's Manual On Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.

(12) "Public road" means all state-maintained roads other than interstate or parkway highways.

(13) "Ramp" means the on- or off-access road from the interstate highway or parkway to or from the first public road.

(14) "TOD trailblazer" means a reduced-sized TODS used in areas where the speed limit is posted with a limit of forty-five (45) miles per hour or less (seventy-two and four-tenths (72.4) kilometers per hours) to direct the traveling public to a tourist attraction.

(15) ~~(14)~~ "Tourist activity" means a public or private activity which provides a tourist attraction or motorist service to the traveling public.

(16) ~~(15)~~ "Tourist attraction" means:

(a) A cultural, historical, recreational, agricultural, educational or entertainment activity; or

(b) A commercial activity which is unique and local or indigenous in nature.

(17) ~~(16)~~ "Tourist oriented directional sign" or "TODS" means an individual tourist information sign paid for and owned by the tourist activity and fabricated to the standards set forth in this administrative regulation and located on an information panel on the right-of-way of a public road. The TODS may provide the official name, directional information, and distance to a specific tourist activity.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of information panels and TODS in accordance with the MUTCD and the provisions of this administrative regulation.

Section 3. Applications and Contracts for TODS. (1) An application for an activity or business to place a TODS or TOD trailblazer sign on an information panel shall be made on an "Application for Highway Tourist Oriented Directional Signing (TODS)" form prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. This form is incorporated by reference in Section 17 ~~(as a part)~~ of this administrative regulation.

(2) The notice by an activity or business to the Department of Highways' contractor of the number, type, and placement of each TODS shall be on "TODS Program Billing Information" forms prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. This form is incorporated by reference in Section 17 ~~(as a part)~~ of this administrative regulation.

(3) The contract to be entered into between the participating activity or business and the Department of Highways' contractor shall be the "Highway TODS Program Agreement" form prepared by the Kentucky Logo Sign Group, Inc. in November 1995 ~~(May, 1994)~~. Addenda to this form may be included in the contract where appropriate. This form is incorporated by reference in Section 17 ~~(as a part)~~ of this administrative regulation.

~~[(4) All forms incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-460-5646. The forms may also be viewed, copied, or obtained from the State Highway Engineer's Office, Permits, 501 High Street, Mail code 11-2, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105 and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.]~~

Section 4. Information Panels for TODS. (1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;
2. Have the least impact on the scenic environment; and
3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for TODS shall not be erected:

1. On interstates or parkways;
2. On the on/off ramps of interstates or parkways;
3. ~~At a grade-separated juncture of two (2) highways or on public roads with a grade separation;~~
4. Where there is insufficient space to locate both other traffic control devices and the information panels; and

4. ~~(5)~~ Except for TOD trailblazers, on those sections of public road with a speed limit of forty-five (45) miles (seventy-two and four-tenths (72.4) kilometers) per hour or less.

(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(2) Intersection approach information panels.

(a) Information panels may be erected at the approach of an intersection on a public road.

(b) Except as provided in paragraph (g) of this subsection, each intersection approach information panel shall be located at least 200 feet (sixty and eight-tenths (60.8) meters) from the intersection.

(c) Except as provided in paragraph (g) of this subsection, an intersection approach information panel shall be spaced at least 200 feet (sixty and eight-tenths (60.8) meters) from any other traffic control device including another intersection approach information panel.

(d) A separate information panel shall be installed for each of the directions of traffic on an approach to an intersection at which TODS will be placed for the identification of tourist activities. The directions of traffic are the following:

1. A right turn;

2. A left turn;

3. No turn if the activity or business is located ahead if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.

(f) If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, but it shall not obstruct the driver's critical viewing of other traffic control devices.

(g) The spacing requirements set forth in paragraphs (b) and (c) of this subsection may be waived by the State Highway Engineer's Office if, based on sound engineering judgment, it is determined that the intersection can safely accommodate the reduced spacing.

(3) Advance information panels.

(a) Advance information panels may be installed only in situations where sight distance, intersection vehicle maneuvers or other vehicle operation characteristics require advance notification of the service to reduce vehicle conflicts and improve highway safety;

(b) The last of the advance information panels to be driven past shall be located at least one-half (1/2) mile (eight-tenths (0.8) kilometers) from the intersection.

(c) Advance information panels shall have a minimum of 800 feet (243.2 meters) between the panels.

(d) A separate advance information panel shall be installed for each of the directions of traffic on an approach to an intersection at which TODS will be placed for the identification of tourist activities. The directions of traffic are the following:

1. A right turn;

2. A left turn;

3. No turn if the activity or business is located ahead and if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) In the direction of traffic, the order of placement for separate advance information panels shall be for facilities to the left, to the right and straight ahead.

(f) If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, and it shall not obstruct the driver's critical viewing of other traffic control devices.

Section 5. TODS Design and Composition. (1) Each TODS shall:

(a) Be rectangular in shape;

(b) Have a white legend and border on a blue background;

(c) Have reflective legends, arrows, backgrounds and borders;

(d) Contain the name of the business in not more than two (2) lines of legend which shall not include promotional advertising.

(2) Each TODS on an intersection approach information panel shall have:

(a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;

(b) The distance to the activity or business shown beneath the arrow;

(c) Arrows pointing to the right at the extreme right of the TODS; and

(d) Arrows pointing to the left or up at the extreme left of the TODS.

(3)(a) The arrangement of the tourist oriented directional signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(b) The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same sign legends should be placed on the information panels above the TODS.

(c) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used when there are intervening minor roads.

(4) More than four (4) TODS shall not be installed on a single information panel.

(5) TODS shall be arranged vertically on an information panel when appropriate located so that the right turn signs are closer to the intersection. When not more than four (4) TODS are to be installed on an approach to an intersection, the TODS may be combined on the same information panel with the TODS for left turns placed above the TODS for right turns.

(6) The standard lettering for tourist oriented directional signs shall be in upper case letters of the type provided in the "Standard Alphabets for Highway Signs and Pavement Markings" book. Capital letters shall be six (6) inches (152.4 millimeters) in height. Spacing between characters shall conform to the tables in the metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published in 1977 by the U.S. Department of Transportation. This document is incorporated by reference as a part of this administrative regulation.

(7)(a) A TODS sign shall not exceed seventy-two (72) inches (1828.8 millimeters) wide and eighteen (18) inches (457.2 millimeters) tall.

(b) The TODS signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or business underneath shall not exceed sixteen (16) inches (406.4 millimeters) wide and sixteen (16) inches (406.4 millimeters) tall.

(d) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) spacing between the border and legend and two (2) inch (fifty and eight-tenths (50.8) millimeters) spacing between lines of legend.

(f) The maximum length of the legend shall be five feet four inches (5'4") (1.64 meters) per line.

(8) Clearance of panels should be governed by Sections 2A and 2D of the MUTCD.

(9) The document incorporated by reference in subsection (6) of this section as a part of this administrative regulation may be viewed or copied at the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646. The document may also be viewed or copied from the Office of the State Highway Engineer, Permits, 501 High Street, Mail code 11-2, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105 and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. The



document may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. by referring to document number 620-809/71.

Section 6. AHEAD Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow set forth in Section 5(2)(d) of this administrative regulation.

(2) Signing for tourist activities in the AHEAD direction shall be considered only under the following circumstances:

(a) There is signing for a similar facility in either the right or left direction;

(b) Through traffic is not the normal traffic pattern; or

(c) The visibility of the establishment is obscured until a motorist is within 800 feet (243.2 meters) of the entrance.

Section 7. Trailblazer Signs. (1) At each turn required to be made by the traveling public when proceeding from a TODS to the tourist attraction, a legal sign shall be in place directing the turn. This may be accomplished by purchasing an additional TODS or TOD trailblazer sign.

(2) The Transportation Cabinet, based on engineering judgment, shall establish the size and location of each TOD trailblazer sign.

(3) The Transportation Cabinet shall approve the proposed trailblazing route for each tourist activity seeking trailblazing signs prior to the submission of the application for permit is required by Section 15 of this administrative regulation.

Section 8. Tourist Activity Eligibility. A tourist activity shall meet the following requirements to qualify for tourist oriented directional signing. A TODS sign shall not be erected until the tourist activity or site has been approved in accordance with this administrative regulation.

(1) A tourist activity shall be of significant interest to the traveling public. The types of activities or sites which are of significant interest to the traveling public are gas, food, lodging, camping, and tourist attractions, if at least one-third (1/3) of the income or visitors at the tourist activity are derived during the normal business season from visitors not residing within twenty (20) miles (32.18 kilometers) of the activity.

(2) The tourist activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Approval shall not be granted if the tourist activity is using an illegal sign any place in the Commonwealth of Kentucky.

(4) Each tourist activity shall comply with all applicable local, state, and federal statutes and regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each tourist activity identified on a tourist oriented directional sign shall provide assurance of its conformance with all applicable federal, state or local laws and regulations. If a tourist activity is in noncompliance of any of these laws or regulations, it may be considered ineligible for participation in this program and its signs may be removed, with no return of any fees.

(5) The tourist activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the tourist activity is a bed and breakfast lodging. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(6) Any tourist activity which operates on a seasonal basis shall make provisions with the department's contractor to remove or cover the tourist activity's TODS sign during the off season. The tourist activity shall in writing notify the department's contractor at least thirty (30) days before the opening or closing occurs.

(7) A TODS shall not be displayed which would misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation.

In these instances the business shall make arrangements for a new TODS.

(8) The department shall have no responsibility for business lost due to TODS or information panels becoming temporarily out of service.

(9) The display of the tourist activity sign on the department's TODS structure shall not be considered an endorsement or recommendation by the State of Kentucky on behalf of the tourist activity.

(10) To qualify for a "GAS" TODS sign, a business shall:

(a) Be in continuous operation at least twelve (12) hours per day, six (6) days a week, twelve (12) months a year;

(b) Provide regular and unleaded fuel, oil, air and water;

(c) Have restroom facilities, drinking water, and telephone available to the traveling public;

(d) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(11) To qualify for a "FOOD" TODS sign, a business shall:

(a) Be in continuous operation to serve two (2) meals a day, twelve (12) hours a day, six (6) days a week, anytime the TODS sign is displayed;

(b) Provide a telephone and restroom facilities for the traveling public; and

(c) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(12) To qualify for a "LODGING" TODS sign, a business shall:

(a) Have off-street parking and at least two (2) rooms for sleeping accommodations;

(b) Be in operation anytime the TODS sign is displayed;

(c) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less; and

(d) Have a private bathroom for each sleeping room with the exception of bed and breakfast establishments.

(13) To qualify for a "CAMPING" TODS sign, a business shall:

(a) Have a minimum of ten (10) individual campsites and parking space for each;

(b) Have modern sanitary facilities and telephone available to its guests;

(c) Be in continuous operation for the time the sign is displayed; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

(14) To qualify for a "TOURIST ATTRACTION" TODS sign, a business or activity shall:

(a) Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the TODS sign is displayed;

(b) Have adequate parking for the facility with a minimum of fifteen (15) spaces;

(c) Be listed on the state or national Register of Historic Sites if the tourist attraction is a historic site; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

Section 9. Bumping. If a nonparticipating tourist activity becomes qualified nearer the intersection than one which already has a tourist activity sign displayed on a fully utilized information panel, the new tourist activity may apply to have its sign displayed at the beginning of the next contract year. The tourist activity farther from the intersection shall have its TODS removed at the end of the contract year if the closer tourist activity has applied to have its sign displayed and has been approved for the program, except under the following circumstances:

(1) A tourist attraction shall not be replaced by a motorist service;

(2) A seasonal tourist attraction shall not be replaced by a year-round motorist service;

(3) A year-round tourist attraction shall not be replaced by a seasonal tourist attraction; and

(4) A year-round motorist service shall not be replaced by a seasonal motorist service.

Section 10. Changes. (1) When a participation business changes ownership, a new contract shall be signed at no additional cost to the business for the remainder of the contract year.

(2) When a participating business is sold and the new owner changes its name, if the new owner wants to continue on the program, a new application and contract shall be completed. This is considered a new business and the applicant shall pay the annual fee, prorated according to time remaining in the contract year.

(3) If a participating business changes its name, a new application and contract may be completed.

(4) If a participating business changes its name only, a new application and contract shall not be required.

(5) A reinstallation fee shall be charged for the placement of a new TODS, if needed.

Section 11. Fees. (1)(a) Except as provided by in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of \$216, in advance, for each TODS placed on the right-of-way.

(b) Except as provided in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of \$216, in advance for each TOD trailblazer placed on the right-of-way.

(c) If the qualifying business has a "tourist attraction" logo as set forth in 603 KAR 4:035, the annual fee for each TOD trailblazing sign or TODS from the logo to the tourist activity shall be \$150.

(2) The annual fee for the first year shall accompany the initial application.

(3) The first year's annual fee may be prorated on a monthly basis with each portion of a month the TODS is in place on the information panel requiring payment of one-twelfth (1/12) of the fee.

(4) The yearly renewal fee shall be due forty-five (45) days prior to the annual renewal date.

(5) The payment of the initial or renewal fee guarantees that the TODS or TOD trailblazer sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor and is approved by the Transportation Cabinet.

(6) If the signs for a seasonal tourist activity are removed or covered by the department's contractor, a fee of \$200 shall be charged for the removal or covering of all of the TODS or TOD trailblazer signs for the specific business.

(7) If the signs for a tourist activity are removed for any reason, a fee of \$200 shall be charged for the reinstallation of all of the TODS for the specific business.

(8) The fee for the reinstallation, removal, or covering of TODS shall be paid to the department's contractor within thirty (30) days of the postmarked date of the invoice.

(9) The tourist activity shall be responsible for damages to its TODS or TOD trailblazer signs caused by acts of vandalism or natural causes which require repair or replacement of the TODS or TOD trailblazer sign.

Section 12. Revocation or Suspension. The contract between the department's contractor and the tourist activity may be revoked or suspended if:

(1) The activity no longer meets the eligibility requirements set forth in this administrative regulation;

(2) The owner or responsible operator of the activity willfully makes a false, deceptive, or fraudulent statement in its application or in other information submitted for review;

(3) The owner or responsible operator of the activity or an agent thereof revises or modifies a TODS sign erected by the department or its agents;

(4) The owner or responsible operator of the business or activity has engaged in a deceptive or fraudulent business practice;

(5) An illegal billboard advertising device advertising the business is located in the state of Kentucky;

(6) Payment is not received on time or is otherwise delinquent;

(7) The owner or responsible operator of the business or activity fails to notify the department's contractor of its seasonal closing; or

(8) The owner or responsible operator of the business or activity is a habitual violator of the provisions of this administrative regulation.

Section 13. Measurements. (1) Measurements taken to determine the qualifications or priority of tourist activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route on which the sign is to be placed and the center line of the crossroad.

(2) Measurements for the qualification of tourist activities for display of TODS shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad to the particular tourist activity.

Section 14. TODS Contract. (1)(a) A TODS contract between a particular tourist activity and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of the TODS.

(b) Each TODS and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating tourist activity shall be cause for the revocation of the TODS contract.

(d) If the contract is revoked for cause, the prepaid fees for the contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a tourist activity does not comply with the requirement of this administrative regulation, the Department of Highways' contractor shall notify the tourist activity in writing of the violations.

(3) If the tourist activity fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the TODS.

Section 15. Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new information panel proposed to be erected or removed from the state-owned right-of-way.

Section 16. Appeal of the Department of Highways Action. (1) Any business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner of the Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

(3) Upon request of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(4) The hearing and subsequent procedures shall be conducted in accordance with the provisions of KRS Chapter 13B. [The hearing examiner shall schedule a date for the hearing as soon as the schedules of the parties needed at the hearing allow provided that the time shall not exceed sixty (60) days after receipt of the request for hearing.

~~(5) The hearing shall be recorded.~~

~~(6) The rules of evidence shall not apply.~~

~~(7)(a) The hearing examiner shall prepare and submit his report with a recommendation within sixty (60) days of the hearing.~~

~~(b) The report and recommendations shall be submitted to the commissioner of highways with copies served to the party which requested the hearing.~~

~~(8) Any party to the hearing may within twenty (20) days file with the Commissioner of Highways his exceptions to the report and recommendation of the hearing examiner.~~

~~(9) The commissioner shall within ten (10) days of receiving the exceptions and within thirty (30) days of receiving the report and recommendation of the hearing examiner issue an Official Order setting forth the final action of the Department of Highways.]~~

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) "Application for Highway Tourist Oriented Directional Signing (TODS)" form prepared by the Kentucky Logo Sign Group, Inc., May 1994 edition;

(b) "TODS Program Billing Information" forms prepared by the Kentucky Logo Sign Group, Inc., May 1994 edition; and

(c) "Highway TODS Program Agreement" form prepared by the Kentucky Logo Sign Group, Inc., November 1995 edition.

(2) All forms incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646. The forms may also be viewed, copied, or obtained from the State Highway Engineer's Office, Permits, 501 High Street, Mail code 11-2, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105 and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

J. M. YOWELL, P.E., State Highway Engineer  
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: June 6, 1996

FILED WITH LRC: June 12, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 30, 1996 at 11 a.m., local prevailing time in the Fourth Floor Hearing/Conference Room of the State Office Building located at the corner of High and Clinton Streets, 501 High Street, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 25, 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. The party requesting the transcript will be responsible for paying the cost of its preparation. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will be accepted until close of business on July 30, 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, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All travelers using Kentucky's noninterstate highways and nonparkway as well as the businesses which are eligible to and choose to purchase a TODS sign.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Even though no comments were received at the public comment hearing, earlier comments made to the Transportation Cabinet indicate that the cost of living will not be affected anywhere in the state as a result of this administrative regulation. If there is an impact at all on employment, it will be to slightly increase employment in those areas where signage to tourist-oriented businesses may make the hard-to-locate ones more accessible.

(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 comments were received at the public comment hearing, the cost to a business choosing to participate in the TODS Program will be just under \$250 per year/per signed intersection.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

The tourism industry has contended for some time that better highway signage for tourist-related businesses would increase the number of tourists who stop in Kentucky. The impact on state and local revenues while minuscule, would be positive.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The tourist-oriented businesses which choose to participate in the TODS Program will pay annual fees which will be used to implement the administrative regulation. Enforcement of the administrative regulation will be by the Department of Highways using Road Fund receipts.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied by allowing different eligibility criteria between the extremely rural areas and the more populous areas.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no true federal mandate. However, the Federal Highway

Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the "Manual on Uniform Traffic Control Devices". TODS signs are included in the manual. However, the primary requirement beyond limiting the placement, size, color and services listed, is that each state choosing to have a logo sign program, have its policies approved by the Federal Highway Administration.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. They are no more stringent.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**TRANSPORTATION CABINET**  
**Department of Highways**  
**Division of Highway Design**  
**Division of Operations**  
**Division of Transportation Planning**  
**Department of Vehicle Regulation**  
**Division of Motor Vehicle Enforcement**  
**(Amendment)**

**603 KAR 5:066. Weight (mass) limits for trucks.**

RELATES TO: KRS 189.222, 23 CFR 658

STATUTORY AUTHORITY: KRS 174.080, 189.222, 23 CFR 658

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable weight (mass) limits for trucks using the state maintained highway system. This administrative regulation prescribes the maximum weight (mass) limits for each classification of roads in accordance with state and federal laws. These weights may only be exceeded if an overweight permit has been issued for the operation of a motor vehicle by the Transportation Cabinet.

Section 1. Highway Classifications and Truck Types. (1) Trucking highways. All state maintained roads are assigned a classification in 603 KAR 5:301 ~~(006)~~. Unless the motor vehicle being operated has been issued an overweight permit by the Transportation Cabinet, the maximum allowable gross weight (mass) for each classification is as follows:

(a) Class "AAA" designates a maximum allowable gross weight (mass) of 80,000 pounds (36,287.36 kilograms).

(b) Class "AA" designates a maximum allowable gross weight (mass) of 62,000 pounds (28,122.70 kilograms).

(c) Class "A" designates a maximum allowable gross weight (mass) of 44,000 pounds (20,090.05 kilograms).

(2) Truck types. For the purpose of posting bridges at the site and for listing bridge weight (mass) restrictions in these administrative regulations, the following truck types have been established:

(a) Type 1. This is a single unit truck consisting of two (2) single axles.

(b) Type 2. This is a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(c) Type 3. This is a truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(d) Type 4. This is a tractor-semitrailer combination truck consisting of five (5) or more axles.

(e) There are numerous other axle combinations not covered in these basic truck types that are restricted by weight (mass) based on

their axle spacing and weight (mass) distribution per axle.

Section 2. "AAA" Highways Except Interstates. The maximum weight (mass) limits for trucks using Class "AAA" highways, except the Interstate System, shall be as follows:

(1) Gross weight (mass), including load, shall not exceed 80,000 pounds (36,287.36 kilograms);

(2) Gross axle weight (mass) for a single axle shall not exceed 20,000 pounds (9071.84 kilograms) (with axles less than forty-two (42) inches (1.07 meters) apart to be considered as a single axle);

(3) ~~[(2)]~~ Gross weight (mass) shall not exceed 34,000 pounds (15,522.13 kilograms) on two (2) axles in tandem arrangement which are spaced forty-two (42) inches (1.07 meters) or more apart and ninety-six (96) inches (2.44 meters) or less apart;

(4) ~~[(3)]~~ Gross weight (mass) shall not exceed 48,000 pounds (21,772.42 kilograms) on three (3) axles in tridem arrangement if the distance between axles one (1) and three (3) is more than ninety-six (96) inches (2.44 meters) but less than 120 inches (3.05 meters) apart and the distance between any two (2) adjacent axles of the tridem is forty-two (42) inches (1.07 meters) or more;

(5) ~~[(4)]~~ Gross weight (mass) shall not exceed 34,000 pounds (15,522.13 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of axles one (1) and three (3) is ninety-six (96) inches (2.44 meters) or less;

(6) The maximum gross weight (mass) allowed on a vehicle with any other axle configuration shall be established by the bridge weight formula:

$$W = 500 (LN/N-1 + 12N + 36)$$

Where W equals gross weight, L equals distance in feet between the extreme axles of the group of consecutive axles under consideration and N equals the number of axles in the group. The load on any single axle in any arrangement shall not exceed 20,000 pounds (9071.84 kilograms) and the gross weight (mass) shall not exceed 80,000 pounds (36,287.36 kilograms). Any axle which is not included in one (1) of the combinations set forth in this subsection shall be steerable;

(7) ~~[(5)]~~ Tire weight (force). The weight (force) transmitted to the pavement shall not exceed the product of 700 ~~(600)~~ pounds (317.51 kilograms) times the aggregate width in inches (meters) established from the manufacturer's stamped tire measurement for all tires;

(8) ~~[(6)]~~ On Class "AAA" highways if a structure or bridge has a posted load limit of less than 80,000 pounds (36,287.36 kilograms), the posted limit shall not be exceeded.

Section 3. Interstate Highways. The maximum weight (mass) limits for trucks using Class "AAA" highways which are a part of the Interstate System shall be as follows:

(1) Gross weight (mass), including load, shall not exceed 80,000 pounds (36,287.36 kilograms);

(2) Gross axle weight (mass) for a single axle shall not exceed 20,000 pounds (9071.84 kilograms) (with axles less than forty-two (42) inches (1.07 meters) apart to be considered as a single axle);

(3) Gross weight (mass) shall not exceed 34,000 pounds (15,522.13 kilograms) on two (2) axles in tandem arrangement which are spaced forty-two (42) inches (1.07 meters) or more apart and ninety-six (96) inches (2.44 meters) or less apart;

(4) Gross weight (mass) shall not exceed 34,000 pounds (15,522.13 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of one (1) and three (3) is ninety-six (96) inches (2.44 meters) or less;

(5) Gross weight (mass) shall not exceed 48,000 pounds (21,772.42 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of axles one (1) and three (3) is more than ninety-six (96) inches (2.44 meters) but less than 120 inches (3.05 meters), and the distance between any two (2) adjacent axles

of the tridem is forty-two (42) inches (1.07 meters) or more, and the gross weight (mass) of the vehicle is less than or equal to 73,280 pounds (33,239.22 kilograms);

(6) The maximum gross weight (mass) allowed on two (2) consecutive sets of tandem axles shall be 34,000 pounds (15,422.13 kilograms) each, if the distance between the first and last axles of the consecutive sets of axles is thirty-six (36) feet (10.98 meters) or more;

(7) The maximum gross weight (mass) allowed on a vehicle with any other axle [vehicle] configuration shall be established by the bridge weight formula:

$$W = 500 (LN/N-1 + 12N + 36)$$

Where W equals gross weight, L equals distance in feet between the extreme axles of the group of consecutive axles under consideration and N equals the number of axles in the group. ~~The load on any single axle in any arrangement shall not in no event shall the load on any axle in any arrangement~~ exceed 20,000 pounds (9071.84 kilograms) and ~~the~~ the gross weight (mass) shall not exceed 80,000 pounds (36,287.36 kilograms). Any axle which is not included in one (1) of the combinations set forth in this subsection shall be steerable.

