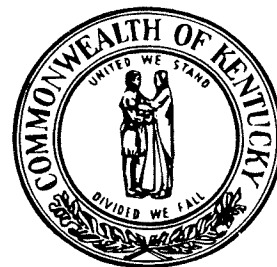


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 3
SUNDAY, SEPTEMBER 1, 1996

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on September 9, 1996. See tentative agenda beginning on page 1323 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 - 1323

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - September 9, 1996, 10 a.m.
Room 149, Capitol Annex**

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

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Public Educational Institutions

13 KAR 2:070. Administrative hearing procedures for determination of residency status.

TREASURY

State Treasury

20 KAR 1:081E. Repeal of 20 KAR 1:080.

STATE BOARD OF ELECTIONS

Forms and Procedures

31 KAR 4:040E. Absentee ballots cast in county clerk's office. (Deferred from August)

Voting

31 KAR 5:010E. Absentee voting. (Deferred from August)

DEPARTMENT OF LAW

Attorney General (Deferred from August)

40 KAR 1:040. Parties who may request an opinion. (Repeals 40 KAR 1:010; 40 KAR 1:020)

40 KAR 1:050. Subjects on which opinions may be issued.

40 KAR 1:060. Subjects on which an opinion shall not be issued.

40 KAR 1:070. Procedures for requesting and issuing on opinion.

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Department of Personnel; Classified

101 KAR 2:100E. Leave administrative regulations. (Deferred from August)

Department of Personnel; Unclassified

101 KAR 3:010E. Leave administrative regulations for unclassified service. (Deferred from August)

REVENUE CABINET

Income Tax; Withholding

103 KAR 18:050. Withholding statements; form K-2.

FINANCE AND ADMINISTRATION CABINET

Purchasing

200 KAR 5:011E. State vehicles. (Repeals 200 KAR 5:010)

200 KAR 5:302E. Delegation of authority. (Repeals 200 KAR 5:301) (Deferred from July)

Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010. Formula for allocation of private bonds.

GENERAL GOVERNMENT CABINET

Board of Accountancy

201 KAR 1:045 & E. Examination subjects; grading and reexamination.

201 KAR 1:130 & E. Examination application procedure.

Kentucky Board of Dentistry

201 KAR 8:430 (&E). Unprofessional conduct. (Deferred from August)

Board of Hairdressers and Cosmetologists

201 KAR 12:082E. Schools' course of instruction.

201 KAR 12:200E. Requirements for continuing education for renewal license.

Kentucky Board of Registration for Professional Geologists

201 KAR 31:060. Code of professional conduct. (Deferred from August)

Kentucky Board of Certification of Marriage and Family Therapists

201 KAR 32:060. Continuing education requirements. (Deferred from August)

TOURISM DEVELOPMENT CABINET

Department of Fish and Wildlife Resources

Fish

301 KAR 1:201. Fishing limits. (Repeals 301 KAR 1:100)

Hunting and Fishing

301 KAR 3:028. Applying for disability hunting and fishing licenses.

Wildlife

301 KAR 4:200. Cyprus AMAX Robinson Forest wildlife management areas use requirements and restrictions.

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Linked Deposits

302 KAR 3:010E. Linked Deposit Investment Program for agribusiness.

ECONOMIC DEVELOPMENT CABINET

Linked Deposit Investment Program

307 KAR 5:010E. Linked Deposit Investment Program.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Air Quality - General Administrative Procedures

401 KAR 50:035E. Permits. (Deferred from August)

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank Environmental Assurance Fund

Petroleum Storage Tank Environmental Assurance Fund

- 415 KAR 1:050E. Definitions.
- 415 KAR 1:060E. Financial responsibility account.
- 415 KAR 1:070E. Petroleum storage tank account.
- 415 KAR 1:080E. Claims procedures.
- 415 KAR 1:090E. Ranking system.
- 415 KAR 1:100E. Third party claims.
- 415 KAR 1:110E. Contractor costs.
- 415 KAR 1:114E. Contractor certification.
- 415 KAR 1:120E. Hearings.
- 415 KAR 1:125E. Discovery procedure.