(8) Tire weight (force). The weight (force) transmitted to the pavement shall not exceed the product of 700 [600] pounds (317.51 kilograms) times the aggregate width in inches (meters) established from the manufacturer's stamped tire measurement of all tires.

(9) On Class "AAA" highways which are part of the interstate system if a structure or bridge has a posted load limit of less than 80,000 pounds (36,287.36 kilograms), the posted limit shall not be exceeded.

(10) Tolerances shall not be ~~There shall be no tolerance~~ allowed on gross weight (mass), axle weight (mass), or combinations of axle weights (mass) on vehicles operating over a Class "AAA" highway which is a part of the Interstate System.

Section 4. "AA" Highways. The maximum weight (mass) for trucks using Class "AA" highways shall be as follows:

(1) Gross weight (mass), including load, shall not exceed 62,000 pounds (28,122.7 kilograms);

(2) Gross axle weight (mass) for a single axle shall not exceed 20,000 pounds (9071.84 kilograms) (with axles less than forty-two (42) inches (1.07 meters) apart to be considered as a single axle);

(3) Gross weight (mass) shall not exceed 34,000 pounds (15,422.13 kilograms) on two (2) axles in tandem arrangement which are spaced forty-two (42) inches (1.07 meters) or more apart and ninety-six (96) inches (2.44 meters) or less apart;

(4) Gross weight (mass) shall not exceed 34,000 pounds (15,422.13 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of axles one (1) and three (3) is ninety-six (96) inches (2.44 meters) or less;

(5) Gross weight (mass) shall not exceed 48,000 pounds (21,772.42 kilograms) on three (3) axles in tridem arrangement if the distance between axles one (1) and three (3) is more than ninety-six (96) inches (2.44 meters) but less than 120 inches (3.05 meters) apart and the distance between any two (2) adjacent axles of the tridem is forty-two (42) inches (1.07 meters) or more;

(6) Tire weight (force). The weight (force) transmitted to the pavement shall not exceed 700 [600] pounds (317.51 kilograms) times the aggregate width in inches (meters) established from the manufacturer's stamped tire measurement of all tires.

(7) On Class "AA" highways if a structure or bridge has a posted load limit of less than 62,000 pounds (28,122.7 kilograms), the posted limit shall not be exceeded.

(8) The maximum gross weight (mass) allowed on a vehicle with any other axle configuration shall be established by the bridge weight formula:

$$W = 500 (LN/N-1 + 12N + 36)$$

Where W equals gross weight, L equals distance in feet between the extreme axles of the group of consecutive axles under consideration and N equals the number of axles in the group. The load on any single axle in any arrangement shall not exceed 20,000 pounds (9071.84 kilograms) and the gross weight (mass) shall not exceed 62,000 pounds (28,122.7 kilograms). Any axle which is not included in one (1) of the combinations set forth in this subsection shall be steerable.

Section 5. "A" Highways. The maximum weight (mass) limit for trucks using Class "A" highways shall be as follows:

(1) Gross weight (mass), including load, shall not exceed 44,000 pounds (20,090.05 kilograms).

(2) Gross axle weight (mass) for a single axle shall not exceed 20,000 pounds (9071.84 kilograms) (with axles less than forty-two (42) inches (1.07 meters) apart to be considered as a single axle).

(3) Gross weight shall not exceed 34,000 pounds (15,422.13 kilograms) on two (2) axles in tandem arrangement which are spaced forty-two (42) inches (1.07 meters) or more apart and ninety-six (96) inches (2.44 meters) or less apart.

(4) Tire weight (force). The weight (force) transmitted to the pavement shall not exceed the product of 700 [600] pounds (317.51 kilograms) times the aggregate width in inches (meters) established from the manufacturer's stamped tire measurement of all tires.

(5) On Class "A" highways if a structure or bridge has a posted load limit of less than 44,000 pounds (20,090.05 kilograms), the posted limit shall not be exceeded.

(6) The maximum gross weight (mass) allowed on a vehicle with any other axle configuration shall be established by the bridge weight formula:

$$W = 500 (LN/N-1 + 12N + 36)$$

Where W equals gross weight, L equals distance in feet between the extreme axles of the group of consecutive axles under consideration and N equals the number of axles in the group. The load on any single axle in any arrangement shall not exceed 20,000 pounds (9071.84 kilograms) and the gross weight (mass) shall not exceed 44,000 pounds (20,090.05 kilograms). Any axle which is not included in one (1) of the combinations set forth in this subsection shall be steerable.

Section 6. Tolerance. There shall not be a ~~no~~ tolerance allowed on gross weight (mass), however, a tolerance of not more than five (5) percent shall be allowed on axle weight (mass) on all state-maintained highways which are not a part of the interstate system.

Section 7. (1) As long as any highway remains a part of the state-maintained system, as defined by administrative regulation 603 KAR 3:030, the classification of that highway in administrative regulation 603 KAR 5:301 shall constitute ~~[006 constitutes]~~ a designation by the Secretary of Transportation as contemplated by KRS 189.280.

(2) City ordinances which impose less stringent limits than this administrative regulation shall not apply to the state-maintained highways, including bridges, unless specific relinquishment of this responsibility to a city is made by the Secretary of Transportation.

ED LOGSDON, Commissioner  
J. M. YOWELL, P.E., State Highway Engineer  
FRED N. MUDGE, Secretary, Commissioner  
APPROVED BY AGENCY: May 17, 1996  
FILED WITH LRC: June 12, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on July 30, 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 July 25, 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 July 25, 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 July 30, 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: While the administrative regulation affects all trucks operating in Kentucky, the primary change in this administrative regulation at the present time will affect only a dozen or so companies.

(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 affect on the cost of living or employment was discussed at the public comment hearing.

(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 affect on the cost of living or employment was discussed at the public comment hearing. However, the few companies which have purchased trucks with the unusual axle configurations allowed by this administrative regulation will be able to use those trucks in Kentucky, slightly reducing their 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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(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: Road fund monies included in the budget for the Division of Motor Vehicle Enforcement.

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

(a) Geographical area in which administrative regulation will be implemented: There will be a slight reduction in the cost of doing business for those companies which already own trucks with the unusual axle configurations allowed by the change in this administrative regulation.

(b) Kentucky: There will be a slight reduction in the cost of doing business for those companies which already own trucks with the unusual axle configurations allowed by the change in this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives

were rejected: The Transportation Cabinet considered not allowing the trucks with unusual axle configurations to be operated on the public highways of Kentucky. It was decided that those trucks allowed by this administrative regulation change would not cause additional damage to the highways and should therefore be allowed to operate.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict: 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:

(11) TIERING: Is tiering applied? Yes. The entire administrative regulation is a tiering of the weights of trucks allowed to operate on highways. The tiering is based on the strength of the highway as it was constructed.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 658.

2. State compliance standards. The federal mandate is only applicable to the interstate highways. Therefore, the truck gross and axle weight requirements set forth in 23 CFR Part 658 are applied to the interstate highways in this administrative regulation, but not the remainder of the highways in the state.

3. Minimum or uniform standards contained in the federal mandate. The bridge weight formula is not to be exceeded on bridges on the interstate highways. The maximum gross vehicle weight shall not exceed 80,000 pounds. The maximum weight on a single axle shall not exceed 20,000 pounds. The maximum weight on a tandem axle shall not exceed 34,000 pounds. There shall be no tolerances allowed on the maximum weights allowed on the interstate highways.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

#### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(Amendment)

#### 702 KAR 3:130. Internal accounting.

RELATES TO: KRS 156.160, 156.200

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.070 gives the Kentucky [State] Board of [for Elementary and Secondary] Education the management and control of the common schools; and KRS 156.200 gives the state board authority over accounting procedures and reports of local school districts. This administrative regulation is necessary to establish uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Internal accounts" means all school funds including funds derived from fund raising activities sponsored under the auspices of the school. Funds raised or received by organizations which do not come under the direct supervision of school authorities



shall not be considered internal accounts.

REGULATORY IMPACT ANALYSIS

Section 2. The district board of education shall have the responsibility for administration and control of all internal accounts.

Section 3. The district board of education shall develop accounting procedures consistent with those set out in the Department of Education's "A Uniform Program of Accounting for School Activity Funds in Kentucky Schools," February [January] 1995, a copy of which is incorporated by reference and which may be inspected, copied, and obtained from the Division of, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

Section 4. All internal accounts shall be audited annually [as follows:

~~(1) High school activity fund accounts shall be audited by a certified public accountant.~~

~~(2) The high school activity fund account for the purpose of making the audit shall include the following:~~

~~(a) Schools with grade ranges of 10 through 12;~~

~~(b) Schools with grade ranges of 9 through 12;~~

~~(c) Schools with grade ranges of 7 through 12; and~~

~~(d) Schools with grade ranges of primary through 12.~~

~~(3) Activity fund accounts other than high school accounts shall be audited either by a certified public accountant, or a select committee approved by the Board of Education. The committee shall be composed of central office staff, principals, teachers or citizens who are not employees of the board.~~

~~(4) If an audit committee is selected by the Board of Education, the names and titles of the committee members shall be submitted to the chief state school officer for approval prior to the date of the audit.~~

~~(5) All audit reports shall be reviewed and accepted by the local board. All recommendations and exceptions listed in the audit shall be reviewed by staff of the Department of Education and a report made to the district Board of Education. A copy of the audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district where they [it] shall be open for public inspection.~~

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: June 13, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 31, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 26, 1996, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected: None

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of Instruction

(Amendment)

704 KAR 3:390. Extended school services.

RELATES TO: KRS 158.070

STATUTORY AUTHORITY: KRS 156.070, 158.070, ~~Acts 1992~~  
~~e-308, Section 1(7)]~~

NECESSITY AND FUNCTION: KRS 158.070 requires schools to provide continuing education beyond the minimum school term for students in need of extended services and requires the Kentucky ~~[State]~~ Board of [for Elementary and Secondary] Education to



promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services. The function of this administrative regulation is to implement the requirements of KRS 158.070. [~~Acts 1992, c. 398, Section 1(7)-~~]

Section 1. Definitions. (1) "Continuing education" means extended school services.

(2) "Extended school services" means instructional and support services provided by school districts for students who need additional time to achieve academic expectations in 703 KAR 4:060. [~~expected outcomes-~~] These services shall be provided at times separate from the regular school day, regular school week, or minimum school term.

(3) "Support services" means noninstructional components of a program which are provided to enable the student to realize the benefits of the instructional program. These services may include transportation, school-based counseling, parent training for follow through, and referrals for social, health and financial assistance through appropriate service agencies.

(4) "Instructional materials" means expendable and nonexpendable books, kits, software and manipulatives, but does not include computer hardware.

(5) "School district" [~~as used in this administrative regulation-~~] means a local public education agency.

Section 2. Instructional Program. (1) The major emphases of extended school services shall be:

(a) To sustain students' present level of performance to prevent them from falling behind;

(b) To provide extended programming for students who have been retained or who are at risk of being retained in a class or grade or of failing to graduate on time without additional assistance; and

(c) To close the achievement gap of low-performing students so that the students will perform successfully in the instructional program appropriate to their age ranges.

(2) The instructional program shall include:

(a) A method to assess the priority educational needs of each individual student and to determine the academic expectations [~~expected competencies~~] to be exhibited by the student at the end of the extended program;

(b) An appropriate educational program designed for the individual student which assists the student in mastering the academic expectations [~~expected competencies~~] within the timelines specified by the program;

(c) An ongoing method of informal and formal assessment to document the student's progress toward mastery of the academic expectations [~~expected competencies~~];

(d) A schedule of services for each student which shall be of the duration and regularity necessary to allow mastery of the academic expectations [~~expected competencies~~] within a reasonable and projected timeline;

(e) Teaching techniques which are supportive of the regular school program and which provide continuity with the regular program; and

(f) Varied instructional approaches such as:

1. Tutorial;

2. Diagnostic or prescriptive;

3. Computer-assisted; and

4. Counseling if needed to assist the student in overcoming social or behavioral problems which interfere with the student's academic success.

(3) The instructional program may utilize a variety of scheduling models including:

(a) Extended day programs which are scheduled any time outside of the regular school day and which may include a night program;

(b) Saturday programs which operate for a full or half day over a specified period of time;

(c) Summer programs which operate a full or half day during the

months of June, July or August; and

(d) Flexible school calendars which allow eligible students to attend school for a longer period of time than other students.

(4) Teachers providing instruction in extended school programs which are offered for academic credit for purposes of promotion or graduation shall meet the same professional qualifications as teachers who are employed in the regular school program.

(5) Extended school services shall be provided to eligible students who are in the first year of the primary school program through the twelfth grade. Students shall be eligible to receive these services until such time as they graduate from the twelfth grade or become twenty one (21) years of age, whichever comes first.

Section 3. Student Selection. Selection of pupils to receive extended school services shall be as follows:

(1) [~~Prior to adoption by the State Board for Elementary and Secondary Education of the outcomes expected of all students-~~] Each school district shall select pupils as described in Section 2(1) of this administrative regulation who need additional instructional time to attain academic expectations [~~expected competencies~~]. A student shall not be selected or assigned to receive extended school services for disciplinary purposes or for any kind of in-school suspension.

(2)(a) A local board of education may mandate the attendance of eligible students to extended school services through the development of a policy which shall describe all conditions under which attendance will be required and shall provide a description of any exceptions permissible under the policy.

(b) Conditions for attendance may include :

1. The characteristics of the students who will be required to attend;

2. A description of the criteria by which they may exit the extended school program or may no longer be required to attend;

3. The conditions under which a targeted student may be excused from attendance; and

4. The arrangements for transporting the students mandated to attend.

(c) The local school board shall include a copy of the policy in the district's application for funds through extended school services.

(3) In assessing students' need for extended school services, the schools shall consider each student's performance in:

(a) Academic skill areas for a single subject or single class, application of such skills to everyday life situations, and integration of skills and experiences to acquire new information;

(b) School attendance when it negatively affects academic performance;

(c) Patterns of promotion or retention;

(d) Physical and mental readiness for learning; and,

(e) When applicable, readiness for transition to work, postsecondary education or the military.

(4) Two (2) or more of the following methods of documentation shall be used to verify which students shall be determined eligible:

(a) Teacher recommendation based upon classroom observation and anecdotal records or parent recommendation;

(b) Academic performance based upon formal and informal measurements of progress; and

(c) Behavioral and developmental progress as documented in formal and informal assessments and reports.

(5) Local school boards shall approve and disseminate procedures whereby pupils who have a greater need as determined by the eligibility criteria shall be referred and selected first to receive extended school services. These procedures shall not exclude students who have greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

(6) School districts shall inform parents and guardians of extended school services which will be offered in the school system including:

(a) A general notification which describes the nature of the services to be offered including the opportunities for maintenance of performance, prevention of failure and reduction of academic deficiencies;

(b) A specific notification to parents or guardians of their child's eligibility to receive extended school services;

(c) Procedures for parents or guardians to request reconsideration of their children's identification or lack of identification of eligibility for extended school services.

~~[(7) Upon adoption by the State Board for Elementary and Secondary Education of the outcomes expected of all students, each school district shall select pupils to receive extended school services who need additional instructional time to achieve the outcomes.]~~

Section 4. Funding. (1) Each school district shall be eligible to receive a grant award from available funds to provide extended school services. Available funds shall be the amount of the total appropriation less two (2) percent for state administrative costs and up to ten (10) percent which shall be reserved to fund innovative projects on a competitive basis.

(2) The chief state school officer shall determine the amount of the grant award for which each school district is eligible based upon the following division of funds: [a formula approved annually by the State Board for Elementary and Secondary Education.]

(a) One-half (1/2) of the total funds shall be distributed based on most current average daily attendance (ADA);

(b) One-sixth (1/6) of the total funds shall be distributed based on most current rates of economic deprivation (ED);

(c) One-sixth (1/6) of the total funds shall be distributed based on most current dropout rates (DR); and

(d) One-sixth (1/6) of the total funds shall be distributed based on most current KIRIS cognitive indices (CI).

(3) Actual district allocations shall be calculated as follows:

(a) Determine state total for ADA by summing the ADA for all districts.

(b) Determine the percentage each district shall receive for ADA by dividing the district's ADA by the state total ADA. The resulting percentage (%) multiplied times the total funds available for average daily attendance equals the amount the district shall receive for ADA.

(c) State totals for ED, CI, and DR shall be calculated as follows:

1. The state total for ED shall be the sum of all districts' ED quotients. Each district's ED quotient shall be calculated by multiplying the district's ED times the district's ADA.

2. The state total for CI shall be the sum of all districts' CI quotients. Each district's CI quotient shall be calculated by subtracting the CI from 100 and then multiplying the difference by the district's ADA.

3. The state total for DR shall be the sum of all district's DR quotients. Each district's DR quotient shall be calculated by multiplying the district's DR times the district's ADA.

(d) Determine the percentage each district shall receive for ED by multiplying the district's ED times the district's ADA and divide the result by the state's total ED ((c)1). The resulting percentage (%) multiplied times the total funds available for economic deprivation equals the amount the district shall receive for ED.

(e) Determine the percentage each district shall receive for CI by multiplying the district's CI times the district's ADA and divide the result by the state's total CI ((c)2). The resulting percentage (%) multiplied times the total funds available for cognitive indices equals the amount the district shall receive for CI.

(f) Determine the percentage each district shall receive for DR by multiplying the district's DR times the district's ADA and divide the result by the state's total DR ((c)3). The resulting percentage (%) times the total funds available for dropout rate equals the amount the district shall receive for DR.

(g) Sum the district's portions for ADA, ED, CI, and DR to determine the district's total ESS allocation.

~~(4) [(3)]~~ To ensure the opportunity for all school districts to provide effective extended school services of adequate size and scope, a school district shall not receive a grant of less than \$15,000.

~~(5) [(4)]~~ Grant awards shall be made to each school district upon approval by the chief state school officer of an application as prescribed in Section 5 of this administrative regulation. Beginning in FY 94 [93], regular grant funds shall be available for use by school districts for fifteen (15) months through September 30 of the last year of the grant period. [only in the fiscal year in which the grant is awarded.]

(5)(a) Funds received for extended school services shall be expended for instructional and support services necessary to provide an effective program.

(b) These services shall include salaries of personnel and may include instructional materials and supplies if a need is demonstrated and the district does not have the supplies and materials available.

(c) Transportation and staff development related to the provision of extended school services shall be [are] approvable support services.

(d) Funds for extended school services shall not be used for capital outlay.

(e) School districts shall be [are] authorized to enter into contractual arrangements when needed to provide comprehensive extended school service programs.

(6) Appropriate financial records including separate ledgers for extended school services shall be maintained by each school district and ~~[such records as may be required]~~ shall be submitted to the Department of Education upon request [direction].

Section 5. Applying ~~[Application]~~ for Funds. (1) All components which are scheduled to take place within the regular school term and the summer term shall be submitted for approval by May 31 of the preceding fiscal year.

(2) School districts shall apply for funds to provide extended school services by submitting the following information to ~~[an application to the chief state school officer on forms provided by]~~ the Department of Education. ~~[The Application for Extended School Services Funds may be obtained from the Kentucky Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 a.m.]~~

~~(2) The components which are scheduled to take place within the regular school term shall be submitted by July 1 of each fiscal year. The components may be amended until March 1 of the same fiscal year.~~

~~(3) Application for funds for any summer school component which takes place in June shall be included in the application for the regular school term in the same fiscal year. The funds for that portion of the summer school shall be expended by June 30.~~

~~(4) Any summer school component which is scheduled to take place within July or August may be submitted and approved with the regular term application for the preceding fiscal year but shall be submitted no later than the preceding March 1 of the same calendar year. The component may be amended until the preceding June 15 of the same calendar year.~~

~~(6)(a) Applications shall include:~~

~~(a) [1-] A description of the services to be provided and operated;~~

~~(b) [2-] A statement of the needs to be met;~~

~~(c) [3-] The methods to be used;~~

~~(d) [4-] The projected number of students to be served and the selection criteria;~~

~~(e) [6-] The facilities in which the program will be provided;~~

~~(f) [6-] The evaluation methods; [and]~~

~~(g) [7-] A budget for each separate component and a summary budget; and~~

~~(h) [to be provided.]~~

~~(b) The application shall also provide] The number and type of certified and noncertified staff, including peer tutors, necessary to~~

operate the program and ~~[shall include the]~~ criteria used in selecting the staff.

~~(3) [(6)](a) District applications for funds shall be approved by the chief state school officer prior to the encumbrance or expenditure of any funds by any school district, including the contracting for personnel for extended school services.~~

~~(b) Approval of programs as described in each district's application shall be based on "Extended School Services Operational Guidelines" dated March, 1996, which is hereby incorporated by reference and which may be obtained from the Kentucky Department of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [approved and disseminated by the Department of Education.~~

~~(c) Guidelines shall be annually reviewed and modified as needed.]~~

Section 6. Program Evaluation. (1) School districts providing extended school services shall submit to the Department of Education student data at the end of the regular school term and any summer term in which funds are expended for extended school services. [an annual self-evaluation of the effectiveness of extended services.]

~~(2) Student data shall include: [The self-evaluation shall be developed according to instructions provided by the Department of Education and shall be based upon the degree to which each student served in the program attains the expected competencies.~~

~~(3) Evaluation components shall include:]~~

~~(a) Prepost student qualitative and quantitative performance data; [Percent of students achieving expected competencies;]~~

~~(b) Student attendance at extended school services; and [Percent of students attending a specified percent of time; and]~~

~~(c) Promotion and graduation data resulting from participation in [Percent of students who are promoted to the next level of the program as a result of the] extended school services.~~

~~[(4) School districts shall provide to the Department of Education the annual report and other evaluation data deemed necessary by the Department of Education.]~~

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: June 13, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 31, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 26, 1996, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Carole G. Kruse

(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: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds support the program. 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 administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 158.070 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.

**WORKFORCE DEVELOPMENT CABINET  
Department for Employment Services  
Division of Unemployment Insurance  
(Amendment)**

**787 KAR 1:210. Employer contribution rates.**

RELATES TO: KRS 341.270

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule

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for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1995 [~~1994~~] was \$470,825,898.93 [~~418,365,160.94~~].

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1995 [~~1994~~].

Section 2. Rate Schedule. On the basis of the findings in Section 1, and in accordance with KRS 341.270, Schedule A of Table A shall be in effect for calendar year 1996 [~~1995~~], because the "trust fund balance" equals or exceeds \$350,000,000 on December 31, 1995 [~~1994~~]. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than -8.0%	9.00%

TREVA B. WRIGHT-DONNELL, Commissioner  
RODNEY S. CAIN, Secretary

APPROVED BY AGENCY: March 28, 1996

FILED WITH LRC: May 21, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1996, at 9 a.m., at the Health Services Auditorium, Workforce Development Cabinet, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by July 17, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Office of General Counsel, Workforce Development Cabinet, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky

40601.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: 75,626 Kentucky employers.

(2) Direct and indirect cost or savings to those affected:

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Possible increase in UI Trust Fund receipts due only to natural wage increases and increased number of employers.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds (BCAA).

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All taxpaying employers are treated equally.

## FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Either all or part of a local government could be affected. Entities such as county health departments, water districts, libraries, etc., could be affected based upon their independent exercise of unemployment reporting options.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects the unemployment tax assessed based on the payroll of those local governments

which have elected to make quarterly unemployment tax payments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The great majority of local governments have elected to reimburse any unemployment benefits attributable to their employment. However, approximately 700 governmental entities have elected to pay quarterly unemployment taxes. By specifying the tax rate schedule in effect for 1996, this regulation determines in part the amount of tax which will be due from these tax paying entities. The tax rate schedule set forth in this regulation remains the same as the previous year.