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Division of Charitable Gaming

Charitable Gaming

- 500 KAR 11:001 & E. Definitions.
- 500 KAR 11:030. Charity game ticket standards.
- 500 KAR 11:110 & E. Keno.
- 500 KAR 11:120. Other allowable expenses.

Department of Corrections

Office of the Secretary

- 501 KAR 6:020. Corrections policies and procedures.
- 501 KAR 6:130. Western Kentucky Correctional Complex.
- 501 KAR 6:170. Green River Correctional Complex.

Department of Training

Concealed Deadly Weapons

- 503 KAR 4:010. Definitions for 503 KAR Chapter 4.
- 503 KAR 4:020. Teaching and advertising courses.
- 503 KAR 4:030. Instructor qualifications.
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- 503 KAR 4:050. Required content and conduct of the applicant training course.
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- 503 KAR 4:070. Revocation of instructor certification and appeal process.

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Department of Vehicle Regulation

Division of Motor Carriers

- 601 KAR 1:025. Transporting hazardous materials by air or highway.
- 601 KAR 1:101. Proof of liability and cargo insurance.

Driver Improvement

- 601 KAR 13:090 & E. Medical Review Board; basis for examination, evaluation, tests. (Not Amended After Hearing)
- 601 KAR 13:100 & E. Medical standards for operators of motor vehicles. (Amended After Hearing)

Department of Highways

Preconstruction

- 603 KAR 2:015. Prequalification for construction, certification of eligibility; and contract claims dispute.

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School Administration and Finance

702 KAR 3:285E. School district Medicaid providers. (Deferred from July)

Education Professional Standards Board

Education Professional Standards Board

704 KAR 20:052. Repeal of 704 KAR 20:050.

704 KAR 20:305E. Written examination prerequisites for teacher certification.

704 KAR 20:475E. Probationary certificate for teachers of technology education.

704 KAR 20:670. Kentucky teaching certificates.

WORKFORCE DEVELOPMENT CABINET Department for Employment Services

Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate.

787 KAR 1:210 (&E). Employer contribution rates. (Deferred from August)

LABOR CABINET

Department of Workers' Claims

803 KAR 25:089E. Workers' compensation medical fee schedule for physicians.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control

Tobacco Enforcement

804 KAR 13:010E. Tobacco enforcement and administration.

Department of Mines and Minerals

Division of Mining

805 KAR 5:010. Fees for licenses to mine.

Miner Training, Education and Certification

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

Department of Insurance

Kinds of Insurance; Limits of Risk; Reinsurance

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Health Insurance Contracts

806 KAR 17:100E. Certificate of filing for provider-sponsored networks.

806 KAR 17:120E. Accountable health plan certification.

806 KAR 17:130E. Twenty-four (24) Hour Pilot Insurance Program.

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806 KAR 18:060E. Filing requirements for associations.

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Thoroughbred Racing

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900 KAR 6:020E. Certificate of need application fee schedule.

900 KAR 6:030E. Certificate of need expenditure minimums.

900 KAR 6:040E. Licensure hearings.

Department for Health Services

Communicable Diseases

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Emergency Medical Services and Ambulance Service Providers

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902 KAR 14:080. Class I ground ambulance providers.

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Disability Determination's Unit

902 KAR 16:011E. Repeal of 902 KAR 16:010.

State Health Plan

902 KAR 17:030E. State Health Plan.

902 KAR 17:040E. Data reporting by health care providers.

Health Services and Facilities

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Department for Social Insurance

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Food Stamp Program

904 KAR 3:042 & E. Food Stamp Employment and Training Program.

Department for Social Services

Child Welfare

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905 KAR 1:360E. Private child care levels of care. (Agency Requests Deferral)

Day Care

905 KAR 2:100E. Certification of family child care homes.

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Medicaid Services

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907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services. (Repeals 907 KAR 1:545) (Deferred from August)

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from August)

907 KAR 1:034E. Early and periodic screening, diagnosis, and treatment services. (Deferred from July)

907 KAR 1:035E. Payments for early and periodic screening, diagnosis, and treatment services. (Deferred from July)

907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities. (Deferred from June)

907 KAR 1:715E. School-based health services. (Deferred from July)

Payment and Services

907 KAR 3:005 & E. Physicians' services.

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

907 KAR 3:020E. Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency.

Department for Mental Health and Mental Retardation Services

Substance Abuse

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Administration

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Division of Waste Management

General Administrative Procedures

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401 KAR 30:010. Adoption without change.

401 KAR 30:031. Environmental performance standards.

401 KAR 30:040. Transfer of regulatory responsibility.

401 KAR 30:080. Standards for variances.

Identification and Listing of Hazardous Waste

401 KAR 31:005. Definitions related to 401 KAR Chapter 31.

401 KAR 31:010. General provisions for hazardous wastes.

401 KAR 31:030. Characteristics of hazardous waste.

401 KAR 31:040. Lists of hazardous wastes.

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401 KAR 31:060. Rulemaking petitions for hazardous waste.

401 KAR 31:070. Delisted hazardous waste streams.

401 KAR 31:110. Appendix on toxicity characteristic leaching procedure.

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401 KAR 31:160. Appendix on basis for listing hazardous waste.

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- 401 KAR 32:020. Manifest system.
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- 401 KAR 34:020. General facility standards.
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- 401 KAR 34:070. Closure and postclosure.
- 401 KAR 34:080. General financial requirements.
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- 401 KAR 34:120. Liability requirements.
- 401 KAR 34:180. Use and management on containers.
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- 401 KAR 34:200. Surface impoundments.
- 401 KAR 34:210. Waste piles.
- 401 KAR 34:230. Landfills.
- 401 KAR 34:240. Incinerators.
- 401 KAR 34:245. Containment buildings.
- 401 KAR 34:250. Miscellaneous units.
- 401 KAR 34:275. Air emission standards for process vents.
- 401 KAR 34:280. Air emission standards for equipment leaks.
- 401 KAR 34:281. Air emission standards for tanks, surface impoundments, and containers.
- 401 KAR 34:287. Corrective action for waste management units.
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- 401 KAR 35:245. Containment buildings (IS).
- 401 KAR 35:250. Thermal treatment (IS).
- 401 KAR 35:275. Air emission standards for process vents (IS).
- 401 KAR 35:280. Air emission standards for equipment leaks (IS).
- 401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (IS).
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Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

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- 401 KAR 36:020. Hazardous waste burned in boilers and industrial furnaces.
- 401 KAR 36:025. Tables and procedures associated with the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.
- 401 KAR 36:030. Recyclable materials used in a manner constituting disposal.
- 401 KAR 36:070. Spent lead-acid batteries being reclaimed.

Waste Management - Land Disposal Restrictions

- 401 KAR 37:005. Definitions related to 401 KAR Chapter 37.

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- 401 KAR 37:010. General provisions for land disposal restrictions.
- 401 KAR 37:030. Prohibitions on land disposal.
- 401 KAR 37:040. Treatment standards. (Repeal 401 KAR 37:100)
- 401 KAR 37:050. Prohibitions on storage.

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- 401 KAR 38:010. General provisions for permitting.
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- 401 KAR 38:040. Changes to permits; expiration of permits.
- 401 KAR 38:050. Public information procedures.
- 401 KAR 38:060. Special types of permits.
- 401 KAR 38:070. Applications procedures.
- 401 KAR 38:080. Contents of Part A application.
- 401 KAR 38:090. General contents of Part B application.
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- 401 KAR 38:190. Specific Part B requirements for incinerators.
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Siting Board.

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- 401 KAR 39:005. Definitions related to 401 KAR Chapter 39.
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- 401 KAR 39:110. Registration fees.
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Enforcement and Compliance Monitoring for Hazardous Waste

- 401 KAR 40:001. Definitions related to 401 KAR Chapter 40.