**LABOR CABINET  
Kentucky Occupational Safety and  
Health Review Commission  
(Amendment)**

**803 KAR 50:010. Hearings; procedure, disposition.**

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.071, 338.081

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 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

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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. Intervenor 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: June 11, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1996, at 1 p.m. at the offices of the KOSH Review Commission, #4 Millcreek Park, Route #3, Millville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative

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regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Frederick G. Huggins, KOSH Review Commission, #4 Millcreek Park, Route #3, Millville Road, Frankfort, Kentucky 40601, telephone number: (502) 573-6892.

### 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 Chapter 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.

### 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.

### 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 Chapter 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

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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.

### CABINET FOR HEALTH SERVICES Office of Inspector General (Amendment)

#### 902 KAR 20:018. Operation and services; renal dialysis facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042, EO 95-79 [216B.040, 216B.105(3)]

NECESSITY AND FUNCTION: KRS 216B.042 [216B.040 and 216B.105(3)] mandates that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation provides for the licensure requirements for the operation and services of renal dialysis facilities. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. ~~[As used in this administrative regulation, the following terms shall have the meanings set forth below:]~~

(1) "Administrator" means a person who holds a baccalaureate degree or its equivalent and has at least one (1) year of experience in an ESRD unit.

(2) "Anti-HBs" means the antibody to the hepatitis B virus. Persons who are anti-HBs positive are immune to infection by the hepatitis B virus. Immunity may be conferred either by vaccination or infection.

(3) ~~["Qualified dietitian" means a person who:~~

~~(a) is registered by the American Dietetic Association and has at least one (1) year of experience in clinical nutrition; or~~

~~(b) Has a baccalaureate or advanced degree with major studies in food and nutrition or dietetics and has at least one (1) year of experience in clinical nutrition.~~

(4) "End stage renal disease (ESRD)" means that stage of renal impairment which is virtually always irreversible and permanent, and requires dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life.

(4) ~~[(5)]~~ "Facility" means renal dialysis facility.

(5) ~~[(6)]~~ "HBsAg" means the hepatitis B antigen. This antigen is present in the blood of persons who are infected by the hepatitis B virus. Patients who test HBsAg positive are potential sources of infection (carriers).

(6) ~~[(7)]~~ "HBV negative" means the absence of the hepatitis B virus, the hepatitis B antigen, and the antibody to the hepatitis B virus. Individuals who are HBV negative are susceptible to infection

by the hepatitis B virus.

(7) ~~[(8)]~~ "Medical director" means a licensed physician who is a board eligible or certified nephrologist, internist, or pediatrician with at least twelve (12) months experience or training in the care of ESRD patients.

(8) "Qualified dietitian" means a person who:

(a) Is registered by the American Dietetic Association and has at least one (1) year of experience in clinical nutrition; or

(b) Has a baccalaureate or advanced degree with major studies in food and nutrition or dietetics and has at least one (1) year of experience in clinical nutrition.

(9) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a registered records administrator or an accredited record technician by the American Medical Record Association.

(10) "Qualified registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041; and

(a) Has at least twelve (12) months experience in clinical nursing and an additional six (6) months of experience in nursing care of ESRD patients; or

(b) Has eighteen (18) months experience in nursing care of ESRD patients. At least three (3) months of the total eighteen (18) months required ESRD experience shall be in training patients in self-care if the nurse is responsible for self-care dialysis training.

(11) "Qualified social worker" means a social worker licensed to practice in Kentucky, who has completed a course of study with specialization in clinical practice at, and holds a masters degree from, a graduate school of social work accredited by the Council on Social Work Education.

(12) "Renal dialysis center" means a hospital unit which is approved to furnish the full spectrum of diagnostic, therapeutic (including inpatient dialysis furnished directly or under arrangement), and rehabilitative services, except renal transportation, required for the care of ESRD dialysis patients.

(13) "Renal transplantation center" means a hospital unit which is approved to furnish directly, transplantation and other medical and surgical specialty services required for the care of the ESRD transplant patients, including inpatient dialysis furnished directly or under arrangement. A renal transplantation center may also be a renal dialysis center.

(14) "Self-care dialysis training" means a program which trains ESRD patients or their helpers, or both, to perform dialysis.

Section 2. Scope of Operation and Services. Renal dialysis facilities are freestanding or hospital based, public or private facilities that are established, equipped and operated to provide outpatient dialysis and related services to end stage renal disease patients.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the facility and for compliance with federal, state, and local laws and regulations pertaining to the operation of the facility.

(b) The licensee shall develop written policies for the administration and operation of the facility. Policies shall include:

1. Personnel practices and procedures;

2. Job descriptions for each level of personnel including authority and responsibilities of each classification;

3. Qualifications for medical staff membership;

4. Medical care practices and procedures;

5. Prevention and control of hepatitis, peritonitis and other infections including appropriate procedures for surveillance and reporting of infections, housekeeping, handling and disposal of waste and contaminants, and sterilization and disinfection, including the



sterilization and maintenance of equipment; and

6. Procedures to be followed in medical and nonmedical emergencies, including fires, natural disasters and equipment failures.

(2) Administrator. The facility shall have an administrator who is responsible for the management of the facility including enforcement of written policies and protection of patient's personal and property rights.

(3) The facility shall have a permanent site of operation and maintain regularly scheduled hours during which dialysis services are available.

(4) Affiliation agreements. A renal dialysis facility shall have affiliation agreements or arrangements in writing with renal dialysis centers and renal transplantation centers which provide the following:

(a) In the case of renal transplantation centers agreements shall provide for medical and surgical specialty services required for the care of ESRD patients, including transplantation and inpatient dialysis furnished directly or under arrangement; and

(b) In the case of renal dialysis centers affiliation agreements shall provide the basis for effective working relationships under which inpatient hospital care or other hospital services are available promptly to the dialysis facility's patients when needed. The agreements between renal dialysis facilities and renal dialysis centers shall provide in writing that:

1. Timely transfer or referral of patients between the renal dialysis facility and the renal dialysis center shall be effected whenever it is determined to be medically appropriate by the physicians at the facility and the center.

2. Patient care plans and medical and other information necessary or useful in the care and treatment of patients transferred or referred between facilities shall be interchanged within one (1) working day of the transfer or referral.

(5) Personnel. An adequate number of personnel shall be present to meet the needs of patients including medical and nonmedical emergencies.

(a) Medical staff. The facility shall have an organized medical staff which shall be responsible for the quality of all medical care provided to patients in the facility and for the ethical and professional practices of its staff.

(b) There shall be a medical director responsible for supervising the staff of the facility. The medical director shall be a full or part-time staff member and in his absence a similarly qualified medical staff member shall be either in the unit or immediately available in the community whenever patients are being dialyzed.

(c) The facility shall employ at least one (1) full-time qualified registered nurse who is responsible for nursing services. Whenever patients are undergoing dialysis, a nurse experienced in rendering ESRD care shall be on duty to oversee patient care.

(d) The facility shall employ or have contracts for services with the following ancillary personnel:

1. A qualified dietician;
2. A qualified medical records practitioner;
3. A qualified social worker.

(6) Incident and accident reports. The facility shall report all incidents or accidents that present a direct or immediate relationship to the health, safety or security of any patient or staff member. Examples of the type of incidents to be reported include but are not limited to the following: any incident requiring emergency treatment or hospitalization, cleaning agents left in a machine and used on a patient, contamination of the water supply, development of infection or communicable disease, etc. The reports shall be submitted to the Cabinet for Health Services [~~Human Resources~~], Office of Inspector General, Division of Licensing and Regulation, 4th Floor, East, 275 East Main Street, Frankfort, Kentucky 40621 within three (3) days of the occurrence on the forms provided by the cabinet. A copy of the report shall be retained at the facility and shall be made available for inspection by the cabinet.

Section 4. Services. (1) Each patient is admitted on the medical authority of, and is under the supervision of, the medical director. When absent from the facility the medical director shall designate a qualified physician to be responsible for admission and supervision of patients.

(2) Laboratory services. All renal dialysis facilities shall have access to laboratory facilities and services (other than the specialty of tissue pathology and histocompatibility testing) to meet the needs of the ESRD patients. All services shall be performed either by a laboratory in a licensed hospital or by a laboratory licensed by the Department for Health Services [~~Human Resources~~] pursuant to KRS Chapter 333 and administrative regulations promulgated thereunder.

(3) Medical records.

(a) A current and complete medical record shall be maintained for each patient.

(b) Organization. The supervisor of medical records shall be responsible for the proper documentation, completion and preservation of all the facility's medical records.

(c) Indexing. Medical records shall be properly indexed and systematically filed.

(d) Ownership. Records of patients shall not be removed from the facility's custody except in accordance with a court order or subpoena.

(e) Confidentiality. Records of patients shall be available for inspection only to members of the professional staff, the patient, or an authorized individual acting in behalf of the patient. This shall not preclude the record being used for research or statistical investigation, providing that the patient's anonymity is protected.

(f) Content. Complete medical records shall be prepared for all patients admitted to the facility. A minimum medical record shall include ~~at least~~ the following information:

1. Name and address of the patient, and guardian or committee, if any;
2. Identification data (name, address, age, sex, marital status);
3. Date of admission;
4. Date of transfer to renal transplantation center if applicable;
5. Referring and attending physicians' name;
6. History and physical examination record prior to the initial treatment;
7. Treatment plans;
8. Records of special examinations, consultations, and clinical, laboratory, and x-ray services;
9. Doctor's orders, dated and signed;
10. Nurses' notes;
11. Dialysis chart including pulse, respiration and blood pressure;
12. Social evaluation and plan developed by the social worker;

and

13. Orders for medication and treatment written in ink and signed by the prescribing physician.

(g) Retention of records. All medical records shall be retained for a minimum of five (5) years from the date the patient was last seen in the facility, or in the case of a minor, three (3) years after the patient reaches the legal age of majority, whichever is longest.

(4) Pharmaceutical services.

(a) The facility shall have provisions for promptly obtaining prescribed drugs and biologicals from licensed pharmacies.

(b) The facility shall provide appropriate methods and procedures for storage, control and administering of drugs and biologicals.

(c) All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical and Nurse Practice Acts. The medical record shall include a record of each dose administered including date and time of administration, type of medication, dosage, method of administration, name of physician who prescribed the medication, and name of the person who administered the medication.

(5) Social services. The qualified social worker shall be responsible for each patient's social evaluation and treatment, participating in



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team review of patient progress and recommending changes in treatment based on the patient's current social needs, providing casework and group work services to patients and their families, financial advice, referrals for vocational rehabilitation, and for identifying community social agencies and other resources and assisting patients and their families to utilize them.

(6) Dietetic services. The nutritional needs of each patient shall be evaluated by the attending physician and the qualified dietician. The dietician, in consultation with the attending physician, shall be responsible for assessing the nutritional and dietetic needs of each patient, recommending therapeutic diets, counseling patients and their families on prescribed diets, and monitoring adherence and response to diets.

(7) Self-care dialysis support services. Renal dialysis facilities which offer self-care dialysis training shall make the following services available either directly, under agreement, or by arrangement with another ESRD facility upon completion of the patients' training:

- (a) Monitoring the patients' home adaptation, including provisions for visits to the home or the facility;
- (b) Consultation for the patient with a qualified social worker and a qualified dietician;
- (c) A recordkeeping system which assures continuity of care;
- (d) Installation and maintenance of dialysis equipment;
- (e) Testing and appropriate treatment of the dialysis water;
- (f) Ordering of supplies as needed; and
- (g) Infection control (i.e., control of hepatitis and peritonitis).

## Section 5. Physical Environment. (1) Building and equipment.

(a) All electrical and other equipment used in the facility shall be maintained free of defects which could be a potential hazard to patients or personnel. There shall be a program of preventive maintenance of equipment used in dialysis and related procedures in the facility.

(b) Water used for dialysis purposes shall be analyzed periodically and treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques. Records of test results and equipment maintenance shall be maintained at the facility.

## (2) Hepatitis testing.

(a) Candidates for dialysis shall be screened for the hepatitis B surface antigen (HBsAg) and antibodies to the hepatitis B virus (Anti-HBs) within one (1) week before or at the time they enter the unit in order to determine their serologic status for surveillance purposes. All potential employees shall be screened within one (1) week prior to or within the first week of employment. Thereafter, routine serologic testing to monitor for hepatitis B infection shall be conducted in accordance with the following schedule:

## TEST AND FREQUENCY

Serologic Status	HBsAg	
	Patients	Staff
<u>Susceptible to infection</u> (HBsAG negative and anti-HBs negative by EIA or less than 10 SRUs by RIA*, i.e. HBV negative)	<u>Monthly</u>	<u>Semiannually</u>
<u>Infected (HBsAG positive)</u>	<u>Annually</u>	<u>Annually</u>
<u>Immune (anti-HBs positive by EIA or at least 10 SRUs by RIA* on one test</u>	<u>None</u>	<u>None</u>

if vaccinated\*\* or  
on two consecutive  
tests if not vaccinated)

## Anti-HBs

<u>Susceptible to infection</u> (HBsAG negative and anti-HBs negative by EIA or less than 10 SRUs by RIA*, i.e. HBV negative)	<u>Semiannually</u>	<u>Semiannually</u>
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<u>Infected (HBsAG positive)</u>	<u>None</u>	<u>None</u>
<u>Immune (anti-HBs positive by EIA or at least 10 SRUs by RIA*, on one test if vaccinated** or on two consecutive tests if not vaccinated)</u>	<u>Annually</u>	<u>None</u>

\*EIA = enzyme immunoassay; SRUs = sample ratio units; RIA = radioimmunoassay

\*\*Vaccinated = three (3) doses of HB vaccine received.

## [HBsAg

Serologic Status \_\_\_\_\_ Patients \_\_\_\_\_ Staff

Susceptible to infection \_\_\_\_\_ Quarterly \_\_\_\_\_ Quarterly  
(HBsAg and anti HBs negative, i.e., HBV negative)

Infected \_\_\_\_\_ Test both patients and staff  
(HBsAg positive) \_\_\_\_\_ monthly; then quarterly after two (2) consecutive positive monthly tests; if person remains positive for six (6) months then test annually

Immune (Anti HBs positive \_\_\_\_\_ Not required for either patients or on two (2) consecutive tests) or staff

## Anti HBs

Serologic Status \_\_\_\_\_ Patients \_\_\_\_\_ Staff

Susceptible to infection \_\_\_\_\_ Monthly \_\_\_\_\_ Quarterly  
(HBsAg and anti HBs negative, i.e., HBV negative)

Infected (HBsAG positive) \_\_\_\_\_ After two consecutive negative  
(HBsAg positive) \_\_\_\_\_ monthly tests for HBsAg, patients and staff shall have two (2) tests for Anti-HBs

Immune \_\_\_\_\_ Semiannually, Annually, if  
(Anti HBs positive \_\_\_\_\_ if vaccinated\* vaccinated\*  
on two (2) consecutive tests) Annually, for unvaccinated patients and staff\*\*

\*Vaccinated = three (3) doses of HB vaccine received and anti HBs positive at a level of ten (10) sample ratio units by radioimmunoassay or positive by enzyme immunoassay.

\*\*Unvaccinated = fewer than three (3) doses of HB vaccine.]

(b) All candidates for dialysis shall be screened for alanine aminotransferase (ALT, previously SGPT) or aspartate aminotransferase (AST, previously SGOT) to determine potential non-A, non-B hepatitis infection within one (1) week before or at the time they enter the unit and monthly thereafter.

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### (3) Infection control.

(a) If dialysis of confirmed carriers of hepatitis is performed in the facility a unit which is adequately isolated from other units in the facility and only used for hepatitis carriers shall be used. Confirmed carriers of hepatitis may also be dialyzed in an adjacent or separate facility utilized only for hepatitis carriers, or in the patients' home.

(b) All facilities utilizing a central-batch delivery system shall provide either on the premises or through affiliation agreements sufficient individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(4) Contamination prevention. The facility shall employ appropriate techniques to prevent cross contamination between the unit and adjacent hospital or public areas including, but not limited to, food service areas, laundry, disposal of solid waste and blood-contaminated equipment, and disposal of contaminants into sewage systems. Waste storage and disposal shall be carried out in accordance with applicable local laws and acceptable public health standards.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: June 7, 1996

FILED WITH LRC: June 11, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 22, 1996, at 9 a.m., in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by July 17, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau - 564-2800

(1) Type and number of entities affected: Renal dialysis facilities provide outpatient dialysis and related services to end stage renal disease patients. There are presently thirty-six (36) licensed renal dialysis facilities.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published, and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published, and no written comments were received.

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

No effect.

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published, and no written comments were received.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(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. No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

### CABINET FOR HEALTH SERVICES Department for Medicaid Services (Amendment)

#### 907 KAR 1:450. Nurse aide training criteria and registry.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396r, 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 nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. (1) "Competency evaluation program" means the competency evaluation program required by 42 USC 1396r for nurse aides employed by Medicaid participating nursing facilities prior to October 1, 1989, when the program is approved by the state in which the nursing facility is located.

(2) "Department" means the Department for Medicaid Services and its designated agents and representatives.

(3) "Licensed health professional" means a:

(a) Physician;

(b) Physician assistant;

(c) Nurse practitioner;

- (d) Physical, speech, or occupational therapist;
- (e) Registered ~~[professional]~~ nurse;
- (f) Licensed practical nurse;
- (g) Registered dietitian; or
- (h) Licensed or certified social worker.

(4) ~~[(3)]~~ "Nurse aide" means any individual, including nursing students, medication aides and those employed through nursing pools, providing nursing or nursing related services to residents in a nursing facility, excluding:

- (a) ~~[but does not include]~~ An individual who is a licensed health professional; ~~[or]~~
- (b) Volunteers who provide the nursing or nursing-related services without monetary compensation; and
- (c) Persons who are hired by the resident or family to sit with the resident.

(5) ~~[(4)]~~ "Nurse aide training and competency evaluation programs (NATCEP)" means the program(s) of nurse aide training and competency evaluation for nurse aides. ~~[required by]~~ 42 USC 1396r requires that these programs ~~[to]~~ be in place for Medicaid participating nursing facilities, when the program is approved by the state in which the nursing facility is located.

(6) ~~[(5)]~~ "State approved program" means the nurse aide training and competency evaluation program requirements shown in the manual entitled "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program ~~[Manual]~~" ~~[revised November 1, 1992 which is hereby incorporated by reference]~~. Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the Commonwealth ~~[state]~~ of Kentucky in accordance with the terms, conditions, and criteria specified for a state approved program as designated in the manual specified in this subsection for the state approved program.

(7) ~~[(6)]~~ "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.

Section 2. General Requirements. (1) A participating nursing facility shall not use an individual as a nurse aide on a permanent basis ~~[on or after October 1, 1989]~~ for more than four (4) months unless the nurse aide has:

- (a) Completed the nurse aide training and competency evaluation program; ~~[or]~~
- (b) Completed the competency program if the individual was used by the facility prior to October 1, 1989 as a nurse aide; or
- (c) Been ~~[is]~~ deemed to meet the competency evaluation prior to January 1, 1989; ~~[as specified in the manual for the approved state program].~~

(2) A facility shall not use an individual as a nurse aide on a temporary, per diem, leased or any other nonfull-time basis unless the person has completed the:

- (a) Nurse aide training and competency evaluation program; or
- (b) Competency evaluation program.

Section 3. Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse aide competency evaluation program, each nursing facility shall be ~~[is]~~ required to provide and document, ~~[(as specified in the Medicaid Services [state approved program] Manual for Nurse Aide Training and Competency Evaluation Program, )]~~ twelve (12) hours of ongoing staff development annually for each nurse aide.

Section 4. Minimum Curriculum and Content Requirements. (1) The nurse aide training program shall, at a minimum, consist of no less than seventy-five (75) hours, which includes a minimum of sixteen (16) hours of supervised practical training.

(2) Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content shall be ~~[are]~~ shown in the

Medicaid Services Manual for the Nurse Aide Training and Competency Evaluation Program ~~[state approved program]~~.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. (1) The nurse aide training program shall ~~[may]~~ be conducted by:

- (a) ~~The [means of a] Department for [of Adult and] Technical Education program;~~
- (b) Nursing facility program;
- (c) Community college; ~~[or]~~
- (d) University program; ~~[or]~~
- (e) A licensed proprietary education program;
- (f) A licensed health care facility offering a nurse aide training program to its own employees; or
- (g) A nonprofit, church related or tax supported program that is not identified in the above categories.

(2) Each entity specified in subsection (1) of this section that wishes ~~[agency wishing]~~ to provide nurse aide training shall request and receive approval of the agency's training program by the department ~~[for Medicaid Services]~~ prior to operating the nurse aide training program in accordance with the criteria shown in the Medicaid Services Manual for Nurse Aide and Competency Evaluation Program ~~[the state approved program]~~.

(3) After initial approval of the training program, each program shall be monitored as follows:

(a) ~~[(1)]~~ Approved nurse aide training programs conducted by nursing facilities shall be monitored on site by the department ~~[Division of Licensing and Regulation, Office of the Inspector General]~~ during the regularly scheduled annual survey for compliance with conditions of participation. A self-evaluation shall be submitted to the department every two (2) years.

(b) ~~[(2)]~~ Approved nurse aide training programs conducted by the Department for ~~[of Adult and] Technical Education~~ shall be monitored on site by the Cabinet for Workforce Development monitoring system at least every two (2) years. A self-evaluation shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed. The results of these reviews shall ~~[will]~~ be compiled by the Department for ~~[of Adult and] Technical Education~~ and forwarded to the Department for Medicaid Services on an annual ~~[quarterly]~~ basis.

(c) ~~[(3)]~~ The department ~~[for Medicaid Services]~~ shall conduct an on-site review of all other approved nurse aide training programs at least every two (2) years, and the training program provider shall submit to the department ~~[for Medicaid Services]~~ a self-evaluation in each year that an on-site review is not performed.

Section 6. Termination of Nurse Aide Training Programs. (1) The department ~~[for Medicaid Services]~~ shall terminate ~~[from]~~ participation in the training program for those previously approved nurse aide training programs not meeting minimum requirements and which do not submit an acceptable plan of correction.

(2) ~~[In addition,]~~ Nurse aide training programs offered by or in a nursing facility shall not be approved if the facility falls within any of the prescribed clauses described in 42 USC 1396(r)(f)(2) (B)(iii)(I)(a), (b), and (c).

Section 7. Final Examination and ~~[a]~~ Competency Evaluation. The Department for ~~[of Adult and] Technical Education~~ or other qualified entities as approved by the department ~~[cabinet]~~ shall be, ~~[(by agreement with the department, [for Medicaid Services])]~~ responsible for the final written or oral examination and the skills demonstration portion ~~[aspect]~~ of the competency evaluation.

Section 8. State Nurse Aide Registry. (1) The department, through an interagency agreement with the Division of Licensing and Regulation, Office of the Inspector General, shall ~~[(by agreement with the Department for Medicaid Services)]~~ be responsible for establish-

ing and maintaining a registry of all nurse aides who have:

(a) Satisfactorily completed a nurse aide training and competency evaluation program; ~~or~~

(b) Satisfactorily completed a competency evaluation program; or

(c) Been granted an exception.

~~(2) [In addition to the names of individuals having satisfactorily completed the nurse aide training and competency evaluation program, or the competency evaluation program,] The registry shall include specific documented findings by the Commonwealth of Kentucky [state] of individual resident abuse or neglect, or misappropriation of resident property by nurse aides listed in the registry, [4]determined in accordance with [statutory requirements shown in] Section 1919(g) of the Social Security Act[)], and a brief statement (if any) by the nurse aide disputing the finding(s). A finding may be included on the registry only after the nurse aide has been provided at least ten (10) days advance notice of the proposed finding and an opportunity for a hearing (if desired) for the nurse aide to rebut allegations.~~

(3) The Division of Licensing and Regulation shall only disclose or divulge information as a result ~~[in the case]~~ of an inquiry to the registry if the ~~[concerning an individual listed in the registry, any]~~ information disclosed concerning the (a) finding also contains the following:

(a) The [shall also include disclosure of any nurse aide] statement of rebuttal of the finding, if it was filed by the nurse aide; [in the registry relating to the finding] or

(b) A clear and accurate summary of the statement.

(4) The department through its agent may periodically notify other states or interested parties of the names of individuals who have completed the requirements to be placed on a nurse aide registry.

Section 9. Reciprocity. A nurse aide who ~~[has completed a nurse aide training and competency evaluation program in another state and]~~ is on another ~~[that]~~ state's nurse aide registry shall be granted reciprocity in Kentucky if the following conditions are met:

(1) The other state's registry shall provide appropriate written documentation showing the individual is on the other state's registry;

(2) An employment record shall be provided to the Division of Licensing and Regulation sufficient to verify that ~~[the aide has been employed in a nursing home since the training and]~~ twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and

(3) There shall be no documented findings on the registry of individual resident abuse or neglect or misappropriation of resident funds for the individual on the registry.

(4) Reciprocity shall not be given to any individual who has a validated complaint against him which is documented on a registry.

Section 10. Material Incorporated by Reference. (1) The "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program", 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. [The manual incorporated by reference in this administrative regulation may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street,

~~Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.]~~

Section 11. Implementation Date. The amendments to this administrative regulation shall be applicable with regard to services provided on and after July 1, 1996.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: June 12, 1996

FILED WITH LRC: June 13, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 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 July 17, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore (564-5020)

(1) Type and number of entities affected: Nursing facilities and nurse aides employed by Medicaid participating nursing facilities.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: No public comments were received during the public hearing process; therefore, we anticipate no economic impact from this administrative regulation.

(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: Medicaid recipients will continue to have adequate access to nursing facility 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: Medicaid recipients may not have adequate access to nursing facility services if nursing facilities were found out of compliance with 42 USC 1396r and could not participate in the Medicaid Program.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(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.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 14, 1996

ATTORNEY GENERAL  
Department of Law  
(New Administrative Regulation)

40 KAR 1:040. Parties who may request an opinion.

RELATES TO: KRS 15.025

STATUTORY AUTHORITY: KRS 15.180

NECESSITY AND FUNCTION: KRS 15.025 establishes the conditions under which the Attorney General may furnish an opinion. This administrative regulation designates the parties who may request an opinion. This administrative regulation also repeals two (2) earlier administrative regulations that are no longer applicable.

Section 1. State Agencies and Officials. An opinion may be requested by constitutional officers, the General Assembly and its individual members, agency heads, cabinet secretaries, agency general counsel, boards, and commissions. Requests from boards and commissions must be submitted on behalf of a majority of board or commission members and not a faction thereof.

Section 2. Individuals Seeking Elective Office. Individuals seeking elective office may request an opinion regarding their eligibility to hold the office they seek.

Section 3. Units of Local Government. An opinion may be requested by cities, counties, and special districts not controlled by a city or county. Requests must be submitted by the government's general counsel or chief executive officer on behalf of the board, or a majority of members of the governing board. An opinion may not be requested by employees thereof.

Section 4. Elected Nonlegislative County Officers. An opinion request from an elected nonlegislative county officer, such as a sheriff, clerk, or coroner, shall be referred to the county attorney. If the county attorney after reasonable research deems an Opinion of the Attorney General necessary, the county attorney may submit the request on behalf of the elected nonlegislative county officer.

Section 5. Judges. An opinion request from a judge may be submitted only on questions that do not arise in the course of litigation. All other questions shall be referred to the State Law Librarian.

Section 6. Private Individuals and Organizations. An opinion may be requested by private individuals and organizations on questions that are, in the opinion of the Attorney General, of such significant and immediate public interest that an Opinion of the Attorney General is necessary in order to inform the general public of the applicable law.

Section 7. Organizations which Represent Elected Officials. An opinion may be requested by the chief administrative officer, or his or her designee of any such organization.

Section 8. Repeal. 40 KAR 1:010 and 40 KAR 1:020 are repealed.

A. B. CHANDLER III, Attorney General

T. SCOTT WHITE, Director

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: June 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on Monday, July 29, 1996, at 9 a.m. in room 141 of the Capitol, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, July 24, 1996 (five days before the hearing), of their intention 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. An interpreter will be provided if a timely request is made as provided in the Americans With Disabilities Act. Any person who does not wish to attend the hearing may submit written comments on the proposed administrative regulation. Written notification of intent to attend the hearing, to request that a transcript be made, to request an interpreter, or to provide written comments should be addressed to: Diane Schuler Fleming, Assistant Attorney General, The Capitol, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: Diane Schuler Fleming

(1) Type and number of entities affected: All parties requesting an opinion from the Attorney General.

(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 on 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: No monetary savings can be quantified. The primary benefit of this regulation is the provision of a concise statement of the procedures that are applicable to the opinion-writing process.

2. Continuing costs or savings: Same 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 is no anticipated effect on state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no practical alternatives. This regulation merely states current and longstanding administrative practice. Under KRS 13A.100(1) this must be done by administrative regulation.

(8) Assessment of expected benefits:

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

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

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(c) If detrimental effect would result, explain detrimental effect:  
Not applicable.

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

(10) Any additional information or comments: This regulation reflects current and longstanding administrative practice.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applicable to this administrative regulation. All persons requesting Attorney General opinions are treated uniformly under the law.

### ATTORNEY GENERAL Department of Law (New Administrative Regulation)

#### 40 KAR 1:050. Subjects on which opinions may be issued.

RELATES TO: KRS 15.025

STATUTORY AUTHORITY: KRS 15.180

NECESSITY AND FUNCTION: KRS 15.025 establishes the conditions under which the Attorney General may furnish an opinion. This administrative regulation establishes the subjects on which an opinion may be issued.

Section 1. General Subject Matter of Opinions. The Attorney General shall provide an opinion on legal questions of a public nature that relate to a public official's duties. An opinion of the Attorney General is not a substitute for routine advice provided by attorneys who represent public officers and agencies and is not provided on questions of fact, or executive, legislative, or administrative policy. An opinion shall be provided in the form of a formal, published opinion or in a miscellaneous advice letter to the requester.

Section 2. Criminal Law. The Attorney General shall answer legal questions raised, or likely to be raised, by Commonwealth and county attorneys in the course of criminal proceedings. Because such questions are likely to be at issue in current or contemplated litigation, the Attorney General shall decline to answer such questions in a formal, published opinion, and instead will answer the questions in a miscellaneous advice letter to the prosecutor. The Attorney General shall not answer legal questions presented by an individual regarding criminal charges against that individual.

Section 3. Eligibility for Elective Office. The Attorney General shall provide an opinion to candidates or those considering candidacy regarding their eligibility to hold elective office. Said opinion shall be provided only to the candidate or the candidate's attorney.

Section 4. Conflicts of Interest. The Attorney General shall provide an opinion to public officials regarding potential conflicts of interest and incompatible offices or refer such inquiries to the appropriate investigative agency for determination. "Public official" means a person who holds a position of responsibility in a governmental unit.

Section 5. Cities, Counties, and Local Governmental Bodies. The Attorney General shall provide an opinion to proper representatives of cities, counties, and local governmental bodies on matters related to state law. The Attorney General shall not provide an opinion interpreting local ordinances, codes, or regulations.

Section 6. Constitutional Questions. The Attorney General shall provide an opinion on the constitutionality of state statutes. Such an opinion shall be provided only to public officials charged with the duty of enforcing or administering the statutes, legislators, and constitutional officers. The Attorney General shall find a statute unconstitutional

only if such a conclusion is compelling in light of the applicable law and the relevant facts described to the Attorney General.

Section 7. Proposed Legislation. The Attorney General shall provide an opinion to legislators or the Director of the Legislative Research Commission regarding proposed and pending legislation. Because the legislation considered by the Attorney General may differ from the law as ultimately enacted, the opinion shall normally not be issued as a formal, published opinion.

Section 8. Administrative Regulations. The Attorney General shall provide an opinion to public agencies regarding administrative regulations adopted or proposed by the agency. Inquiries regarding administrative regulations adopted by an agency other than the agency submitting the inquiry will be referred to the agency that adopted the administrative regulation.

Section 9. Interlocal Agreements. The Attorney General shall approve or disapprove interlocal agreements pursuant to the provisions of the Interlocal Cooperation Act located in KRS 65.210 et. seq. Determinations made under that Act are not opinions of the Attorney General.

A. B. CHANDLER III, Attorney General  
T. SCOTT WHITE, Director

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: June 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 29, 1996, at 9 a.m. in room 141 of the Capitol, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, July 24, 1996 (five days before the hearing), of their intention 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. An interpreter will be provided if a timely request is made as provided in the Americans With Disabilities Act. Any person who does not wish to attend the hearing may submit written comments on the proposed administrative regulation. Written notification of intent to attend the hearing, to request that a transcript be made, to request an interpreter, or to provide written comments should be addressed to: Diane Schuler Fleming, Assistant Attorney General, The Capitol, P. O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Diane Schuler Fleming

(1) Type and number of entities affected: All parties requesting an opinion from the Attorney General.

(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 on 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: No monetary savings can be quantified. The primary



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benefit of this regulation is the provision of a concise statement of the procedures that are applicable to the opinion-writing process.

2. Continuing costs or savings: Same 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 is no anticipated effect on state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no practical alternatives. This regulation merely states current and longstanding administrative practice. Under KRS 13A.100(1) this must be done by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. 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: Not applicable.

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

(10) Any additional information or comments: This regulation reflects current and longstanding administrative practice.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applicable to this administrative regulation. All persons requesting Attorney General opinions are treated uniformly under the law.

### ATTORNEY GENERAL Department of Law (New Administrative Regulation)

**40 KAR 1:060. Subjects on which an opinion shall not be issued.**

RELATES TO: KRS 15.025

STATUTORY AUTHORITY: KRS 15.180

NECESSITY AND FUNCTION: KRS 15.025 establishes the conditions under which the Attorney General shall furnish an opinion. This administrative regulation establishes the subjects on which the Attorney General shall not issue an opinion.

Section 1. Litigation. The Attorney General shall not provide an opinion on a matter that is the subject of current or contemplated litigation, or an agency administrative action.

Section 2. Interagency Disputes. Disputes between state agencies shall be referred to the Governor pursuant to KRS 12.100. The Attorney General shall provide an opinion regarding disputes between other agencies or units of government not within the jurisdiction of KRS 12.100, only if all parties to the dispute join in the opinion request.

Section 3. Questions Not Related to Official Duties. The Attorney General shall not provide an opinion to a public official on matters that are unrelated to the official's public duties.

Section 4. Moot and Hypothetical Questions. The Attorney General shall not provide an opinion on a question that is unlikely to

arise or has not arisen in actual fact. The Attorney General shall decline to provide an opinion on a question that is moot or likely to become moot.

Section 5. Predicting the Outcome of Litigation. The Attorney General shall not provide a prediction regarding the likely outcome of litigation.

Section 6. Questions Regarding Employment. Unless the issue is one of general application to public employees, the Attorney General shall not provide an opinion to a public employee on a question:

(1) Relating to his right as a public employee; or

(2) Arising from a dispute between the employee and his employer.

A. B. CHANDLER III, Attorney General

T. SCOTT WHITE, Director

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: June 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 29, 1996, at 9 a.m. in room 141 of the Capitol, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, July 24, 1996 (five days before the hearing), of their intention 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. An interpreter will be provided if a timely request is made as provided in the Americans With Disabilities Act. Any person who does not wish to attend the hearing may submit written comments on the proposed administrative regulation. Written notification of intent to attend the hearing, to request that a transcript be made, to request an interpreter, or to provide written comments should be addressed to: Diane Schuler Fleming, Assistant Attorney General, The Capitol, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Diane Schuler Fleming

(1) Type and number of entities affected: All parties requesting an opinion from the Attorney General.

(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 on 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: No monetary savings can be quantified. The primary benefit of this regulation is the provision of a concise statement of the procedures that are applicable to the opinion-writing process.

2. Continuing costs or savings: Same 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 is no anticipated effect on state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no practical alternatives. This regulation merely states current and longstanding administrative practice. Under KRS 13A.100(1) this must be done by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. 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: Not applicable.

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

(10) Any additional information or comments: This regulation reflects current and longstanding administrative practice.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applicable to this administrative regulation. All persons requesting Attorney General opinions are treated uniformly under the law.

**ATTORNEY GENERAL**

**Department of Law**

**(New Administrative Regulation)**

**40 KAR 1:070. Procedures for requesting and issuing an opinion.**

RELATES TO: KRS 15.025

STATUTORY AUTHORITY: KRS 15.180

NECESSITY AND FUNCTION: KRS 15.025 establishes the conditions under which the Attorney General may furnish an opinion. This administrative regulation establishes the procedures that must be followed when requesting an opinion and the procedures that the Attorney General shall follow in issuing an opinion.

Section 1. Information to be Submitted with Opinion Request. Requests not submitted on Form OAG-1 must contain the following information:

(1) Identity of the person or agency submitting the request. Requests from private individuals must include a statement justifying issuance of the opinion.

(2) Name, address, and telephone number of public agency or official's counsel.

(3) Name, address, and telephone number of person to contact with inquires about the request.

(4) A precise statement of the question presented.

(5) A statement that the question is not the subject of current or anticipated litigation.

(6) A complete description of all facts pertinent to a consideration of the question.

(7) The legal research and conclusions of attorneys who have examined the question.

(8) An explanation of the reason an opinion of the Attorney General is needed by the requesting party. Lack of legal research facilities or an agency's failure to retain counsel are not sufficient explanation.

(9) The identity of all parties or entities whom the requester knows or reasonably should know has an interest in the opinion.

(10) Attestation, signed by the public official, public agency's presiding officer, or a majority of members of the agency's governing board, that the information included in the request is correct.

Section 2. Research and Review. An opinion is assigned to an Assistant Attorney General. Each opinion undergoes a thorough research and review process. Because an opinion when issued may be the result of numerous drafts and discussions, the Attorney General shall not provide information on the status of an opinion before it is issued.

Section 3. Requests to Expedite an Opinion. The Attorney General shall consider requests to expedite an opinion, but shall not commit to provide an opinion within a specific period of time. Requests to expedite an opinion must include an explanation of the reason that the opinion could not have been requested in ample time to properly research and review the question.

Section 4. Requests for Legal Conclusion Before an Opinion is Requested. The Attorney General shall not state informally how a particular question would be answered if the question were submitted as an opinion request.

Section 5. Formal Opinions. (1) A formal opinion reflects the official position of the Office of the Attorney General. Formal opinions are numbered in the form YY-XX, where YY is the year and XX is a sequential number starting with one (1). Formal opinions are printed with the expression "Opinion of the Attorney General" on page one (1).

(2) The Attorney General issues formal opinions when the question presented is of first impression or has not recently been addressed, and a published opinion would provide useful guidance to public officials or the public generally.

(3) All opinions of the Attorney General are provided to statute publishers, state university law libraries, and the State Law Library. All opinions are published by a law book publisher under contract with the Office of the Attorney General.

Section 6. Miscellaneous Advice Letters. (1) The Attorney General may answer a question in the form of a miscellaneous advice letter rather than a formal opinion. Miscellaneous advice letters are designed to address in an expeditious fashion specific legal matters not generally of Commonwealth-wide interest. Miscellaneous advice letters are prepared in the form of a letter from an Assistant Attorney General to the party presenting the question.

(2) Requests to convert a miscellaneous advice letter to a formal opinion will not be considered unless the requester explains why a published opinion would provide useful guidance to public officials or the public generally.

(3) Miscellaneous advice letters are not opinions of the Attorney General. Miscellaneous advice letters are retained in the Office of the Attorney General for three (3) years. They are not indexed or used by the Attorney General as legal research authority.

Section 7. Booklets and Publications. The Attorney General may respond to an opinion request by providing booklets or other publications that provide the information sought.

Section 8. Requests for Copies of Opinions. The Attorney General shall provide copies of any opinions issued since 1960. Requests must identify particular opinions; requests for all opinions on a designated subject are deemed requests to conduct legal research and will be declined.

Section 9. Form. A request for an opinion of the Attorney General complies with this administrative regulation if it is made on Form

## ADMINISTRATIVE REGISTER - 210

OAG-1. Forms may be obtained by writing to Office of the Attorney General, Opinions Branch, P.O. Box 2000, Frankfort, Kentucky 40601.

A. B. CHANDLER III, Attorney General  
T. SCOTT WHITE, Director

APPROVED BY AGENCY: June 13, 1996

FILED WITH LRC: June 14, 1996 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on Monday, July 29, 1996, at 9 a.m. in room 141 of the Capitol, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, July 24, 1996 (five days before the hearing), of their intention 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. An interpreter will be provided if a timely request is made as provided in the Americans With Disabilities Act. Any person who does not wish to attend the hearing may submit written comments on the proposed administrative regulation. Written notification of intent to attend the hearing, to request that a transcript be made, to request an interpreter, or to provide written comments should be addressed to: Diane Schuler Fleming, Assistant Attorney General, The Capitol, P. O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Diane Schuler Fleming

(1) Type and number of entities affected: All parties requesting an opinion from the Attorney General.

(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 on 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: No monetary savings can be quantified. The primary benefit of this regulation is the provision of a concise statement of the procedures that are applicable to the opinion-writing process.

2. Continuing costs or savings: Same 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 is no anticipated effect on state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no practical alternatives. This regulation merely states current and longstanding administrative practice. Under KRS 13A.100(1) this must be done by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. 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: Not applicable.

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

(10) Any additional information or comments: This regulation reflects current and longstanding administrative practice.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applicable to this administrative regulation. All persons requesting Attorney General opinions are treated uniformly under the law.

### FINANCE AND ADMINISTRATION CABINET

Office of the Secretary

(New Administrative Regulation)

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

RELATES TO: KRS 18A.430(1)

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

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

Section 1. Comprehensive Employment Manual. The Cabinet for Health Services, Department for Health Services, Division of Disability Determinations has been approved to participate in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450. Implementation of the Pilot Personnel Program for the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations shall comply with the "Employee Handbook For Division of Disability Determinations."

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

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

JOHN P. MCCARTY, Secretary

APPROVED BY AGENCY: June 13, 1996

FILED WITH LRC: June 13, 1996 at 4 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 23, 1996, at 9 a.m., EDT at Room 386, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by

July 18, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

#### REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt, Assistant Director

(1) Type and number of entities affected: This regulation will affect all employees in the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations who are participating in the Pilot Personnel Program.

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

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

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

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

1. First year following implementation: Pursuant to KRS 18A.430(1)(a), pilot programs are already required to develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit. This regulation merely promulgates the employment manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations and will result in no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

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

3. Additional factors increasing or decreasing costs: None

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

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

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

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

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

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

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

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

#### GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (New Administrative Regulation)

#### 201 KAR 8:430. Unprofessional conduct.

RELATES TO: KRS 313.130(3)

STATUTORY AUTHORITY: KRS 313.140

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.

This is to certify the President of the Kentucky Board of Dentistry has reviewed this administrative regulation, prior to its filing by the Board of Dentistry with the Legislative Research Commission, as required by KRS 325.240.

STEPHEN T. SCHULER, D.M.D., President

APPROVED BY AGENCY: June 12, 1996

FILED WITH LRC: June 14, 1996 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 26, 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 July 21, 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 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 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?

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Registration  
for Professional Geologists  
(New Administrative Regulation)**

**201 KAR 31:060. Code of professional conduct.**

RELATES TO: KRS 322A.010

STATUTORY AUTHORITY: KRS 322A.030, 322A.100

NECESSITY AND FUNCTION: KRS 322A.030 requires the board

to adopt by administrative regulation a code of professional conduct. This administrative regulation sets forth a code of professional conduct, which includes a list of actions considered to be grounds for disciplinary action against a registrant.

Section 1. Public Trust and Welfare. (1) The public practice of geology requires professional ethical conduct and professional responsibility, as well as scientific knowledge on the part of the practitioner.

(2) Each registered geologist shall protect, to the fullest extent possible, the public health and welfare, and public and private property, in carrying out the public practice of geology.

Section 2. Integrity in Professional Practice. (1) Each registered geologist shall be guided by the highest standards of ethics, honesty, integrity, personal honor, fairness, and professional conduct when engaged in the public practice of geology.

(2) A registered geologist shall provide professional service only when qualified by training or experience in the technical areas involved. A registered geologist may practice under the supervision of a qualified registered geologist for the purpose of obtaining training or experience in new technical areas.

(3) A registered geologist shall exercise reasonable care when rendering professional services and shall apply technical knowledge and skills ordinarily applied by practicing geologists. A registered geologist shall distinguish between fact and opinion in all estimates and evaluations provided, and set forth all assumptions.

(4) A registered geologist, when engaged in the public practice of geology, shall base his professional opinions upon empirical knowledge and commonly recognized geological principles.

(5) A registered geologist shall not issue a false statement or false information, or make sensational, exaggerated and unwarranted statements when engaged in the public practice of geology with the intent to mislead or deceive others.

(6) A registered geologist shall sign and seal only professional work, including, but not limited to, maps and reports for which the geologist has direct professional knowledge, and for which the geologist intends to be responsible for its accuracy and adequacy.

Section 3. Relationship of Professional Geologists to Employer or Client. (1) A registered geologist shall provide adequate and accurate representation of his credentials, qualifications and scope of responsibilities for all previous experience claimed when negotiating with prospective employers or clients.

(2) A registered geologist shall protect, to the fullest possible extent, the interest of his or her employer or client, and the confidentiality of information obtained from an employer or client, so far as is consistent with the law and the geologist's professional obligations and ethics.

(3) A registered geologist shall avoid conflict of interest with an employer or client and shall disclose the circumstances to the employer or client if a conflict is unavoidable. Specifically, a registered geologist shall make full disclosure to all parties of:

(a) Any transaction involving payments made to any person for the purpose of securing a contract, assignment, or engagement;

(b) Any monetary, financial or beneficial interest the professional geologist may have in any contract or entity providing goods or services, other than professional services, to a project or engagement;

(c) Any compensation or concurrent employment from more than one (1) employer or client on the same project; or

(d) Any owned or controlled mineral or other interest which may, either directly or indirectly, have a pertinent bearing on the geologist's employment to the employer or client.

(4) A registered geologist, in the public practice of geology shall not accept compensation without furnishing services.

(5) A registered geologist shall give due notice of withdrawal of



service from an employer or client except that the geologist may withdraw without due notice if:

(a) The geologist fails to receive adequate compensation, or has reasonable cause to believe that compensation for services performed will not be received;

(b) The geologist knows, or has reasonable cause to believe, that continued employment will result in a violation of KRS Chapter 322A, the accompanying administrative regulations promulgated thereunder, or otherwise be illegal;

(c) The geologist knows, or has reasonable cause to believe, that the employer or client is involved in illegal or fraudulent practices, or practices dangerous to the public health and welfare or property; or

(d) The geologist knows, or has reasonable cause to believe, that continued employment will result in sickness or injury to the geologist or the geologist's dependents.

Section 4. Relationship of Professional Geologists to Other Professionals Engaged in the Public Practice of Geology and Other Related Disciplines. (1) A registered geologist shall freely give credit for work done by others to whom credit is due and shall refrain from plagiarism in oral and written communications, and not knowingly accept credit rightfully due another.

(2) A geologist shall either engage or advise an employer or client to engage other experts or specialists if the clients' interests are best served by such service.

(3) If a registered geologist has knowledge or reasonable cause to believe another person or geologist is in violation of any provision of KRS Chapter 322A or the administrative regulations promulgated thereunder, the geologist shall present information in writing to the board.

(4) A registered geologist shall provide adequate supervision and training to other geologists the registered geologist is supervising, and make them aware of this code of professional conduct.