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- 401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

Standards for Special Collection System Wastes

- 401 KAR 43:005. Definitions related to 401 KAR Chapter 43.
- 401 KAR 43:010. General standards.
- 401 KAR 43:020. Standards for small quality handlers of universal waste.
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- 401 KAR 43:050. Standards for destination facilities.
- 401 KAR 43:060. Import requirements.
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- 401 KAR 44:005. Definitions related to 401 KAR Chapter 44.
- 401 KAR 44:010. Applicability. (Repeals 401 KAR 36:050)
- 401 KAR 44:020. Standards for used oil generators.
- 401 KAR 44:030. Standards for used oil collection centers and aggregation points.
- 401 KAR 44:040. Standards for used oil transporter and transfer facilities.
- 401 KAR 44:050. Standards for used oil processors and refiners.
- 401 KAR 44:060. Standards for used oil burners who use off-specification used oil for energy recovery.
- 401 KAR 44:070. Standards for used oil marketers.
- 401 KAR 44:080. Standards for use as a dust suppressant and disposal of used oil.

Solid Waste Facilities

- 401 KAR 47:005. Definitions related to 401 KAR Chapter 47.

Standards for Solid Waste Facilities

- 401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

Solid Waste Planning

- 401 KAR 49:005. Definitions related to 401 KAR Chapter 49.

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 - 1330

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY LEGISLATIVE ETHICS COMMISSION

July 18, 1996

Kentucky Legislative Ethics Commission

(1) **2 KAR 2:010**, Amended forms, Employer's Updated Registration Statement, Legislative Agent's Updated Registration Statement, Employer's Notice of Termination of Engagement, and Legislative Agent's Notice of Termination of Engagement.

(2) The Kentucky Legislative Ethics Commission intends to amend updated registration forms and termination of engagement forms.

(3) A public hearing to receive oral and written comments on the proposed amended form has been scheduled for September 23, 1996 at 10 a.m., 22 Mill Creek Park, 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 10 days prior to September 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Earl S. Mackey, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed amended form:

(a) The statutory authority for the amendment of the form relating to updated registration statements is KRS 6.807, 6.821 and 6.827, and to termination statements is KRS 6.807.

(b) The amended forms that the Kentucky Legislative Ethics Commission intends to submit will not only reflect changes necessitated by HB 585, but they will also result in a reorganized format of the current "Employer's Updated Registration Statement" and the current "Legislative Agent's Updated Registration Statement" (not the recently approved "Employer Short Form" and "Legislative Agent Short Form," however). The same reorganized format will be used for the current "Employer's Notice of Termination of Engagement" and the current "Legislative Agent's Notice of Termination of Engagement."

(c) The necessity and function of the proposed amended form is as follows: This form is needed to expedite and simplify filing of required registration forms.

(d) The benefits expected from the proposed amended form are: simplification of required reporting and paperwork reduction.

(e) The form will be implemented as follows: Proposed replacement for existing Employer's Updated Registration Statement and Legislative Agent's Updated Registration Statement, and the existing Employer's Notice of Termination of Engagement and the Legislative Agent's Notice of Termination of Engagement.

JUSTICE CABINET Department of Corrections

August 13, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: use of force, staff/visitor meals and special functions, nutritional adequacy of the diet for inmates, restricted diet procedures, alternative diet, inmate grievance procedure, and inmate correspondence

(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 September 23, 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:

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 10 days prior to September 23, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Attention: Tamela Biggs, Room 200, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494.

(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 above.

ADMINISTRATIVE REGISTER - 1331

(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. Staff/visitor meals and special functions (11.1) shall be amended to meet the requirements of KRS Chapter 13A, to delete the employee meal charge exemptions section, to preclude employees from participation in holiday meals and to eliminate the need for visitors to purchase a meal ticket for meals eaten at an institution.

3. Nutritional adequacy of the diet for inmates (11.2) shall be amended to meet the requirements of KRS Chapter 13A and current ACA standards, and to clarify program reviews and requirements.

4. Restricted diet procedures (11.3) shall be amended to meet the requirement of KRS Chapter 13A, to set forth and clarify the procedures regarding the prescribing of restricted or religious diets by appropriate Corrections personnel, as well as the manner and times of delivery to all inmate areas.

5. Alternative diet (11.4) shall be added to provide inmates with a religious or medical aversion to pork alternatives from the institution's main menu.

6. 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.

7. Inmate correspondence (16.2) has been totally revised to provide inspection of outgoing mail, to simplify what mail is deemed privileged and to restrict incoming books and magazines to publishers only.

(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.

August 12, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary.

(2) The Justice Cabinet, Department of Corrections, 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 September 23, 1996, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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 10 days prior to September 23, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:040, Kentucky State Penitentiary, as follows:

1. Legal services (KSP 14-04-01) shall be amended to comply with actual practice and to renumber this policy from 100000-20.

2. Discharge of inmate by shock probation (KSP 25-10-01) shall be amended to renumber this policy from 15-10-01.

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

1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

2. This administrative regulation updates operating procedures at the Kentucky State Penitentiary to comply with KRS Chapter 13A and to reflect current operating procedures.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

ADMINISTRATIVE REGISTER - 1332

August 12, 1996
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:140**, Bell County Forestry Camp.

(2) The Justice Cabinet, Department of Corrections, 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 September 23, 1996, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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 10 days prior to September 23, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter 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 6:140, Bell County Forestry Camp, as follows:

1. Hours of work, inclement weather, leave request, misuse of sick time (BCFC 03-07-01) shall be added to address personnel issues in these areas.

2. Identification of special needs inmates (BCFC 18-02-01) shall be added to set guidelines in identifying inmates with special needs.

3. Inmate accounts (BCFC 02-02-01) shall be amended to reflect a change in the title to warden's fund.

4. Purchase orders (BCFC 02-03-01) shall be amended to reflect a change in the title to purchasing.

5. Processing of invoices (BCFC 02-04-01) shall be amended to reflect a change in the title to fiscal management: organization, accounting, insurance and audit.

6. Materials receiving procedure (BCFC 02-05-01) shall be amended to reflect a change in the title to budget administration.

7. Property inventory (BCFC 02-06-01) shall be amended to reflect a change in the title to nonexpendable personal property.

8. Prisoners fund (BCFC 02-08-01) shall be amended to reflect a change in the title to prisoner's fund.

9. Offender records (BCFC 06-01-01) shall be amended to reflect current operating procedures in offender records.

10. Fire procedures (BCFC 08-03-01) shall be amended to reflect current operating procedures in fire safety and procedures.

11. Search policy disposition of contraband (BCFC 09-06-01) shall be amended to reflect a change in the title to search policy and disposition of contraband.

12. Restricted area (BCFC 09-14-01) shall be amended to reflect a change in the title to restricted areas.

13. Special management inmate's (BCFC 10-01-01) shall be amended to reflect a change in the title to short-term temporary holding area.

14. Food service: security (BCFC 11-02-01) shall be amended to reflect the removal of knives from the kitchen.

15. Insect and vermin control (BCFC 12-06-01) shall be amended to reflect a change in the title to pest control.

16. Sick call and physicians' weekly clinic (BCFC 13-02-01) shall be amended to reflect a change in operating procedures.

17. Use of pharmaceutical products (BCFC 13-14-01) shall be amended to reflect the current medical waste disposer for BCFC.

18. Parenteral administration medications and use of psychotropic drugs (BCFC 13-15-01) shall be amended to reflect current operating procedures in administering medications.

19. Management of serious and infectious diseases (BCFC 13-18-01) shall be amended to reflect current operating procedures.

20. Bloodborne pathogens exposure control plan (BCFC 13-19-01) shall be amended to reflect the current medical waste disposer for BCFC.