Section 5. Grounds for Disciplinary Action. (1) A registered geologist shall not:

(a) Violate any provision of KRS Chapter 322A or the accompanying administrative regulations;

(b) Issue a false statement or false information, or make a sensational, exaggerated, or unwarranted statement while engaged in the public practice of geology with the intent to mislead or deceive others;

(c) Defraud or deceive a client or employer whole engaged in the practice of geology;

(d) Engage in the practice of geology while his registration is suspended or revoked;

(e) Fail to comply with an order issued by the board;

(f) Fail to cooperate with the board by:

1. Unreasonably refusing to furnish any papers or documents requested by the board;

2. Unreasonably refusing to furnish in writing a complete explanation covering a matter contained in a complaint against the registrant filed with the board;

3. Not appearing before the board at a time and place designated by the board during the investigation of a complaint or hearing; or

4. Not properly responding to subpoenas issued by the board.

(g) Aide or abet an unregistered person in the unregistered practice of geology when registration is required;

(h) Fail to provide adequate supervision to persons for whom the registered geologist is professionally responsible;

(i) Sign, seal or stamp professional work not prepared under his direct professional control or supervision;

(j) 1. Be convicted of any felony or a misdemeanor related to the practice of geology;

2. Conviction shall include conviction based on:

a. A plea of nolo contendere or an Alford plea; or

b. The suspension or deferral of a sentence; or

(k) Engage in the practice of geology while declared mentally incompetent or insane by a court of law.

JOHN C. PHILLEY, Ph.D., Board Chairman

APPROVED BY AGENCY: June 10, 1996

FILED WITH LRC: June 12, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1996, at 1:30 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 24, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

#### REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: All persons registered as professional geologists.

(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: This administrative regulation sets forth a code of professional conduct for professional geologists.

(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: Trust and agency revolving account in the name of the board.

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

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

(b) Kentucky: Entire state.

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

(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



public will be protected from unethical actions on the part of professional geologists.

(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 public would not be protected from unethical actions on the part of professional geologists.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all professional geologists.

#### GENERAL GOVERNMENT CABINET

#### Board of Certification of Marriage and Family Therapists (New Administrative Regulation)

#### 201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 335.340(1)(b)

STATUTORY AUTHORITY: KRS 335.320(7), 335.340(1)(b)

NECESSITY AND FUNCTION: This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. As used in this administrative regulation, unless the context otherwise requires:

(1) "Approved" means recognized by the Kentucky Board of Certification of Marriage and Family Therapists.

(2) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(3) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series.

(4) "Academic courses offered by an accredited post-secondary institution" means:

(a) A marriage and family therapy course, designated by a marriage and family therapy course title or content, beyond the undergraduate level; or

(b) An academic course, relevant to marriage and family therapy, beyond the undergraduate level.

General education courses, either electives or designated to meet degree requirements, are not acceptable. Academic credit equivalency for continuing education hours will be based on one (1) credit hour equals fifteen (15) continuing education hours.

(5) "Relevant" means having content applicable to the practice of marriage and family therapy as determined by the board.

(6) "Provider" means an organization approved by the Kentucky Board of Certification for Marriage and Family Therapy for providing continuing education programs.

(7) "Successful completion" means that the certificate holder has satisfactorily met the specific requirements of the program and the certificate holder has earned the continuing education hours.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of forty-five (45) continuing education hours shall be accrued by each person holding certification during the three (3) year certification period for renewal, except that those persons holding certification which is due to be renewed by May 1,

1998, shall obtain fifteen (15) continuing education hours for this renewal period only. All persons holding certification shall obtain forty-five (45) continuing education hours for each renewal thereafter.

(2) The certification period shall be May 1 through April 30 of the third calendar year.

(3) All hours shall be in or related to the field of marriage and family therapy.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the mandatory certificate shall be directly related to the professional growth and development of marriage and family therapy practitioners. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy are therefore approved without further review by the board:

(a) Programs provided by the American Association for Marriage And Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as set forth in Section 1 of this administrative regulation; or

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources may be reviewed and determined to be relevant and therefore subsequently approved by the board:

(a) Relevant programs, including but not limited to home study courses and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the certificate holder. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Relevant publications in a professionally recognized or juried publication. Credit may be granted only for those publications that were published within the three (3) year period immediately preceding the renewal date. A certificate holder shall earn one-half (1/2) of the continuing education hours required for a relevant publication. Only one (1) publication may be counted during each renewal period; or

(d) Related areas not specifically a part of the field of marriage and family therapy may be approved for up to five (5) continuing education hours out of the forty-five (45) required if the board believes the related areas may serve to enhance the certificate holder's ability to practice.

Section 4. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, stating the:

(a) Type of learning activity;

(b) Subject matter;

(c) Names and qualifications of the instructors; and

(d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters which integrally relate to the practice of marriage and family therapy;

(c) Contributes to the professional competency of the certificate holder; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5. Responsibilities and Reporting Requirements of Certificate Holders. A certificate holder shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding certification shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board a request for approval for continuing education activities not approved by the board as set forth in Section 4 of this administrative regulation;

(3) Maintain records of continuing education hours. Each person holding certification shall maintain, for a period of three (3) years from the date of renewal, all documentation verifying successful completion of continuing education hours. During each certification renewal period, up to fifteen (15) percent of all certificate holders shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours is not otherwise reported to the board;

(4) Document attendance and participation in a continuing education activity in the form of, but not limited to, official documents such as transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence such as written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required varies depending on the specific activity submitted to the board for approval; and

(5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and may result in the refusal to renew, suspension, or revocation of the certification.

Section 6. Carry-over of Continuing Education Hours, Prohibited. There shall be no carry-over of continuing education hours earned in excess of those required under Section 2 of this administrative regulation into the immediately following certification renewal period.

Section 7. Board to Approve Continuing Education Hours; Appeal when Approval Denied. (1) In the event of denial, in whole or part, of any application for approval of continuing education hours, the person holding certification shall have the right to appeal in writing to the board. Notice of appeal shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

(2) A hearing before the full board may be held at the request of the person holding certification if the written appeal is denied, provided the board receives written request for such hearing within ten (10) days after the entry date of the board's decision denying the written appeal.

Section 8. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding certification and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the

waiver or extension, the person holding certification shall reapply.

JOHN SOHAN, Board Chairman

APPROVED BY AGENCY: May 16, 1996

FILED WITH LRC: June 13, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1996, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 24, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number: (502) 564-3296.

#### REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: All persons certified as a marriage and family therapist.

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

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

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

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

1. First year following implementation: This administrative regulation will create minimal reporting requirements for those individuals certified as a marriage and family therapist.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All applications for renewal of certification as a marriage and family therapist will be reviewed by the board and must contain documentation of the required number of hours of continuing education.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Fees paid by the applicants.

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

(a) Geographical area in which administrative regulation will be implemented. Commonwealth of Kentucky.

(b) Kentucky: Entire state.

(7) Assessment of alternative methods; reasons why alternative methods were rejected. KRS Chapter 310 requires persons credentialed by the board to obtain continuing education as a condition of renewal.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Those individuals certified as a marriage and family therapist will be required to keep their knowledge of the profession current.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Yes

(c) If detrimental effect would result, explain detrimental effect: Individuals without the proper education would hold themselves out to the public as a certified marriage and family therapist.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified candidates.

**TOURISM DEVELOPMENT CABINET**

**Department of Fish and Wildlife Resources  
(New Administrative Regulation)**

**301 KAR 2:176. Deer control tags.**

RELATES TO: KRS 150.010, 150.105 150.170, 150.175, 150.340, 150.360, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 150.105

NECESSITY AND FUNCTION: 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 measures on a county-wide basis through regular hunting seasons.

**Section 1. Definitions.** (1) "Damage to wildlife habitat" means:

(a) The existence of a browse line caused by deer; or

(b) Damage to more than thirty-five (35) percent of native plant species preferred by deer.

(2) "Deer control tags" means special tags issued by the department which authorize hunters to take antlerless deer during an open deer season.

(3) "Deer destruction permits" means written authorization from the department, pursuant to KRS 150.105, to take deer outside the regular hunting season framework.

(4) "Deer food plot" means a crop grown to attract and feed deer.

(5) "Department representative" means a person employed by the department who is qualified and authorized by the commissioner to assess deer damage.

(6) "Landowner" means the person who has title to a particular property.

**Section 2. Qualifying for Deer Control Tags.** (1) Landowners with fewer than 1,000 contiguous acres shall qualify for deer control tags if:

(a) They have permitted deer hunting on the property during the previous deer season;

(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and

(c) A department representative certifies deer damage to crops, gardens, property or wildlife habitat.

(2) Owners of 1,000 contiguous acres or more shall qualify for deer control tags without evidence of damage if:

(a) They have permitted deer hunting on the property during the

previous deer season;

(b) In the judgement of the department representative, regular deer seasons are inadequate to control deer populations on the property; and

(c) The landowner agrees to:

1. Follow the deer management practices recommended by the department representative; and

2. Supply the department with weight, age and condition data on deer taken from his property.

(3) A department representative shall make an on-site inspection of each property for which a request for deer control tags has been made, unless the property:

(a) Has been previously inspected by the department and the landowner affirms that deer damage still exists; or

(b) Is immediately adjacent to property assessed by a department representative as having severe deer damage.

(4) Landowners whose property is immediately adjacent to property assessed by a department representative as having severe deer damage may be issued damage control tags upon request of the landowner, even if there is no evidence of deer damage on their property.

(5) The department shall not issue deer control tags to landowners whose only damage is to deer food plots.

**Section 3. Applying for Deer Control Tags.** (1) Landowners wishing to apply for deer control tags shall contact the department through:

(a) A conservation officer;

(b) The appropriate district wildlife biologist; or

(c) The Division of Wildlife in Frankfort.

(2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage.

(3) Requests for assessments shall be made on or before September 30 to be eligible for current year damage control tags.

(4) Requests for assessments made after September 30 shall be considered for the following year.

**Section 4. Number of Tags Issued.** (1) The department shall determine the number of deer control tags to be issued for each landholding based on the recommendation of the department representative.

(2) Except as provided in Section 2(2) or (4) of this administrative regulation, the department shall not issue tags if:

(a) The county deer season is adequate to achieve the desired reduction in deer numbers; or

(b) If crop or environmental damage is not present.

**Section 5. Transfer of Deer Control Tags.** (1) Deer control tags shall be issued in the landowner's name.

(2) Landowners:

(a) May transfer their deer control tags to persons of their choice.

(b) Shall not issue more than two (2) deer control tags to an individual hunter.

(c) Shall require hunters to sign deer control tags at the time of transfer.

(d) Shall return unissued tags to the department before January 25.

**Section 6. Use of Deer Control Tags.** (1) Deer control tags:

(a) Shall not be valid except on the landholding for which they were issued.

(b) Shall expire after license year for which they were issued.

(2) Hunters using deer control tags:

(a) Shall have in their possession:

1. A deer control tag with their signature;

2. A valid hunting license, unless exempt from license require-

ments by KRS 150.170; and

3. Unless exempted by KRS 150.170, the receipt portion of a current deer permit.

(b) May use deer control tags during archery, gun or muzzle-loader seasons to take antlerless deer.

(c) Shall not take more than two (2) deer per license year with deer control tags.

(d) Shall abide by the provisions of 301 KAR 2:172, except that they shall:

1. Not take antlered deer;

2. Tag deer with the deer control tag rather than the carcass tag portion of the deer permit.

(3) Deer taken with deer control tags shall not count toward the annual limit as specified in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may issue deer destruction permits:

(a) To landowners:

1. Who continue to experience damage after being issued deer control tags; or

2. Whose property cannot legally be hunted.

(b) Where deer are posing a public safety or environmental threat.

(2) Deer destruction permits shall specify:

(a) The number and sex of deer to be destroyed;

(b) The method of destruction;

(c) The names of the persons who will destroy the deer; and

(d) The dates during which the destruction will take place.

(3) Deer destruction permits shall not be issued without the recommendation of a representative of the department and the approval of the commissioner.

(4) Persons destroying deer shall:

(a) Attach a disposal tag provided by the department to each carcass; and

(b) Not remove the disposal tag until the carcass is processed or disposed of.

(5) Deer destruction permits shall not be used except as specified on the permit.

(6) Nothing in this administrative regulation shall prohibit a landowner or tenant from taking action to control deer that are posing a direct and immediate threat to life or property.

Section 8. Denial or Revocation of Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department may revoke deer control tags or destruction permits and deny future tags or permits to persons who:

(a) Fail to comply with the requirements of this administrative regulation;

(b) Are convicted of a deer administrative regulation violation; or

(c) Otherwise abuse the Deer Control Tag Program.

(2) Appeals of a revocation or a denial of eligibility shall be submitted in writing:

(a) To the commissioner;

(b) Within sixty (60) days of the date of the revocation or denial.

(3) Appeals of the commissioner's decision shall be made in writing to the Fish and Wildlife Resources Commission within sixty (60) days of the commissioner's decision.

(4) The Fish and Wildlife Resources Commission shall hear the appeal at its next regularly scheduled meeting.

Section 9. 301 KAR 2:211 is repealed.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 1, 1996

FILED WITH LRC: June 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on July 29, 1996 at 1 p.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 July 24, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

#### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: The department makes approximately 600 damage assessments and issues 6,000 deer control tags annually. Destruction permits are issued to around 10 landowners annually.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have an impact on costs of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have an impact on costs doing business.

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

1. First year following implementation: This administrative regulation does not impose additional reporting or paperwork requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation should create neither additional costs nor additional savings for the agency.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation should have no impact on state or local revenues.

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

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

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

(b) Kentucky: No public comments received. By providing methods for property owners to control deer damage to their property, this administrative regulation should create a positive economic impact by increasing yields from farmlands.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of allowing deer damage to continue unabated is unacceptable to the department and to property owners;

the alternative of liberalizing county deer seasons to accommodate damage complaints in specific areas is poor deer management, as is not controlling nor monitoring the destruction of depredating deer.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Overpopulated deer herds can have serious deleterious effects upon natural ecosystems and on crops, orchards and forage.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Localized but serious agricultural and ecosystem damage by excessive deer numbers.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: This administrative regulation replaces and repeals 301 KAR 2:211. In addition to updating the wording and formatting to meet the requirements of KRS Chapter 13A, this administrative regulation stipulates a more detailed set of requirements for issuing deer control tags.

(11) TIERING: Is tiering applied? Tiering is used to the extent that individual properties are assessed for the nature and extent of deer damage and deer control tags are issued based upon those individual assessments. Tiering is not otherwise 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.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Driver Licensing  
(New Administrative Regulation)**

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

RELATES TO: KRS 186.411, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.400, 186.411, 186.444, 186.570

NECESSITY AND FUNCTION: The Medical Review Board has existed through administrative regulation since June, 1964. The 1994 General Assembly passed two (2) bills, SB 205 and HB 417, mandating the establishment of the Medical Review Board and authorizing the Transportation Cabinet to promulgate an administrative regulation to implement the Medical Review Board. Statutory authority was necessary because the Administrative Regulations Review Subcommittee determined in late 1993 that the Transportation Cabinet does not have the specific authority necessary to promulgate an administrative regulation relating to the Medical Review Board and, therefore, 601 KAR 13:010 expired on April 15, 1994. Because of a slight conflict between SB 205 and HB 417, the Transportation Cabinet is including in this administrative regulation clarification of the differences between the two (2) bills.

Section 1. (1) The Medical Review Board shall be chaired by the Commissioner of the Department of Vehicle Regulation of the Transportation Cabinet or his representative.

(2) A quorum of the Medical Review Board shall be not less than

three (3) physicians licensed to practice medicine in the Commonwealth of Kentucky.

(3) Appointees to the Medical Review Board who are not physicians licensed pursuant to KRS Chapter 311 may have their appointment restricted to a specified area of expertise.

(4) The Commissioner of the Department of Vehicle Regulation or his representative shall prescribe the time and place for the board to meet.

(5) The nonstate government members of the board who participate in a meeting shall be paid \$200 each day or part of a day and reimbursed for necessary expenses incurred in attending the meeting.

Section 2. (1) When the Commissioner of the Department of Vehicle Regulation or his representative receives notice that one (1) or more of the conditions listed in Section 4 of this administrative regulation exists in a person and that the person's physical or mental condition may render it unsafe for him to operate a motor vehicle upon the public highways, the commissioner shall refuse to issue an operator's license to the person or he shall suspend the existing driving privilege of the person unless the person submits to an examination by a qualified physician within forty-five (45) days of notification of the commissioner's intentions.

(2) If the department deems that an examination by a qualified physician is necessary, the required medical examination shall be conducted at the person's own expense by any licensed physician of his choice.

(3) The examining physician shall report within forty-five (45) days the results of his examination directly to the Division of Driver Licensing on a form furnished by the Department of Vehicle Regulation. The Medical Review Board Form TC 94-86, revised in November 1995 is incorporated by reference in Section 5 of this administrative regulation.

(4)(a) As soon as possible after receipt of the completed form, the Department of Vehicle Regulation shall evaluate it according to the medical standards set forth in 601 KAR 13:100.

(b) The Department of Vehicle Regulation shall submit any case to the Medical Review Board in which medical or rehabilitation expertise is needed to evaluate the driving ability of a person.

(c) The Medical Review Board may make recommendations to the Department of Vehicle Regulation for further medical examination, testing, or restriction of the person's driving privilege, or denial of driving privilege.

(d) If the Medical Review Board recommends further examination or investigative testing or if the Department of Vehicle determines it to be necessary, the Commissioner of the Department of Vehicle Regulation or his representative shall notify the person of the date by which he shall comply in order to retain or obtain his driving privilege.

Section 3. (1) If the Medical Review Board or Department of Vehicle Regulation, pursuant to the evaluation in Section 2(3) of this administrative regulation, recommends total suspension of a person's driving privilege or any limitations thereon, the Commissioner of the Department of Vehicle Regulation or his representative shall notify the person at the last known address of the person that this action will be taken unless a written request for an informal hearing before the board is received within twenty (20) days following the first class mailing of the notice. The person shall also be informed of his right to an immediate administrative hearing pursuant to the provisions of KRS Chapter 13B.

(2) The informal hearing shall be scheduled as early as practicable at a time and place designated by the commissioner or his representative and notice shall be mailed to the person involved no later than ten (10) days prior to the hearing date.

(3) The commissioner or his representative shall preside at the hearing before the Medical Review Board and at least three (3) physician members shall be present.

(4) The presiding officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

(5) The scope of the hearing shall be limited to the presentation of the evidence upon which the Medical Review Board made their recommendation and any medical evidence the petitioner wishes to present in explanation or refutation of this evidence.

(6) Evidence may be presented at the hearing in the form of depositions.

(7) All testimony at the hearing shall be recorded and together with any depositions or exhibits introduced at the hearing shall form the complete record.

(8) Within ten (10) working days after the hearing, the commissioner shall issue a decision and this shall be promptly forwarded to the petitioner.

(9) In the notice provided pursuant to subsection (8) of this section, the petitioner shall be informed of his right to an administrative hearing pursuant to the provisions of KRS Chapter 13B.

Section 4. The Commissioner of the Department of Vehicle Regulation or his representative shall promptly notify the person involved to submit to the physical examination set out in Section 2 of this administrative regulation when one (1) or more of the following conditions exists:

(1) Driver has indicated that he "blackout", lost consciousness or suffered a seizure prior to a reportable motor vehicle accident;

(2) Driver has been named in an affidavit by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental infirmities;

(3) Driver has been reported by a physician as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;

(4) Driver has been reported by a law enforcement officer or a Kentucky State Police license examiner who has reason to believe or who has observed an individual driving or behaving in an erratic or dangerous manner which indicates a possibility of a physical or mental disability which may impair his driving ability;

(5) Applicant for a motor vehicle operator's license or for its renewal indicates on the application form that he has a physical or mental disability which may impair his driving ability;

(6) Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental impairment;

(7) Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental impairment; or

(8) Driver has reported to the Transportation Cabinet or Medical Review Board that he has a mental or physical impairment.

Section 5. (1) Medical Review Board Form TC 94-86 revised November 1996 is incorporated by reference as a part of this administrative regulation.

(2) The material incorporated by reference in this administrative regulation can be viewed, copied, or obtained from the Division of Driver Licensing. The address is 501 High Street, Second Floor, Frankfort, Kentucky 40601. The telephone number is (502) 564-5384. The business hours are 8 a.m. to 4:30 p.m. on weekdays.

ED LOGSDON, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: May 21, 1996

FILED WITH LRC: June 12, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on July 30, 1996 at 1:30 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by July 25, 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 July 25, 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 July 30, 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, (502) 564-4809.

#### REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: 900 new cases are presented to the Medical Review Board annually. 60 of these have an administrative hearing before the board. 600 of these had their driving privilege withdrawn. This 600 number includes the persons who in essence did not contest the idea of surrendering their driver's license. Most of these just sent in their license without even returning the medical forms. Over 5,000 cases are reviewed annually.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None anticipated. However, no public comment hearing was held. It should be noted that each new case will be asked to have a medical examination which costs between \$50 and \$200. Most will not actually have the medical exam. They are aware they should not be driving or have just been using the driver's license for identification purposes.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None anticipated. However, no public comment hearing was held.

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

1. First year following implementation: The result of approximately 200 physical examinations must be documented by the physician and the forms sent to the Medical Review Board for the persons newly reported each year.

2. Second and subsequent years: The result of approximately 200 physical examinations must be documented by the physician and the forms sent to the Medical Review Board for the persons newly reported each year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It costs \$75,000 annually to operate the Medical Review Board including its administrative costs and staff.

2. Continuing costs or savings: It costs \$75,000 annually to operate the Medical Review Board including its administrative costs and staff.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: A formal report must be prepared on each of the hearings held. In addition, several personal letters must be sent to each person with a disability brought under the purview of the Medical Review Board.

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(8) Assessment of expected benefits: Provision of a mechanism to allow reporting of persons with disabilities so that their driving ability can be evaluated.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be an adverse effect on highway safety.

(c) If detrimental effect would result, explain detrimental effect: Since 601 KAR 13:011 expired on April 15, 1996 and the emergency version of this administrative regulation will expire soon, without the implementation of this administrative regulation and 601 KAR 13:100 there would be no mechanism in Kentucky to remove drivers with disabilities adversely affecting their ability to safely operate a motor vehicle from the highways.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 186.444 and 186.570 conflict slightly with each other regarding the fee to be paid to the Medical Review Board Members and the qualifications for the board members. This administrative regulation conflicts with KRS 186.570 in regard to the per diem fee paid to the board members (but it is in accordance with KRS 186.444). The administrative regulation conflicts with KRS 186.444 in regard to the qualifications for the board members (but is in accordance with KRS 186.570.)

(a) Necessity of proposed regulation if in conflict: The language in KRS 186.444 and 186.570 which conflict were passed in the same legislative session. Since the Statutes Revisor said he did not have the authority to resolve conflicts between separate statutes, the only way to resolve the conflicts is by administrative regulation.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. The administrative regulation provides a tiering of the reporting of the cases to the Medical Review Board.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Driver Licensing  
(New Administrative Regulation)**

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

RELATES TO: KRS 186.411, 186.440, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.444, 186.570

NECESSITY AND FUNCTION: KRS 186.570 requires the Transportation Cabinet to withhold driving privileges from an individual who has a mental or physical disability that makes it unsafe for him to drive upon the highways. KRS 186.411 requires that a person with a seizure condition be seizure-free for ninety (90) days prior to licensing. This administrative regulation sets forth the standards to be used by the Transportation Cabinet in determining who is unsafe to operate a motor vehicle because of a mental or physical disability.

Section 1. Definitions. (1) "Altered consciousness" means a state

of awareness characterized by loss or distortion of the impressions made by the senses or inability to respond to the impressions made by the senses.

(2) "Assessment" means an examination of a person's use of chemicals for the person by an approved public treatment facility.

(3) "Chemical" means alcohol, a drug, or a controlled substance as defined in KRS Chapter 218A.

(4) "Cognition" means the ability to think, perceive, and remember.

(5) "Comorbid" means that more than one (1) condition is present at the same time.

(6) "Corrective lens" means an ophthalmic lens, whether an eyeglass, contact lens or single lens system, that corrects the refraction error or other optically correctable deficiency of the eye.

(7) "Driving evaluation" means a test conducted to determine if a person adequately compensates for his medical, mental, or physical condition or functional impairment.

(8) "Episode" means any incident or segment of time involving altered consciousness or loss of bodily control.

(9) "Field of vision" means the entire horizontal and vertical planes a person has for each eye without shifting the gaze.

(10) "Functional ability" means the degree of cognitive, mental or emotional, sensorimotor and sensory capability in performing activities of daily living, including safely performing the tasks of driving.

(11) "Licensing action" means any action by the Transportation Cabinet involving the denial, cancellation, restriction, or issuance of a motor vehicle operator's license under KRS Chapter 186.