21. Due process/disciplinary procedures (BCFC 15-01-01) shall be amended to reflect a change in the title to BCFC Adjustment Program.

22. Mail regulations (BCFC 16-03-01) shall be amended to reflect a change in the title to inmate mail regulations.

23. Inmate packages (BCFC 16-03-02) shall be amended to reflect changes in Correction's policy and procedures.

24. Religious services (BCFC 23-01-01) shall be amended to reflect current staffing for the chaplain's position.

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

1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

2. This administrative regulation updates operating procedures at the Bell County Forestry Camp to comply with KRS Chapter 13A and to reflect current operating procedures.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

ADMINISTRATIVE REGISTER - 1333

August 12, 1996
Justice Cabinet
Department of Corrections

- (1) Regulation Number and Title: **501 KAR 6:170**, Green River Correctional Complex.
- (2) The Justice Cabinet, Department of Corrections, 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 September 23, 1996, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 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 10 days prior to September 23, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
 - (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:170, Green River Correctional Complex, as follows:
 1. Employee training and staff development (GRCC 04-01-01) shall be deleted as it is no longer needed as an administrative regulation.
 2. Institutional inspections (GRCC 09-07-01) shall be deleted as it is no longer needed as an administrative regulation.
 3. Dining room guidelines (GRCC 11-03-01) shall be amended to eliminate specific seating requirements for inmates in the dining room.
 4. Inmate self-administration of medication (GRCC 13-13-01) shall be established to outline the guidelines for inmates' self-administration of medication.
 5. Health Education Program and Detoxification (GRCC 13-15-01) shall be established to outline the guidelines for the administration of the health education program and detoxification for inmates.
 6. Inmate visiting (GRCC 16-01-01) shall be amended to establish the amount of money each adult visitor may bring into the facility when visiting inmates.
 7. Inmate Work Program (GRCC 19-01-01) shall be amended to redefine guidelines for the Inmate Work Program.
 8. Inmate release process (GRCC 25-01-02) shall be established to outline the guidelines for the inmate release process.
 - (c) The necessity and function of the proposed administrative regulation is as follows:
 1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
 2. This administrative regulation updates operating procedures at the Green River Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.
 - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
 - (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

Department of State Police

August 2, 1996
Kentucky Justice Cabinet
Department of Kentucky State Police

- (1) Regulation Number and Title: Applicant qualifications selection process, **502 KAR 45:005**.
- (2) The Department of State Police 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 September 26, 1996 at 10 a.m. at Kentucky State Police Headquarters, Commissioner's Conference Room, 919 Versailles Road, 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 10 days prior to September 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Lt. Colonel Charles Johnson, Director, Administrative Division, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.
- (b) On the request for a public hearing, a person shall state:

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation governing the selection procedures for cadet troopers is KRS 16.040. This statute vests in the Commissioner of State Police the authority to determine the fitness of applicants appointed to the Department of Kentucky State Police.

(b) The administrative regulation that the Department of State Police proposes amends 502 KAR 45:005 in that it changes the definition of applicant to mean a person who is fully qualified when the application is submitted.

(c) The necessity and function of the proposed amendment to the administrative regulation is to provide the department with a means to insure that applicants possess the threshold qualifications when submitting an application.

(d) The benefits expected to flow from this amended administrative regulation are candidates for appointment as cadet troopers who possess those sought after attributes consistent with KRS 16.040, 16.050.

(e) The amended administrative regulation will be implemented as follows: An emergency amendment to an administrative regulation.

August 2, 1996

Kentucky Justice Cabinet

Department of Kentucky State Police

(1) Regulation Number and Title: Applications for employment application form, **502 KAR 45:035**.

(2) The Department of State Police 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 September 26, 1996 at 10 a.m. at Kentucky State Police Headquarters, Commissioner's Conference Room, 919 Versailles Road, 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 10 days prior to September 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Lt. Colonel Charles Johnson, Director, Administrative Division, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation governing the selection procedures for cadet troopers is KRS 16.040. This statute vests in the Commissioner of State Police the authority to develop an application that captures the minimum qualification data reflected in the statute.