(12) "Loss of bodily control" means involuntary movements of the body characterized by muscle spasms or muscle rigidity, or loss of muscle tone or muscle movement.

(13) "Medical condition" means any physical, mental, or emotional condition which affects a person's health for which a person is receiving medical treatment, or for which medical treatment is usually prescribed.

(14) "Mental or emotional function" means interaction and communication skills, adaptive behavior or coping capacity, and orientation.

(15) "Review board" means the medical review board established under KRS Chapter 186.

(16) "Sensory function" means vision, hearing, touch, smell, or vibration sense.

(17) "Vision specialist" means a person licensed to practice optometry as defined by KRS Chapter 320, or a physician licensed pursuant to KRS Chapter 311.

Section 2. General Requirements. (1) If the Department of Vehicle Regulation learns that a person applying for, renewing, or holding a motor vehicle operator's license may have a medical condition which may affect safe driving, the department may require the person to provide the department with medical information about the person's medical condition. The department shall review the medical information using the standards specified in this administrative regulation.

(2) A person holding a Kentucky operator's license or instruction permit shall report to the department medical conditions that adversely affect his driving skills.

Section 3. Information to be Considered in Licensing Actions. Pursuant to 601 KAR 13:090, the Medical Review Board when making recommendations, and the department when taking licensing action, may consider the following information:

(1) Any medical condition affecting the person including, but not limited to:

(a) History of illness;

(b) Severity of symptoms and prognosis;

(c) Complications or comorbid conditions, or both;

(d) Treatment and medications, including effects and side effects, and the person's knowledge and use of medications;



- (e) Results of medial tests and reports of laboratory findings;
- (f) Physician's medical report;
- (g) Physician's recommendations with regard to functional impairment; and
- (h) Physicians's identification of risk factors.
- (2) Reports of driver condition or behavior;
- (3) The results of any driving evaluation of the person;
- (4) Alcohol or drug assessment reports by an agency;
- (5) Traffic accidents that may have been caused in whole or in part by a medical condition;
- (6) Vision specialist's report;
- (7) A person's failure to provide requested information to the department; or
- (8) A report from a rehabilitation specialist.

Section 4. Conditions Affecting Cardiovascular Function. (1) With respect to conditions affecting cardiovascular function, the Medical Review Board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to the following:

- (a) Cardiac dysfunction;
- (b) Arrhythmias; and
- (c) Other cardiac or circulatory disorder or dysfunction.
- (2) The department or the Medical Review Board may require a person to provide information on the person's cardiovascular functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cardiovascular function of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following cardiovascular function criteria:
  - (a) There shall not be current symptoms of coronary artery disease, such as unstable angina, dyspnea, or pain at rest, which interfere with safe driving;
  - (b) There shall not be a cause of cardiac syncope present, including ventricular tachycardia or fibrillation, which is not successfully controlled;
  - (c) There shall not be congestive heart failure that limits functional ability;
  - (d) There shall not be cardiac rhythm disturbances which are not successfully controlled;
  - (e) There shall not be an automatic implantable cardioverter defibrillator, unless the device is assessed by an electrophysiologist as not interfering with safe driving;
  - (f) There shall not be medications interfering with safe driving; and
  - (g) There shall not be valvular heart disease or malfunction of prosthetic valves that interferes with safe driving.

Section 5. Conditions Affecting Cerebrovascular Function. (1) With respect to conditions affecting cerebrovascular function, the medical review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Cerebrovascular accident; and
- (b) Other cerebrovascular disorder or dysfunction.
- (2) The department or medical review board may require information on a person's central nervous system functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cerebrovascular functions of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following cerebrovascular function criteria:
  - (a) There shall not be sensori-motor deficit preventing safe

driving;

- (b) There shall not be impairment of reasoning or judgement preventing safe operation of a vehicle; and
- (c) There shall not be medications interfering with the person's ability to operate a motor vehicle safely.

Section 6. Conditions Affecting Endocrine Function. (1) With respect to conditions affecting endocrine function, the Medical Review Board, when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Diabetes mellitus; and
- (b) Other endocrine disorder or dysfunction.
- (2) The department or Medical Review Board may require information on a person's endocrine functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting endocrine functions of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following endocrine function criteria:
  - 1. There shall not be diabetic neuropathy or other complication which interferes with safe driving;
  - 2. There shall not be frequent and functionally impaired hypoglycemic reactions; and
  - 3. There shall not be evidence of use of alcohol or other drugs to an extent that interfere with the person's prescribed treatment program for the condition.

Section 7. Conditions Affecting Musculoskeletal Function. (1) With respect to conditions affecting musculoskeletal function, the Medical Review Board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Rheumatoid arthritis;
- (b) Paralysis; and
- (c) Other musculoskeletal disorder or dysfunction.
- (2) The department or Medical Review Board may require information on a person's musculoskeletal functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting musculoskeletal function of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet of the following musculoskeletal function criteria:
  - (a) Pain shall not interfere with the person's ability to safely operate a motor vehicle;
  - (b) The person's operation of a vehicle in a driving evaluation demonstrates adequate compensation for any weakness or limitations in range of motion or mobility; and
  - (c) There shall not be effects or side effects of medication interfering with safe driving.

Section 8. Conditions Affecting Neurological or Neuromuscular Function. (1) With respect to conditions affecting neurological or neuromuscular function, the review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Central nervous system diseases or disorders;
- (b) Demyelinating diseases;
- (c) Muscular diseases or disorders; and
- (d) Seizure disorders.
- (2) The department or Medical Review Board may require information on neurological or neuromuscular functional abilities or disorders.
- (3) A motor vehicle operator's license shall not be issued to,

renewed by, or held by a person who does not meet the medical review standards for conditions affecting neurological or neuromuscular function of this subsection and a person who applies for, renews, or holds for motor vehicle operator's license shall meet all of the following neuromuscular function criteria:

- (a) There shall not have been a seizure episode as set forth in KRS 186.411;
- (b) The person adequately compensates for any paralysis or sensory deficit when operating a vehicle;
- (c) Fatigue, weakness, muscle spasm or tremor at rest does not impair safe driving;
- (d) There shall not be effects of or side effects of medication that interferes with safe driving; and
- (e) There shall not be a decline in cognition to an extent that interferes with safe driving.

Section 9. Conditions Affecting Mental or Emotional Function. (1) With respect to conditions affecting psychosocial, mental or emotional function, the review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Substance and alcohol abuse; and
  - (b) Other mental or emotional disorder or dysfunction.
- (2) The department or Medical Review Board may require information on mental or emotional functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting mental and emotional function of this subsection and a person who applies for, renews, or holds any classification of operator's license shall meet all of the following mental and emotional function criteria:
- (a) There shall not be dementia that is unresponsive to treatment;
  - (b) There shall not be a behavior disorder with threatening or assaultive behavior at the time of application;
  - (c) There shall not be a delusional system which interferes with safe driving;
  - (d) There shall not be a suicidal tendency;
  - (e) There shall not be an impairment of judgement that interferes with safe driving;
  - (f) There shall not be an active psychosis that interferes with safe driving; and
  - (g) There shall not be effects or side effects of medication that interferes with safe driving.

Section 10. Conditions Affecting Respiratory Function. (1) With respect to conditions affecting respiratory function, the review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Chronic obstructive pulmonary diseases; and
  - (b) Any other respiratory disorder or dysfunction.
- (2) The department or Medical Review Board may require information on respiratory functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting respiratory function of the subsection and a person who applied for, renews, or holds a motor vehicle operator's license shall meet all of the following respiratory function criteria:
- (a) The person does not require medication that interferes with driving; and
  - (b) There shall not be dyspnea that interferes with safe driving.

Section 11. Conditions Affecting Vision and Sensory Function. (1) With respect to conditions affecting sensory function, the review board when making recommendations, and the department when taking licensing action, may consider conditions including, but not limited to,

the following:

- (a) Vision loss; and
  - (b) Any other ocular or sensory disorder or dysfunction.
- (2) The department or Medical Review Board may require information on ocular and sensory functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting sensory functions of this subsection and a person who applies for, renews, or holds any classification of operator's license shall meet all of the following criteria:
- (a) Visual acuity of at least 20/60 or better in at least one (1) eye with single lens system; and
  - (b) Binocular horizontal field of vision of at least thirty-five (35) degrees to the left and right side of fixation and a binocular vertical field of vision of at least twenty-five (25) degrees above and below fixation.

Section 12. License Restrictions. (1) The department may restrict a person's operating privilege based on any of the following:

- (a) A recommendation of a physician or vision specialist;
  - (b) The results of a driving examination or evaluation performed by the Kentucky State Police or a rehabilitation specialist or facility; or
  - (c) Recommendation of the Medical Review Board.
- (2) License restrictions may require a person to:
- (a) Wear corrective lenses;
  - (b) Use special equipment or specially equipped vehicles;
  - (c) Operate only during daylight hours;
  - (d) Restrict the driving area; or
  - (e) Restrict the motor vehicle operating privilege in any other manner which the department deems necessary for safety purposes.

ED LOGSDON, Commissioner  
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: May 21, 1996

FILED WITH LRC: June 12, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on July 30, 1996 at 1:30 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by July 25, 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 July 25, 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 July 30, 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, (502) 564-4809.

#### REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: 900 new cases are presented to the Medical Review Board annually. Over 5,000 cases are reviewed annually. All 5900 individuals are affected by the standards set forth in this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None anticipated. However, no public comment hearing was held.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None anticipated. However, no public comment hearing was held.

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

1. First year following implementation: The result of approximately 200 physical examinations must be documented by the physician and the forms sent to the Medical Review Board for the persons newly reported each year. However, that is the requirement of 601 KAR 13:090. This administrative regulation just establishes the standards for evaluation of the drivers.

2. Second and subsequent years: The result of approximately 200 physical examinations must be documented by the physician and the forms sent to the Medical Review Board for the persons newly reported each year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It costs \$75,000 annually to operate the Medical Review Board including its administrative costs and staff.

2. Continuing costs or savings: It costs \$75,000 annually to operate the Medical Review Board including its administrative costs and staff.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None as a result of this administrative regulation. However, in regard to 601 KAR 13:090 a formal report must be prepared on each of the hearings held. In addition, several personal letters must be sent to each person with a disability brought under the purview of the Medical Review Board.

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Much more stringent standards were considered and rejected since the Medical Review Board and the Transportation Cabinet have always striven to allow anyone who can do so safely to continue operating a motor vehicle.

(8) Assessment of expected benefits: Safe driving medical standards which are known in advance which will make it easier for families and physicians to know if an individual should be able to safely operate a motor vehicle.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be a positive effect on highway safety throughout Kentucky with the implementation of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be an adverse effect on highway safety.

(c) If detrimental effect would result, explain detrimental effect: Since 601 KAR 13:011 expired on April 15, 1996 and the companion emergency regulation will expire soon, without the implementation of this administrative regulation and 601 KAR 13:090 there would be no mechanism in Kentucky to remove drivers with disabilities adversely affecting their ability to safely operate a motor vehicle from the

highways.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. The administrative regulation provides a tiering of the standards for operating a motor vehicle.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Insurance**  
**(New Administrative Regulation)**

**806 KAR 46:030. Reasonable time for violation correction.**

RELATES TO: KRS 304.48-220(1)(e)

STATUTORY AUTHORITY: KRS 304.48-230, 304.48-220(1)(e)

NECESSITY AND FUNCTION: KRS 304.48-230 states that the commissioner may promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304 Subtitle 48. Pursuant to KRS 304.48-220(1)(e), the commissioner should establish a reasonable time period for a liability self-insurance group to correct a violation of KRS Chapter 304 Subtitle 48 or related administrative regulations.

Section 1. If a liability self-insurance group fails to correct a violation of KRS Chapter 304 Subtitle 48 or related administrative regulations within thirty (30) days of receiving notice of the violation pursuant to KRS 304.2-120, the commissioner may suspend or revoke the certificate of filing of the liability self-insurance group.

Section 2. Additional thirty (30) day time periods may be granted by the commissioner upon a showing by the liability self-insurance group and determination by the commissioner of good cause for each extension. A request for extension shall be submitted in writing not less than ten (10) days prior to the running of each thirty (30) day time period. The request for extension shall contain sufficient detail to permit the commissioner to make an informed decision.

Section 3. A liability self-insurance group shall notify the commissioner in writing and provide supporting documentation immediately upon correcting a violation of KRS Chapter 304 Subtitle 48 or related administrative regulations.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: June 11, 1996

FILED WITH LRC: June 13, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on July 22, 1996, at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on July 22, 1996, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written

comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 239.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Six liability self-insurance groups.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. The department anticipates 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: No public comments were received. The department anticipates 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: A liability self-insurance group must correct a violation of Subtitle 48 within thirty (30) days of notice of the violation.

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 Department of Insurance will monitor the liability self-insurance correction of violations.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The normal Department of Insurance budget will be used.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received.

(b) Kentucky: Same as (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation sets forth a specific time period. If we have no time period, then liability self-insurance groups will not know when a violation can be corrected.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applied, because all liability self-insurance groups will be affected equally.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of June 3, 1996

The June meeting of the Administrative Regulation Review Subcommittee was held on Monday, June 3, 1996, at 10 a.m. in Room 149 of the Capitol Annex. Representative Jesse Crenshaw, Chairman, called the meeting to order, and the roll call was taken. The minutes of the May 6, 1996 meeting were approved.

**Present were:**

**Members:** Representative Jesse Crenshaw, Chairman, Senators Fred Bradley, John David Preston; Representatives Jimmy Lee, James E. Bruce, Woody Allen.

**LRC Staff:** Greg Karambellas, Donna Little, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines, Cindy Schweickart, Sharon Cantrell.

**Guests:** Dennis L. Taulbee, Ken Walker, Council on Higher Education; Maryellen B. Allen, State Board of Elections; Jeffrey F. Lagrew, Attorney General's Office; Angela Robinson, Alex Whitenack, Ed Ross, Gail Prewitt, Finance and Administration Cabinet; Denise Placido, Department for the Blind; Richard Carroll, State Board of Accountancy; Jeffrey C. Blair, Real Estate Commission; Dave Nicholas, Division of Occupations and Professions; Jack Damron, Brenda Priestley, Tamela Biggs, Department of Corrections; Kevin Noland, Mike Roscoe, Department of Education; Sue Simon, Beverly Haverstock, Juanita Back, Workforce Development Cabinet; George Parsons, Department of Vocational Rehabilitation; Tim Chancellor, Bill Ralston, Labor Cabinet; Valerie Salven, Donna Terry, Department of Workers' Claims; Carla H. Montgomery, Russell R. Coy II, Department of Insurance; Judith G. Walden, Housing, Buildings and Construction; John H. Walker, Karen Doyle, Ralph Von Derau, Robert Calhoun, Marcia Burklow, Gary L. Kupchinsky, Gary W. Beville, Ked Fitzpatrick, Joni Cracraft, Cabinet for Health Services; Cookie Whitehouse, Pat Bishop, Ann Hager, Joyce Lea, Cabinet for Families and Children; Sharon Davenport, KenPAC-DMS.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

**Council on Higher Education: Public Educational Institutions**

13 KAR 2:050. Tuition at state-supported institutions of higher education in Kentucky. Dennis Taulbee, General Counsel, and Ken Walker, Deputy Executive Director for Finance, represented the Council. This administrative regulation was amended as follows: (1) the Title and Section 1 were amended to use "public institutions of higher education", the term established by KRS Chapter 164, instead of "state supported institutions of higher education", pursuant to KRS 13A.222(4)(d), (h); (2) the STATUTORY AUTHORITY paragraph was amended to correct citation of statutes; (3) the NECESSITY AND FUNCTION paragraph was amended to (a) delete language repeating the KRS 164.020(3), pursuant to KRS 13A.120(2)(e), (f); and (b) clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (4) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4)(j).

**State Board of Elections: Forms and Procedures**

31 KAR 4:030. Reporting forms. Maryellen Allen, Assistant Attorney General, represented the Board. In response to a question by Representative Bruce, Ms. Allen stated that: (1) this administrative regulation attempted to simplify the forms required to be filed relating to elections; (2) the forms had been amended a few years ago; and (3) the Board was updating the administrative regulation to incorporate the new forms. In response to a question by Chairman Crenshaw, Ms. Allen stated that: (1) the Board had received comments requesting changes in the voter registration form; (2) the Board is

considering changing the form to require, at the top of the application, an applicant to state that the applicant is a United States citizen; and (3) the Board will vote on this at its next meeting.

This administrative regulation was amended as follows: (1) The STATUTORY AUTHORITY paragraph was amended to correct the citation of statutes; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (3) Section 1, incorporation by reference section, was amended to correct the formatting, pursuant to KRS 13A.2251(1).

**Department of Law: Administrative Hearings**

40 KAR 5:010. Required training. Jeff Lagrew, Director, Division of Administrative Hearings, Office of the Attorney General, stated that this administrative regulation established the training requirements for hearing officers pursuant to KRS Chapter 13B. This administrative regulation was amended to: (1) delete language that summarized or repeated statutory language, pursuant to KRS 13A.120(2)(e), (f); (2) comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) clearly establish required course content in Sections 3 and 5; and (4) because KRS 13B.040(4) provides that Division approval of training is required, does not authorize the Division to delegate this function to another administrative body or official, and approval of training is not merely a clerical duty: (a) retain the authority granted by Section 3(3) of this administrative regulation for agency approval of agency specific training; and (b) add language requiring Division approval of agency specific training before it may be implemented. In response to a question by Representative Bruce, Mr. Lagrew and Subcommittee staff stated that the: (1) KRS Chapter 13B granted the Division the authority to approve agency specific, and other training of hearing officers; (2) while the Division could permit an agency also to approve training, the Division could not delegate this function to an agency; and (3) while the amendment would allow agency input, the Division would retain and exercise its authority to approve because its approval would be required.

**Finance and Administration Cabinet: 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. Denise Placido, Department for the Blind, and Gail Prewitt, project manager of the Steering Committee for personnel pilot projects appeared before the Subcommittee. This administrative regulation was amended as follows: "Employee Records and Files", page 6 of the Employee Handbook incorporated by reference in this administrative regulation, was amended to include a notice to state employees of their right to inspect their personnel files and documents relating to them under KRS Chapter 18A, which is broader and in addition to their right to inspect under the Open Records law.

**Board of Accountancy**

201 KAR 1:160. Quality reviews. Dick Carroll, Office of the Attorney General, represented the Board. This administrative regulation was amended as follows: (1) Amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations of statutes; (2) Amend various sections to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (2) Language incorporating standards was deleted from Section 1(1) and placed in a new Section 4; and (3) Various sections were amended to delete terms used in place of the statutory term, "firm".

**Real Estate Commission**

201 KAR 11:400 (& E). Agency disclosure requirements. Jeff Blair, General Counsel, represented the Commission. Subcommittee staff stated that the Commission requested that the amendment proposed by the Commission pursuant to Subcommittee staff review be amended to include the following changes to Section 3(2)(b)1., Lines 2-3: (1) delete "non-owner"; and (2) in lieu thereof, insert "purpose other than owner". In response to questions by Senator Bradley, Mr. Blair: (1) read the Section 3(2)(b)1. as it would read if amended as proposed by the Commission; (2) stated that: (a) the forms require a real estate agent to disclose who the agent is representing; (b) at the public hearing, it was stated that occasionally people will not want their identity to be known in real estate transactions; (c) the limited exception that would be permitted by the amendment to Section 3(2)(b)1. would allow the agent not to disclose who the agent represented in a real estate transaction, if the person represented specifically requested nondisclosure in writing; (d) because this exception would apply only to real estate transactions other than owner occupant residential use, the exemption would primarily apply to commercial or apartment realty; and (e) without this exemption, disclosure of the identity of the purchaser would unfairly affect the purchaser's negotiating ability.

Senator Bradley stated that: (1) while he could see from the Commission's perspective what it would like to accomplish, he could not understand why it should not apply to the total regulation; (2) he was uncertain that the exemption was appropriate; and (3) the administrative regulation appears inconsistent because, while it generally requires disclosure, it grants an exemption if does not like it.

In response to Senator Bradley's comments, Mr. Blair stated that: (1) the background to 201 KAR 11:400 is that in residential dealings, people do not know: (a) who the agent is representing; and (b) whether the agent represents the buyer or the seller; (2) in typical commercial situations, a company wants to buy property in an area and feels that disclosure of its will unfairly affect its negotiating abilities; (3) this situation does not affect the purpose of the administrative regulation; (4) the primary purpose of the administrative regulation is to clarify the relationships between agents and consumers; (5) in commercial situations, there is not the potential problem that exists in a typical residential sale; (6) there is generally no legal requirement that an agent disclose the identity of the person he represents; (7) the agency disclosure form was specifically proposed to address the specific problem of the confusion between agents, prospective buyers, and sellers as to who represents whom; (8) this problem is not related to or affected by the agency disclosure form; (9) after consideration of the comments at the public hearing, the Commission felt that this was an area that: (a) was beyond the scope of the administrative regulation; and (b) unduly affects the negotiating ability of a business or an individual; (10) this exception applies only to real property that was: (a) non residential; and (b) not to be occupied by the owner; and (11) the Commission believed that it was unfair to have a company's identity disclosed in a situation where it may unduly affect its ability to negotiate.

Senator Bradley stated that: (1) while he disagreed to some extent with the reasoning of the Commission, it had far more expertise than he; (2) he was concerned about making the distinction between real estate transactions; (3) he buys real estate, both commercial and residential; and (4) he thinks the same rules should apply to both situations.

Mr. Blair stated that: (1) the Commission believes that the exemption was not related to the problems addressed by the disclosure form; (2) the purpose of the disclosure form is narrow; (3) the exception resulted from a comment made at the public hearing; and (4) The commission amended the language to grant an exception to the disclosure requirement, because it believed that the need for disclosure did not include the transactions excepted.

Representative Woody Allen stated that: (1) a real estate broker

can buy a piece of property in a community without letting the community or anyone else know what is to be done with it, or who the buyer is; (2) perhaps an industry that the community wouldn't want in the community is the real buyer; (3) this is a concern, especially with companies that have a history of polluting the environment; (4) if someone had a piece of property next to him that he was trying to sell for an industrial purpose, he and the rest of the community would certainly want to know what was going to be done with the property and who was going to own it; and (5) while he supported property and private rights a community has the right to know: (a) what is going to happen to the property being sold; (b) whether it will be developed; and (c) who will occupy it.

In response to Representative Allen's comments, Mr. Blair stated that: (1) what Representative Allen is concerned could happen has always been possible; (2) the disclosure form is: (a) the exception to the general rule for disclosure in real estate transactions; and (b) was established to specifically address the confusion among sellers and buyers over who represented an individual; (4) the concerns addressed by Representative Allen go beyond the scope of the administrative regulation; (5) before this administrative regulation was implemented: (a) there were no disclosure requirements; and (b) except for the existing planning and zoning requirements and procedures, there is nothing that the Commission or anyone else could do to inform a community that someone wanted to come into an area and purchase property other than the normal planning and zoning process and changes; and (7) some of these questions, such as whether the property purchased by an industry is appropriate may be addressed by planning and zoning requirements and procedures.

Representative Allen restated his concern that someone would be able to go into a community, buy property, and then put something on that property that the community does not want.

In response to a question from Chairman Crenshaw, Mr. Blair stated that the public hearing was held February 28.

Chairman Crenshaw stated that (1) the Commission had four months to submit the amendment to the Subcommittee in writing; (2) while the Subcommittee has been judicious about accepting handwritten amendments on the day of a Subcommittee meeting because of an emergency, he had a problem with this amendment because: (a) the subject matter of the administrative regulation is disclosure; and (b) some months ago, the Commission discussed the amendment to the amendment that would permit an exception from disclosure for certain commercial transactions; (3) it seemed very fair to let every consumer know when he is or is not being represented by an agent, because at closing, it is known that the agent is representing one person and not the rest of the people at the closing; (4) while this clarification is good, discussion and an amendment relating to agency principal law that does not require disclosure of the identity of a buyer by an agent who purchases property on his behalf is an entirely different subject matter; (5) the merger of these different subject matters is not going to be good for the consumer; (6) if an exception is appropriate: (a) it should be placed in a separate section; and (b) the disclosure section should fully explain that the exception is granted in another section of the administrative regulation; and (7) rather than amend this administrative regulation to include the exception after a twenty minute discussion, the proposed amendment should be further studied.

In response to Chairman Crenshaw's comments, Mr. Blair stated that: (1) the exception was already in this administrative regulation; (2) the amendment proposed by the Commission simply deleted "non-owner" and inserted in lieu thereof, "purposes other than owner"; (3) he became general counsel at the Commission six weeks ago; (4) the previous general counsel had drafted the language in the administrative regulation that, after review, he believed needed clarification because it did not clearly state the intent of the administrative regulation concerning disclosure; and (5) the amendment to the amendment proposed by the Commission, today, was: (a) not intended to be a change from what was already in the administrative

regulation before the Subcommittee; and (b) is simply a clarification of what the administrative regulation intended.

Chairman Crenshaw: (1) asked Mr. Blair if he would agree to: (a) approval by the Subcommittee of the original amendment, and exclusion of the amendment to the amendment; (b) appear before the Subcommittee at its next meeting, which would allow the Subcommittee sufficient time to review the amendment to the amendment and determine whether it was appropriate; (2) stated that: (a) Representative Allen's concern is one that is well worth looking into in detail because, often, quiet residential communities are suddenly faced with the location in the community of an undesirable industry; (b) Mr. Blair's original context was to ensure that the consumer knew what he was and was not receiving in terms of representation by an agent; (c) while the Subcommittee wants to help implement that change, it has not had a chance to fully study the exception to disclosure; and (6) Senator Bradley had raised similar issues that may well need to be addressed or further clarified before the Subcommittee goes forward on this administrative regulation. Mr. Blair stated that (1) he understood Chairman Crenshaw's concerns and (2) Chairman Crenshaw's proposal was a good suggestion.

In response to a question from Representative Bruce, Chairman Crenshaw stated that he wanted the amendment to the amendment officially withdrawn. Representative Allen so moved, seconded by Representative Bruce.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Section 3(2)(b) was amended to: (a) comply with the drafting requirements of KRS 13A.222; and (b) correct a cross-reference to a section of the administrative regulation; and (4) Section 3(4)(b) was amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Board of Certification of Marriage and Family Therapists**

201 KAR 32:050. Code of ethics. This administrative regulation was amended as follows: (1) The RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION paragraphs were amended to correct statutory citations; (2) 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); (3) The following sections were amended to clarify requirements: (a) Section 1(3), relating to dual relationships with clients; (b) Section 2(1)(d) relating to waivers for the release of confidential information; (c) Section 3 relating to disciplinary action; (d) Section 4 relating to dual relationships with supervisees; and (3) Section 6(2) was amended to delete "but not limited to", and to establish the specific items or conditions, pursuant to: (a) KRS 13A.100 and 13A.120, requiring an administrative regulation to contain all conditions, requirements; and (b) KRS 13A.130, prohibiting the use of forms of action not contained within an administrative regulation.

#### **Board of Certification for Professional Art Therapists**

201 KAR 34:010. Definitions. David Nicholas represented the Board. In response to a question by Representative Bruce, Mr. Nicholas stated that: (1) the statute governing art therapists was a certification, rather than a licensure law; (2) provided title protection for persons who have been certified as professional art therapists; and (3) a professional art therapist uses art as a method to determine and deliver the type of therapy a client may need, especially in the therapy provided children and others for whom it is more likely that drawing and other forms of art, rather than other forms of information gathering, is more likely to result in the determination of the problem and appropriate therapy.

This administrative regulation was amended as follows: (1) The Title was amended to state the subject matter of this administrative

regulation, the certification of professional art therapists; (2) Pursuant to KRS 13A.222(4)(e), definitions were deleted or placed in a section of the administrative regulation governing the subject matter because they were: (a) not required; or 2. repeated or summarized a statutory definition; or 3. did not comply with the requirements for the establishment or use of definitions established by KRS 13A.222(4)(e); or 4. established conditions, terms, or other requirements rather than solely define terms, words, or phrases; (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); and (4) clarify terms.

#### **Justice Cabinet: Juvenile Detention Facilities**

500 KAR 6:110 (& E). Medical and health care services. Jack Damron, Counsel, Department of Corrections, represented the Cabinet. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to make cite the specific subsection of applicable statutes; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation pursuant to 13A.220(3)(f); (3) various subsections of Section 1 were amended to: (a) comply with the drafting requirements of KRS 13A.222; and (b) correct numbering within the administrative regulation, pursuant to KRS 13A.220(4).

500 KAR 6:150 (& E). Programs. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to cite the specific subsections of applicable statutes; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (3) Section 1 was amended to: (a) comply with the drafting requirements of KRS 13A.222; and (b) delete superfluous language, pursuant to KRS 13A.222(4).

500 KAR 6:190 (& E). Waiver of compliance. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation as required by KRS 13A.220(3)(f); (2) Section 1(1), (2), and (3) was amended to: (a) comply with the drafting requirements of KRS 13A.222; (b) delete superfluous language, and (c) use "shall" and "may", pursuant to KRS 13A.222(4)(b).

500 KAR 6:200 (& E). Physical plant. In response to a question from Representative Jim Bruce, Mr. Damron stated that: (1) this administrative regulation addresses physical plant requirements, including how the jail will house juveniles; (2) many of the changes are intended to make the housing requirements clearer; and (3) some of the requirements include: (a) the number of that can be housed; (b) how many juveniles can be in a day room; (b) how many toilets per juvenile; and (d) the dimensions of the cells.

In response to a question from Representative Allen, Mr. Damron stated that: (1) the decisions regarding physical plant requirements are made at the suggestion of a commission appointed by Corrections and the Legislature; (2) the commission: (a) has representatives of county government, juvenile facilities, and corrections; (b) meets at least twice annually; (c) makes suggestions on housing and on how the jails ought to comply; and (3) some of the changes have been made in response to litigation that had been filed on behalf of juveniles.

In response to questions from Representative Bruce, Mr. Damron stated that: (1) some children will and have sued the Justice Cabinet and the Department of Corrections because the children felt the facilities for juveniles were inadequate; (2) there has been major litigation in Northern Kentucky, Daviess County, Lexington, and Louisville; (3) some of the requirements and limitations relating to housing are the result of these lawsuits; (4) if the juveniles are successful in their lawsuits, under the Civil Rights Act, they are entitled to request attorney fees from the court; (5) the judge assesses attorney fees; (6) if the state is the defendant and loses, it



pays the attorney fees; (7) public defenders represent only criminal defendants; and (8) juveniles are represented by the private bar or the American Civil Liberties Union.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to cite the specific subsection of applicable statutes; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (3) Section 1 was amended to: (a) comply with the drafting requirements of KRS 13A.222(4), (b) delete superfluous language, and (c) specify that the Cabinet is required to make the required notifications when the population of a juvenile facility exceeds the rated capacity.

**Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to: (a) use "promulgate" instead of "adopt" pursuant to KRS 13A.010(3); and (b) delete superfluous language; (2) Section 1, the incorporation by reference section, was amended to correct formatting pursuant to KRS 13A.2251(1); (3) pages 2 and 3 of CPP 27-12-02 were amended to correct two typographical errors in capitalization and punctuation.

501 KAR 6:170. Green River Correctional Complex. This administrative regulation was amended as follows: (1) Section 1, the incorporation by reference section, was amended to: (a) correct formatting pursuant to KRS 13A.2251(1) and (b) insert a comma; and (2) various pages of the GRCC were amended to (a) correct grammar and punctuation errors; (b) correct citations to referenced statutes and administrative regulations; and (c) reformat the section numbering of GRCC 11-08-01, Page 2; and (3) Pursuant to Representative Lee's motion and Senator Preston's second under KRS 13A.320(1)(b)3: (a) GRCC 09-05-01, Page 1, Section 3, was amended to allow individuals under age twenty-one to enter the facility with the permission of the Warden or Deputy Warden; and (b) GRCC 09-09-01, Page 4, Section 10, was amended to show that the facility has a combination lock, rather than a keyed lock, for the evidence locker.

In response to a question from Senator Preston, Subcommittee staff stated that the proposed amendments corrected the issues relating to statutory authority.

**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. Kevin Noland, General Counsel, represented the Department. This administrative regulation was amended to clearly state the necessity for and function served by the administrative regulation in the NECESSITY AND FUNCTION paragraph pursuant to KRS 13A.220(3)(f).

**Pupil Transportation**

702 KAR 5:080. Bus drivers' qualifications; responsibilities. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct the citation of federal regulations; (2) the NECESSITY AND FUNCTION paragraph was amended to use "promulgate" instead of "adopt", pursuant to KRS 13A.010(3); (3) Pursuant to KRS 13A.2251(1): (a) Sections 1(5) and 2(2)(f) were deleted; and (b) language incorporating material by reference was inserted in a new section, Section 34; (4) Section 2(1)(a)1 was amended to change an "or" to "and"; (5) Section 3(1) and (2) was amended to use "corrective lenses" instead of "glasses" to make it clear that: (a) contact lenses may be used to correct vision; (b) "contact lenses" would make it clear that all corrective "glasses" or lenses are included; and (c) this amendment would comply with the term used by the applicable federal regulation; (6) Section 7(2) was amended to include a citation to standards and to incorporate them by reference; (7) Section 8 was amended to renumber two subparagraphs; (8) Sections 7, 8, 11, and 16 were amended to comply with the drafting requirements of KRS 13A.222(4); (9) Section 26 was

amended to use "may" as required by KRS 13A.222(4)(b); and (10) the Alcohol and Controlled Substance Policy, KDE 1530, that was incorporated by reference, was amended to: (a) comply with the formatting requirements required for the first page of material incorporated by reference, pursuant to KRS 13A.2251(3); (b) correct references to the "Kentucky Board of Education"; (c) comply with the drafting requirements of KRS 13A.222(4); and (d) correct citations to apply federal regulations.

**Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration**

781 KAR 1:040. Rehabilitation technology services. Sue Simon, Office of General Counsel, and George Parsons, Department of Vocational Rehabilitation, represented the Department. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to state that the agency is required to promulgate the administrative regulation; (2) Sections 2, 3(1), 6(4), 7, and 8(4) were amended to use "if" to express a condition, pursuant to KRS 13A.222(4)(i); (3) Section 3(3), 8(2), and 9(3) were amended to use the same title for the director of program services throughout the administrative regulation; (4) Section 8(1) was amended to cross reference the appropriate term for subsections; (5) Section 8(4) was amended to use "shall" pursuant to KRS 13A.222(4)(b); and (6) Sections 11(2) and 12(2) were amended to delete "but is not limited to" pursuant to KRS 13A.100, 13A.120, and 13A.130.

781 KAR 1:070. Fees for services. In response to questions by Representative Allen, Mr. Parsons stated that: (1) some of the fees may have been increased; (2) the fees for services have not been increased since 1990; (3) the increases were small (4) fees for psychiatric services have been raised from \$67.50 to the Medicare rate plus ten percent, in order to: (a) offer these services to people who otherwise would not qualify for Department services; and (b) base the fees for services to these people on the Medicare rate; (6) if the Medicare rate changes, the Department's rates will change; (7) while the current psychiatric evaluations fees are about \$100, he was unsure of the exact Medicare rate; (8) it was the intent of the Department to provide psychiatric services at a rate that was a little higher than Medicare rate because the Medicare rate is lower than it should be for the provision of these services; (9) instead of a five-day evaluation at \$380, vocational evaluation will increase to \$132 per day, because everyone does not need a five-day evaluation; (10) there is a small increase of about \$80 or \$90 per day for evaluations; (15) there are some new fees for new services the rehabilitation center is starting to provide, such as: (a) audiological services; (b) outpatient therapy; (c) brain injury program; and (c) in-house services for dormitories; (16) some of the fees are paid by Medicare, Medicaid, the Veterans' Administration, and some Workers' Compensation insurance carriers, who will not use these services if the rate is not competitive; (17) the Department's intent is to make the service available if the service is there and the room and space is available; (18) in order to avoid an audit exception by the federal government, the Department: (a) is prohibited from using federal funds to make these services available to the general public; and (b) is required to charge a fee for non-eligible individuals to access these services; (26) this approach permits the Department to match the empty space with people who need the services but who otherwise would not be eligible; (27) it does not matter if the Veterans' Administration or Workers' Compensation insurance carriers choose to obtain the services elsewhere, because the Department's intent is to make the services available if people who otherwise would be ineligible want it.

This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to: (a) cite the statute relating to the specific subject matter of the administrative regulation; (b) state that the agency is required to promulgate the administrative regulation; (c) insert a comma; and (d) insert "administrative" before "regulation"; and (2) Section 2(2)(p) was amended to

correct a spelling error.

**Department of Insurance: Authorization of Insurers and General Requirements**

806 KAR 3:160. Life and health reinsurance agreements. Carla Montgomery and Russell Coy represented the Department of Insurance. Ms. Montgomery stated that: (1) this administrative regulation and the amendments to it was intended to prevent a company from: (a) claiming to reinsure business when it is not reinsuring business; and (b) presenting a false financial picture of itself; (2) the amendment adds: (a) health reinsurance to the types of reinsurance covered; (b) several accounting procedures to assist consumers in the evaluation based on NAIC model regulations; and (3) Subcommittee staff assisted Department staff in preparing the amendments offered at today's meeting, which basically would make the administrative regulation comply with the format and drafting requirements of KRS Chapter 13A. In response to questions by Representative Bruce, Ms. Montgomery stated that: (1) this administrative regulation: (a) was not promulgated in response to legislation enacted during the 1996 Regular Session of the General Assembly; and (b) did not conflict with the legislation; and (2) administrative regulations required to implement the legislation would be promulgated after July 15, the effective date of the legislation.

This administrative regulation was amended as follows: (1) The NECESSITY AND FUNCTION paragraph was amended to: (a) correct statutory citations; and (b) clearly state the need for and the function the administrative regulation will serve; (2) various sections were amended to comply with the: (a) format requirements of KRS 13A.220(4); (b) drafting requirements of KRS 13A.222(4); and (c) clarify terms and cross references; (3) establish in Section 1, the definitions section, a definition for "evergreen clause"; and (4) delete the Appendix, and create a new section, Section 6, to contain the Risk Categories Table originally placed in the Appendix.

**Kinds of Insurance; Limits of Risk; Reinsurance**

806 KAR 5:025. Credit for reinsurance. This administrative regulation was amended to: (1) comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (2) add a definition for "evergreen clause"; (3) clearly establish deadlines; and (4) identify and incorporate the "Certificate of Assuming Insurer" form.

**Cabinet for Health Services: Department of Health Services: Emergency Medical Technicians**

902 KAR 13:010. Definitions for 902 KAR Chapter 13. Robert Calhoun, Emergency Medical Services Manager; Marcia Burklow, Training Coordinator for Emergency Medical Technicians Training Programs in Kentucky; and Gary Kupchinsky, Chemical Stockpile Emergency Preparedness Health Program Administrator, represented the Department. Mr. Calhoun stated that: (1) this administrative regulation and the other 902 KAR Chapter 13 administrative regulations considered by the Subcommittee, today, were required because of a change in the national training standards and curriculum for EMTs in 1994 that is required to be implemented in Kentucky for purposes of training, certification, and practice management for EMTs.

The NECESSITY AND FUNCTION paragraph of this administrative regulation was amended to state that the agency is required to promulgate the administrative regulation to comply with KRS 13A.010(3).

902 KAR 13:020. Applicant requirements for EMT training and certification. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to state that the agency is required to promulgate the administrative regulation pursuant to KRS 13A.010(3); (2) Section 1(1) was amended to correct a typographical error; (3) Section 1(4) was amended to delete a reference to a July 1, 1996 effective date because the administrative regulation will not be effective at that time;

(b) (4) Section 2 was amended to correct the formatting of subparagraphs, pursuant to with KRS 13A.220(4); (5) Section 2(1) was amended to (a) delete an "or" and an "and", and (b) correct a punctuation error; (6) Section 4(1) was amended to: (a) make a word plural and (b) correct a typographical error.

902 KAR 13:050. Training, examination, certification and recertification of the emergency medical technician. In response to a question by Representative Bruce, Mr. Calhoun stated that: (1) an amendment in addition to the amendment proposed by the agency pursuant to Subcommittee staff review was necessary to comply with House Bill 374, enacted during the 1996 General Assembly; (2) while the initial administrative regulation allowed the Department to phase in a requirement that all EMTs shall meet the requirements of the National Registry for EMTs within a three year period, HB 374 requires, effective July 1, 1997, that all EMTs shall meet National Registry requirements in order to be certified.

Pursuant to KRS 13A.320(1)(b)3, on Senator Preston's motion, seconded by Representative Bruce, this administrative regulation was amended as follows: (1) Sections 1(5)(a) and 13(4) were amended to change the name of the application form to the form's correct name in order to correct a typographical error in the title of the form; and (2) Section 3(3)(a) was amended to (a) delete the three-year phase-in period and (b) require compliance with the new training requirements by July 1, 1997, in order to comply with the provisions of 1996 House Bill 374.

This administrative regulation was also amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to state, pursuant to KRS 13A.010(3), that the agency is required to promulgate the administrative regulation; (2) Sections 1(2), 1(3), 3(1), 3(3), 10(2) were amended to delete references to a July 1, 1996 effective date, because the administrative regulation will not be effective at that time; (3) Sections 1, 3, 5, 9, 12, 13: were amended to (a) correct grammar and punctuation; and (b) delete superfluous language; and (4) Sections 2(1), 5(11), 12(10) were amended to correct cross references to other sections of this administrative regulation.

902 KAR 13:070. EMT-instructors and EMT-instructor trainers. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to state, pursuant to KRS 13A.010(3), that the agency is required to promulgate the administrative regulation; (2) Sections 1, and 4(5), (6) were amended to correct grammar and punctuation errors; and (3) Because the administrative regulation will not be effective on July 1, 1996, Sections 4(2), (3), (5) were amended to (a) delete references to a July 1, 1996 effective date, and (b) to insert in lieu thereof, "effective date of this administrative regulation".

902 KAR 13:080. Authorized procedures. In response to a question by Chairman Crenshaw, Mr. Calhoun stated that: (1) while the original language of this administrative regulation authorized the Cabinet to vary from the national standards curriculum for pilot programs to test out new skills in Kentucky, it did not specifically state whether and how new skills could be practiced in Kentucky; and (2) an amendment in addition to the amendment proposed by the agency pursuant to Subcommittee staff review is necessary to allow certain ambulance services or counties to permit EMTs trained in programs to practice the special skills subject to limitations in this administrative regulation.

Pursuant to KRS 13A.320(1)(b)3, upon Senator Preston's motion seconded by Representative Bruce, this administrative regulation was amended to add a new Section 3(3) to permit EMTs who complete a cabinet-approved pilot program to perform procedures learned in the pilot program in accordance with specific limitations established by this administrative regulation.

This administrative regulation was also amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to state that, pursuant to KRS 13A.010(3), the agency is required to promulgate the administrative regulation; (2) Because this administrative regulation will not be effective on July 1, 1996, Sections 1(1), (3); and

2(1), (7) were amended to (a) delete references to a July 1, 1996 effective date, and (b) insert in lieu thereof "effective date of this administrative regulation"; and (3) Section 1(3) was amended to: (a) correct the numbering of the Section; and (b) correct a citation to another administrative regulation.

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Finance and Administration Cabinet: Purchasing**

200 KAR 5:021 & E. Manual of policies and procedures. Angela Robinson, attorney for the Cabinet, Ed Ross, State Controller, and Alex Whitenack, State Controller's office represented the Cabinet. Ms. Robinson stated that this administrative regulation amended the Cabinet's policies and procedures manual to permit small purchases under the procurement card program. Subcommittee staff stated that: (1) the Cabinet was one of the few agencies exempted from KRS 13A.221(2) and permitted by statute to incorporate all its forms, policies and procedures in one administrative regulation; (2) Subcommittee staff has been able to review in detail only about a third of the manual; (3) Mr. Ross had been informed that: (a) this administrative regulation would be considered today; (b) Subcommittee staff would complete its review as time permitted, inform him of issues raised by the review, and meet with him to resolve any issues raised; and (c) if amendments were needed, they could be filed by the Cabinet. In response to a question by Representative Bruce, Subcommittee staff stated that: (a) the manual was incorporated by reference in this administrative regulation; (b) although the Subcommittee staff review was not complete, the review did not indicate any problems; (c) a vote on this administrative regulation was a vote on the manual; and (d) the agency had been informed that it would be contacted after the manual had been thoroughly reviewed. In response to a question by Representative Bruce, Mr. Ross stated that, for the procurement card, the maximum limit on small purchases was \$500, and complied with the limits established by purchasing administrative regulations. Representative Bruce stated that: (1) complaints had been made that Cabinet specifications had been drawn in such a complicated manner that they prevented better offers that would have been made to the Cabinet had the specifications been less complicated; and (2) while he was sure the Cabinet's current policy was not to draw specifications in such a manner that only one person could bid, complaints that this had been done had been made years ago. In response to a question by Chairman Crenshaw, Mr. Ross stated that: (1) the manual has existed for 6 or 8 years; (2) this administrative regulation amends the manual to add a small section relating to the procurement card; and (3) other parts of the manual had been extensively reviewed in the past, with the most recent comprehensive review having occurred in 1994 after a complete revision.

**Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance**

787 KAR 1:210E. Employer contribution rates. Beverly Haverstock, General Counsel, and Juanita Back, Unemployment Insurance, Department for Employment Services, represented the Department. Ms. Haverstock stated that: (1) amending this administrative regulation was an annual event; (2) the Department needs to establish the rates for employer contributions based upon the amount in the trust fund; (3) this administrative regulation merely amended the amount in the trust fund upon which the employer contributions are based; (4) applicable statutes require the use of a particular table and schedule established by the statute, if the trust fund exceeds \$350 million; and (5) because the trust fund balance exceeds that amount, this administrative regulation establishes the schedule for employer contributions.

In response to a question by Chairman Crenshaw, Ms. Back stated that: (1) it was necessary to file this as an emergency administrative regulation in order to notify the employers to file their

first quarterly reports on a timely basis; and (2) the Department has filed an ordinary administrative regulation.

In response to a question from Representative Lee and Chairman Crenshaw, Ms. Back stated that: (1) it would not cost more money; and (2) the Department has charged one of the lowest rates established in Table A of the statute.

**Labor Cabinet: Occupational Safety and Health**

Bill Ralston, Safety Standards Specialist, and Tim Chancellor, Health Standards Specialist, represented the Cabinet. Mr. Chancellor stated that: (1) The Kentucky Occupational Safety and Health Standards Board made minor and technical changes to the three (3) administrative regulations listed below relating to occupational exposure to asbestos and lead as published by federal OSHA; and (2) these changes are primarily intended to clarify definitions and explain the intent of existing regulations so that the employers can better understand what is expected of them.

In response to a question by Representative Bruce, Mr. Chancellor stated that the federal government has: (1) not relaxed regulatory requirements for asbestos; and (2) provided some alternative methods for compliance without relaxing protection for employees.

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. (See Discussion under OTHER BUSINESS)

**Department of Insurance: Health Insurance Contracts**

806 KAR 17:066 & E. Medicare supplement insurance policies. In response to questions by Rep Bruce, Ms. Montgomery stated that: (1) this administrative regulation was amended to comply with federal guidelines for Medicare supplement policies; (2) the NAIC model regulation is required by federal guidelines to be updated; (3) the Department has: (a) followed the federally mandated updates of the NAIC model, particularly updates in amounts paid for Medicare supplements; (b) increased some of the copayments to comply with federal government increases; and (4) the increases would not increase the cost to the state. Chairman Crenshaw stated that he was concerned about the increase in the amount citizens would have to pay. In response to questions by Chairman Crenshaw relating to the amount of the increase in payment for various items, Ms. Montgomery stated that: (1) all payments in the different plans were updated and increased, including: (a) including hospitalization; (b) skilled nursing facility care, which increased from \$78 to \$89.50; (c) Medicare payment for the first 60 days of hospitalization excludes the first \$716, an increase of \$88; and (2) the greatest increase was probably \$100.

**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. Judith Walden, General Counsel, represented the Department. Ms. Walden stated that this administrative regulation removed both the initial and the renewal fees that were previously charged. In response to a question by Representative Bruce, Ms. Walden stated that individuals were still permitted to put window air conditioners in themselves.

**Plumbing**

815 KAR 20:020. Parts or materials list. In response to questions from Chairman Crenshaw, Ms. Walden stated that (1) the Department has a list of 35 additional parts and materials; (2) from time to time, manufacturers come up with new products that are not a part of the code already; (3) the manufacturers appear before the Plumbing Code committee for approval of new parts; (4) if the parts are approved, the Department: (a) lists the parts in this administrative regulation; and (b) permits the new parts to be sold in Kentucky; (5)

the new parts are new fittings previously unmarketed in Kentucky; and (6) the Department is: (a) not adding additional requirements to the costs of building a piece of property; (b) accepting new products; and (c) making more materials available.

**Cabinet for Health Services: Long-term Care**

900 KAR 2:020. Appeals. John Walker, Cabinet Office of the Counsel, Ralph Von Derau, Cabinet Office of the Inspector General, represented the Cabinet. Mr. Von Derau stated that the administrative regulation was promulgated because: (1) of the executive branch reorganization of the Cabinet; and (2) to implement changes required by KRS Chapter 13B, governing the subject matter of the administrative regulation, administrative hearings. Representative Lee: (1) stated that the: (a) 30 day deadline for holding a hearing was changed to require a hearing to be held as soon as practicable; and (b) absence of a deadline for holding an administrative hearing concerned him; (2) deadline should contain a maximum period that could not be exceeded; and (3) asked if that meant there was no deadline the Cabinet had to meet. Mr. Von Derau stated that the general deadline was required by KRS Chapter 13B. Subcommittee staff stated that: (1) This was one of the hearing administrative regulations that would be reviewed in detail; (2) Subcommittee staff would report its findings to the agency and Subcommittee on compliance with KRS Chapter 13B and required amendments; (3) applicable state and federal statutes and administrative regulations establishing deadlines and other requirements would be reviewed for compliance; and (4) If required, the deadline in this administrative regulation for administrative hearings could be amended to ensure that it did not exceed a deadline mandated by KRS Chapter 13B. Mr. Walker stated that: (1) the Cabinet welcomed the opportunity to work with Subcommittee staff and the Office of the Attorney General on administrative regulations implementing KRS Chapter 13B; (2) would address the issue raised by Representative Lee and other issues relating to the implementation of KRS Chapter 13B; (3) the original 30 day deadline: (a) had been added in 1983 at the request of Representative Gerta Bendl; (b) since then, the Cabinet has had problems scheduling hearings with all parties in compliance with this deadline; (c) the amendment is intended to provide parties sufficient prior notice and time to prepare; and (d) Cabinet staff will work with Subcommittee staff to: 1. determine whether KRS Chapter 13B governs extensions of periods to ensure sufficient prior notice and time to prepare; and 2. how to comply with KRS Chapter 13B. Representative Bruce stated that the: (1) 30 day deadline had been added because of delays in conducting administrative hearings; and (2) Cabinet should report to the Subcommittee on its progress in complying with KRS Chapter 13A and prevention of undue delay in holding administrative hearings. Subcommittee staff stated that: (1) staff would complete its review; (2) report to the Subcommittee; and (3) request the Cabinet to report on the matter to the Subcommittee. (See Discussion under OTHER BUSINESS)

**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. Ann Hager, Department for Social Insurance, represented the Department. Ms. Hager stated that: (1) this administrative regulation implements the cost of living increases for the state supplementation program that were effective in January; (2) the increases that would go to personal care homes, family care homes, and individual and caretaker services are a result of increases in SSI that the recipients receive; (3) the Cabinet does not penalize people upon the receipt of an increase in SSI benefits in order to permit them to raise their standards for personal care and family care accordingly; (4) another amendment permits, rather than requires, a personal care home to participate in mental illness/mental retardation basic training workshops; (5) whenever the population of a facility includes thirty-five percent mental illness and mental retardation

patents, the department pays a training allowance for its staff to attend the basic training workshops; (6) there are three personal care homes in the state that receive funding from Mental Health/Mental Retardation whose staff is trained in the MI/MR basic training; (7) the Department is exempting these homes from participation in the required basic training workshops; and (8) the other amendments to this administrative regulation are definitions of acronyms.

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

904 KAR 2:055. Hearings and appeals. (See Discussion under

**OTHER BUSINESS**

904 KAR 2:116 (& E). Home Energy Assistance Program. (See Discussion under OTHER BUSINESS)

**Food Stamp Program**

904 KAR 3:060. Administrative disqualification hearings and penalties. (See Discussion under OTHER BUSINESS)

904 KAR 3:070. Fair hearings. Ms. Ann Hager, represented the Cabinet. Ms. Hager stated that these administrative regulations: (1) relate to administrative hearings under the food stamp program on disqualification and fair hearing procedures; and (2) were amended by the Cabinet to conform to KRS Chapter 13B, governing administrative hearings, primarily to delete language that repeated or summarized KRS Chapter 13B. Subcommittee staff stated that these administrative regulations were among administrative regulations governing administrative hearings that would be reviewed in detail by Subcommittee staff and the Office of the Attorney General for conformity with KRS Chapter 13B. (See Discussion under OTHER BUSINESS)

**Cabinet for Health Services: Office of Inspector General**

906 KAR 1:060. Nursing pool hearings. Ralph Von Derau, Office of Inspector General, represented the Cabinet. (See Discussion under OTHER BUSINESS)

906 KAR 1:080. Standards for utilization review. (See Discussion under OTHER BUSINESS)

906 KAR 1:100. Nurse aide registry, abuse registry and hearing procedures. Ralph Von Derau represented the Cabinet. Mr. Von Derau stated that these administrative regulations: (1) relate to administrative hearings; (3) were required to comply with the executive order reorganizing the Cabinet; and (3) were amended by the Cabinet to conform to KRS Chapter 13B, governing administrative hearings. (See Discussion under OTHER BUSINESS)

**Department for Medicaid Services**

907 KAR 1:320. Kentucky patient access and care system (KenPAC). John Walker, Office of Counsel; Ked Fitzpatrick, Medicaid Services, and Karen Doyle, Cabinet for Health Services, represented the Cabinet.

907 KAR 1:560. Medicaid hearings and appeals for recipients. (See Discussion under OTHER BUSINESS)

907 KAR 1:671. Conditions of Medicaid provider participation; withholding overpayments, appeals process, and sanctions. (See Discussion under OTHER BUSINESS)

907 KAR 1:672. Provider enrollment, disclosure, and documentation for Medicaid participation. In response to a question by Representative Bruce, Ms. Doyle stated that: (1) at the request of Subcommittee staff, the Cabinet has removed sections from 902 KAR 1:671 and placed them in 902 KAR 1:672 and 902 KAR 1:673, pursuant to KRS 13A.221(1); and (2) the requirements previously in 902 KAR 1:671 have not been amended.

In response to a question by Chairman Crenshaw and Representative Bruce, Ms. Doyle stated that: (1) pursuant to House Bill 127 and Senate Bill 37, enacted during the 1994 Regular Session, 902 KAR 1:672 establishes the procedures for the enrollment of physicians or providers and the requirements that they follow; (2) this tightened up Cabinet requirements; and (3) previously, the provisions of these administrative regulations had been contained in one administrative regulation.

In response to a question by Representative Bruce, Mr. Walker

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stated that any work the Cabinet does with administrative regulations is designed to help it correct the overcharges from the providers.

907 KAR 1:673. Claims processing.

907 KAR 1:675 (& E). Program integrity.

907 KAR 1:677 (& E). Medicaid recipient lock-in.

The following administrative regulation was withdrawn by the promulgating agency:

**Board of Certification of Marriage and Family Therapists**

201 KAR 32:040. Compensation of board members.

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: Personnel Pilot 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.

**Board of Examiners and Registration of Landscape Architects**

201 KAR 10:050E. Fees.

**Transportation Cabinet: 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.

**Cabinet for Families and Children: Food Stamp Program**

904 KAR 3:042E. Food Stamp Employment and Training Program.

**Cabinet for Health Services: Department for Medicaid Services**

907 KAR 1:060E. Medical transportation.

907 KAR 1:061E. Payments for medical transportation.

907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities.

**Payment and Services**

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.

Compiler stated that the following administrative regulations on today's agenda related to administrative hearings: 803 KAR 25:010; 900 KAR 2:020; 900 KAR 2:060; 904 KAR 2:055; 904 KAR 2:116 (& E); 904 KAR 3:060; 904 KAR 3:070; 906 KAR 1:060; 906 KAR 1:080; 906 KAR 1:100; 907 KAR 1:560; and 907 KAR 1:671.

The Subcommittee adjourned at 11:50 a.m. until July 1, 1996 at 10 a.m. in Room 149 of the State Capitol Annex.

### OTHER BUSINESS

Chairman Crenshaw stated that: (1) while the administrative regulations relating to administrative hearings governed by KRS Chapter 13B on today's agenda would be considered by the Subcommittee, they would be subject to further review; (2) these administrative regulations appeared to comply with statutory authority; (3) Subcommittee staff was: (a) conducting a review of all administrative regulations implementing KRS Chapter 13B, governing administrative hearings; and (b) working with the Division of Administrative Hearings of the Office of the Attorney General in this review; (c) because of the need to concentrate on administrative regulations deferred from previous Subcommittee meetings, other administrative regulations and Subcommittee business, Subcommittee staff would: 1. defer a comprehensive review of the administrative hearing administrative regulations on today's agenda; 2. notify agencies of issues raised by these administrative regulations; 3. discuss and attempt to resolve the issues raised; and 4. report its findings to the Subcommittee; (4) the Subcommittee will consider administrative regulations for which amendments are required as existing administrative regulations; and (5) agencies can file the necessary amendments. The Regulations





## ADMINISTRATIVE REGISTER - A1

### CUMULATIVE SUPPLEMENT

#### Locator Index - Effective Dates ..... A2

The Locator Index lists all administrative regulations published in VOLUME 23 of the Administrative Register from July, 1996 through June, 1997. 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 22 are those Administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

#### KRS Index ..... A8

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 23 of the Administrative Register.

#### Subject Index ..... A9

The Subject Index is a general index of administrative regulations published in VOLUME 23 of the Administrative Register, and is mainly broken down by agency.



# ADMINISTRATIVE REGISTER - A2

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
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### VOLUME 22

The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 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)

907 KAR 1:677E	1299	12-5-95
907 KAR 1:715E	2283	5-13-96
907 KAR 3:005E	1984	4-15-96
907 KAR 3:010E	1986	4-15-96
908 KAR 1:340E	1582	1-30-96

200 KAR 5:021E	1778	3-15-96
200 KAR 5:302E	2249	5-15-96
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
Replaced	2287	6-6-96
202 KAR 4:010E	1050	11-6-95
Replaced	2288	6-6-96
301 KAR 2:140E	1968	4-11-96
Withdrawn		5-30-96
500 KAR 6:110E	1555	2-14-96
500 KAR 6:150E	1558	2-14-96
500 KAR 6:190E	1559	2-14-96
500 KAR 6:200E	1560	2-14-96
500 KAR 11:001E	2253	5-15-96
500 KAR 11:110E	2255	5-15-96
601 KAR 13:090E	1971	4-15-96
601 KAR 13:100E	1973	4-15-96
702 KAR 3:285E	2257	5-15-96
704 KAR 20:084E	1271	12-4-95
Replaced	1892	6-6-96
787 KAR 1:210E	1976	4-8-96
803 KAR 2:320E	1562	2-15-96
803 KAR 2:425E	1567	2-15-96
803 KAR 2:500E	1569	2-15-96
803 KAR 50:010E	2259	5-15-96
806 KAR 17:066E	1779	2-29-96
902 KAR 1:400E	2267	5-13-96
902 KAR 14:070E	2269	5-15-96
902 KAR 17:021E	2272	4-30-96
904 KAR 2:015E	1571	1-30-96
904 KAR 2:016E	1285	12-5-95
904 KAR 2:116E	1447	1-4-96
904 KAR 3:042E	1977	4-15-96
905 KAR 1:360E	1292	11-22-95
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907 KAR 1:013E	2273	5-13-96
907 KAR 1:034E	2278	5-13-96
907 KAR 1:035E	2282	5-13-96
907 KAR 1:060E	1576	1-18-96
907 KAR 1:061E	1578	1-18-96
907 KAR 1:140E	1981	4-4-96
907 KAR 1:505E	1071	11-6-95
Expired		5-19-96
907 KAR 1:510E	1073	11-6-95
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907 KAR 1:675E	1295	12-5-95

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31 KAR 4:030		
Amended	2041	(See Volume 23)
40 KAR 5:010	2189	(See Volume 23)
105 KAR 1:140		
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200 KAR 5:021		
Amended	2044	
200 KAR 5:301		
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200 KAR 22:120	2191	
201 KAR 1:160	2192	(See Volume 23)
201 KAR 8:015		
Amended	2311	
201 KAR 8:121	2504	
201 KAR 8:150		
Amended	2312	
201 KAR 8:260		
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201 KAR 8:330		
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201 KAR 15:040		
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201 KAR 15:050		
Amended	2321	
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201 KAR 15:090		
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201 KAR 32:040	1911	
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201 KAR 34:010	1913	(See Volume 23)
202 KAR 4:010	1747	
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301 KAR 2:111		
Amended	2325	



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301 KAR 2:174			As Amended	2298	6-6-96
Amended	1877	6-6-96	601 KAR 1:040		
301 KAR 2:178			Amended	1725	
Amended	1878		As Amended	2299	6-6-96
As Amended	2289	6-6-96	601 KAR 1:085		
401 KAR 50:010			Repealed	2299	6-6-96
Amended	1686		601 KAR 1:090		
Amended	2006	6-6-96	Repealed	2299	6-6-96
401 KAR 50:033	1752	6-6-96	601 KAR 1:105		
401 KAR 51:001			Repealed	2299	6-6-96
Amended	1691		601 KAR 1:170		
Amended	2010	6-6-96	Repealed	2299	6-6-96
401 KAR 51:010			601 KAR 1:200	2504	
Amended	2326		702 KAR 3:041	2194	(See Volume 23)
401 KAR 59:001			702 KAR 5:080		
Amended	1695		Amended	2056	(See Volume 23)
Amended	2014	6-6-96	704 KAR 20:084		
401 KAR 61:001			Amended	1892	6-6-96
Amended	1699		704 KAR 20:100		
Amended	2018	6-6-96	Repealed	2301	6-6-96
401 KAR 63:001			704 KAR 20:260		
Amended	1703		Amended	1894	
Amended	2023	6-6-96	Died*		6-13-96
401 KAR 65:001			704 KAR 20:540		
Amended	1707		Amended	1896	
Amended	2027	6-6-96	As Amended	2301	6-6-96
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Amended	2047	(See Volume 23)	Amended	2059	(See Volume 23)
500 KAR 6:150			781 KAR 1:070		
Amended	2049	(See Volume 23)	Amended	2061	(See Volume 23)
500 KAR 6:190	2193	(See Volume 23)	803 KAR 2:320		
500 KAR 6:200			Amended	2063	
Amended	2050	(See Volume 23)	803 KAR 2:425		
501 KAR 6:020			Amended	2068	
Amended	1882	6-6-96	803 KAR 2:500		
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Amended	2331		803 KAR 25:010		
501 KAR 6:030			Amended	2071	
Amended	1884	6-6-96	806 KAR 3:160		
501 KAR 6:040			Amended	1741	
Amended	1886	6-6-96	Amended	2033	(See Volume 23)
501 KAR 6:060			806 KAR 5:025	1755	
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501 KAR 6:120			Amended	2077	
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501 KAR 6:170			Amended	2114	
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601 KAR 1:005			815 KAR 8:020		
Amended	1716		Amended	2337	
Amended	2029		815 KAR 8:030		
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601 KAR 1:030			Amended	2339	
Amended	1720		815 KAR 30:060		
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			815 KAR 35:015		
			Amended	2346	



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Amended	2349		Amended	2445	
900 KAR 2:020			902 KAR 45:020		
Amended	2122		Amended	2450	
900 KAR 2:060			902 KAR 45:040		
Amended	2124		Amended	2455	
902 KAR 4:040			902 KAR 45:080		
Amended	2352		Amended	2459	
902 KAR 7:010			902 KAR 45:100		
Amended	2355		Amended	2463	
902 KAR 8:090			902 KAR 45:150		
Amended	2359		Amended	2469	
902 KAR 8:140			902 KAR 47:040		
Amended	2360		Amended	2472	
902 KAR 9:010			902 KAR 47:050		
Amended	2362		Amended	2474	
902 KAR 10:020			902 KAR 47:060		
Amended	2365		Amended	2477	
902 KAR 10:030			902 KAR 47:070		
Amended	2367		Amended	2478	
902 KAR 10:040			902 KAR 55:010		
Amended	2369		Amended	2480	
902 KAR 10:045			902 KAR 55:030		
Amended	2373		Amended	1900	
902 KAR 10:050			As Amended	2302	6-6-96
Amended	2376		902 KAR 55:070		
902 KAR 10:120			Amended	2481	
Amended	2378		902 KAR 100:040		
902 KAR 10:140			Amended	2483	
Amended	2392		902 KAR 100:170		
902 KAR 10:150			Amended	2490	
Amended	2394		904 KAR 2:015		
902 KAR 10:160			Amended	2141	
Amended	2399		904 KAR 2:016		
902 KAR 10:170			Amended	2146	
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902 KAR 13:010			Amended	2153	
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902 KAR 13:020			Amended	2158	
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902 KAR 13:050			Amended	2495	
Amended	2129	(See Volume 23)	904 KAR 3:020		
902 KAR 13:070			Amended	1901	6-6-96
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902 KAR 13:080			Amended	2162	
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902 KAR 13:090			Amended	2165	
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902 KAR 13:120			Amended	2169	
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902 KAR 13:130			Amended	2171	
Amended	2411		906 KAR 1:100		
902 KAR 15:010			Amended	2174	
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902 KAR 15:020			Amended	2497	
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902 KAR 17:020			Amended	2499	
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902 KAR 20:350			Amended	2076	
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902 KAR 22:030			Amended	1906	6-6-96
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907 KAR 1:671					
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907 KAR 1:672	2198				
907 KAR 1:673	2201				
907 KAR 1:675	1916				
Amended	2304				
907 KAR 1:677	1920				
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31 KAR 5:010E	45	6-13-96
101 KAR 2:100E	46	5-23-96
101 KAR 3:010E	52	5-23-96
201 KAR 1:045E	58	5-22-96
201 KAR 1:130E	59	5-22-96
302 KAR 78:020E	61	6-5-96
401 KAR 50:035E	62	6-14-96
701 KAR 5:020E	80	6-14-96
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11 KAR 8:030	
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11 KAR 12:050	
Amended	161
11 KAR 12:070	
Amended	162
13 KAR 2:050	
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13 KAR 2:060	
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201 KAR 32:060	215
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As Amended	145				
902 KAR 13:050					
As Amended	146				
902 KAR 13:070					
As Amended	152				
902 KAR 13:080					
As Amended	153				
902 KAR 20:018					
Amended	199				
907 KAR 1:450					
Amended	202				
907 KAR 1:545					
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	40 KAR 1:050	Chapter 197	501 KAR 6:020
	40 KAR 1:060	199.640-199.670	905 KAR 1:360E
	40 KAR 1:070	205.520	907 KAR 1:022E
18A.030	101 KAR 2:100E		907 KAR 1:025E
18A.110	101 KAR 2:100E		907 KAR 1:450
18A.155	101 KAR 3:010E	211.180	902 KAR 115:020E
18A.195	101 KAR 2:100E	211.870	902 KAR 105:070E
18A.430	200 KAR 22:130	211.890	902 KAR 105:070E
61.394	101 KAR 2:100E	211.993	902 KAR 105:070E
Chapter 117	101 KAR 3:010E	216B.010-216B.130	902 KAR 20:018
117.086	31 KAR 5:010E	216B.990	902 KAR 20:018
150.010	31 KAR 4:040E	224.10-100	401 KAR 50:035E
150.105	301 KAR 2:176	224.20-100	401 KAR 50:035E
150.170	301 KAR 2:176	224.20-110	401 KAR 50:035E
150.175	301 KAR 2:176	224.20-120	401 KAR 50:035E
150.340	301 KAR 2:176	304.48-220	806 KAR 46:030
150.360	301 KAR 2:176	313.130	201 KAR 8:430
150.390	301 KAR 2:176	322A.010	201 KAR 31:060
150.395	301 KAR 2:176	323A.060	201 KAR 10:050
150.990	301 KAR 2:176	323A.100	201 KAR 10:050
156.070	701 KAR 5:020E	325.261	201 KAR 1:045E
	702 KAR 7:065E		201 KAR 1:130E
156.132	701 KAR 5:051E	325.270	201 KAR 1:040
	701 KAR 5:055E		201 KAR 1:045E
156.160	702 KAR 3:130	327.040	201 KAR 1:130E
156.200	702 KAR 3:130		201 KAR 22:106
156.210	701 KAR 5:051E	327.050	201 KAR 22:135
157.200	707 KAR 1:180E		201 KAR 22:031
157.360	707 KAR 1:180E	327.060	201 KAR 22:135
158.030	707 KAR 1:180E	327.075	201 KAR 22:031
158.070	704 KAR 3:390E	327.080	201 KAR 22:135
158.100	707 KAR 1:180E	335.340	201 KAR 22:031
158.780	703 KAR 3:205E	Chapter 338	201 KAR 32:060
158.785	703 KAR 3:205E	341.270	803 KAR 50:010
160.045	702 KAR 1:080E	344.010-344.500	787 KAR 1:210
160.345	701 KAR 5:086E	344.030	104 KAR 1:020
161.770	701 KAR 5:090E	344.600-344.680	101 KAR 2:100E
161.790	701 KAR 5:090E	344.990	104 KAR 1:020
164.020	13 KAR 2:060	Chapter 439	104 KAR 1:020
164.744	11 KAR 8:030	605.090	501 KAR 6:020
164.753	11 KAR 8:030	610.110	905 KAR 1:360E
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164.780	11 KAR 5:130	20 USC	401 KAR 50:035E
164.785	11 KAR 5:130	42 USC	707 KAR 1:180E
164A.310	11 KAR 12:070	1996 Acts ch. 38	401 KAR 50:035E
164A.325	11 KAR 12:050	SB 137, 1996 GA	302 KAR 78:020E
164A.330	11 KAR 12:050	PL 103-3	302 KAR 78:020E
	11 KAR 12:070		101 KAR 2:100E
164A.335	11 KAR 12:070	EO96-619	101 KAR 3:010E
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	601 KAR 13:100		
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907 KAR 1:022E; 907 KAR 1:025E

### MEDICAL REVIEW BOARD (TRANSPORTATION)

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### MENTALLY RETARDED

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### MOTOR VEHICLES

(See Highways; or, Vehicle Regulation)

### NATURAL RESOURCES, ENVIRONMENTAL PROTECTION

Environmental Protection

Air Quality

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### NURSE AIDE

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### NURSING FACILITIES

(See Medicaid Services)

### OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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### OCCUPATIONS AND PROFESSIONS

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Dentistry; 201 KAR Chapter 8

Geologists; 201 KAR Chapter 31

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Marriage, family therapists; 201 KAR Chapter 32

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### PERSONNEL

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### PERSONNEL PILOT PROGRAMS

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### PHYSICAL THERAPISTS

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### PHYSICAL THERAPY, STATE BOARD

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### PUBLIC PROTECTION, REGULATION CABINET

Insurance

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### PUBLIC SERVICE COMMISSION

Utilities

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### RADIATION OPERATORS

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### RENAL DIALYSIS FACILITIES

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### RIGHT-OF-WAY

(See Highways)

### SCHOOLS, PUBLIC

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### SOCIAL SERVICES

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### SPECIAL INSTRUCTIONAL SERVICES (EDUCATION)

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### TEACHERS

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### TEACHER SCHOLARSHIPS

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### TELECOMMUNICATIONS

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### THERAPISTS

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### TOBACCO

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### TOURISM DEVELOPMENT CABINET

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### TRAFFIC

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Highways

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### UNCLASSIFIED EMPLOYEES

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### UNEMPLOYMENT INSURANCE

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Driver Improvement

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### VOTING

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### WATER FLUORIDATION

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