(b) The administrative regulation that the Department of State Police proposes amends 502 KAR 45:035 in that it adopts the new application form.

(c) The necessity and function of the proposed amendment to the administrative regulation is to provide the department with a means to capture threshold qualifications and to integrate them into the appointment process in accordance with the statutory provisions.

(d) The benefits expected to flow from this amended administrative regulation are candidates for appointment as cadet troopers who possess those sought after attributes consistent with the qualifications.

(e) The amended administrative regulation will be implemented as follows: An emergency amendment to an administrative regulation.

August 2, 1996

Kentucky Justice Cabinet

Department of Kentucky State Police

(1) Regulation Number and Title: Written examination selection process, **502 KAR 45:045**.

(2) The Department of State Police 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 September 26, 1996 at 10 a.m. at Kentucky State Police Headquarters, Commissioner's Conference Room, 919 Versailles Road, 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 10 days prior to September 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Lt. Colonel Charles Johnson, Director, Administrative Division, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation governing the selection procedures for cadet troopers is KRS 16.040 et seq. This statute vests in the Commissioner of State Police the authority to conduct tests deemed necessary to determine the fitness of officers appointed to the Department of Kentucky State Police.

(b) The administrative regulation that the Department of State Police proposes amends 502 KAR 45:045 in that it changes the test scoring from percentage to pass/fail.

(c) The necessity and function of the proposed amendment to the administrative regulation is to provide the department with a means to measure threshold abilities.

(d) The benefits expected to flow from this amended administrative regulation are candidates for appointment as cadet troopers who possess those sought after attributes that will enable them to succeed in the applicant and training process.

(e) The amended administrative regulation will be implemented as follows: An emergency amendment to an administrative regulation.

August 2, 1996

Kentucky Justice Cabinet

Department of Kentucky State Police

(1) Regulation Number and Title: Employment of cadet troopers employment register, **502 KAR 45:075**.

(2) The Department of State Police 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 September 26, 1996 at 10 a.m. at Kentucky State Police Headquarters, Commissioner's Conference Room, 919 Versailles Road, 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 10 days prior to September 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Lt. Colonel Charles Johnson, Director, Administrative Division, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation governing the selection procedures for cadet troopers is KRS 16.050. This statute vests in the State Police Personnel Board the authority to establish eligibility lists as a result of competitive testing.

(b) The administrative regulation that the Department of State Police proposes amends 502 KAR 45:075 in that it changes the weight of the score computed as a result of the Content Based Task Test (CBTT) and the oral interview process.

(c) The necessity and function of the proposed amendment to the administrative regulation is to provide the department with a means to measure the abilities of candidates and to select them accordingly.

(d) The benefits expected to flow from this amended administrative regulation are candidates for appointment as cadet troopers who possess those sought after attributes consistent with the tasks that make up a state police officer's duties.

(e) The amended administrative regulation will be implemented as follows: An emergency amendment to an administrative regulation.

August 2, 1996

Kentucky Justice Cabinet

Department of Kentucky State Police

(1) Regulation Number and Title: Content Based Task Test (CBTT) selection process, **502 KAR 45:150**.

(2) The Department of State Police 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 September 26, 1996 at 10 a.m. at Kentucky State Police Headquarters, Commissioner's Conference Room, 919 Versailles Road, 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 10 days prior to September 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Lt. Colonel Charles Johnson, Director, Administrative Division, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation governing the selection procedures for cadet troopers is KRS 16.040. This statute vests in the Commissioner of State Police the authority to conduct tests deemed necessary to determine the fitness

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of officers appointed to the Department of Kentucky State Police.

(b) The administrative regulation that the Department of State Police proposes amends 502 KAR 45:150 in that it changes the weight of the score computed as a result of the Content Based Task Test (CBTT).

(c) The necessity and function of the proposed amendment to the administrative regulation is to provide the department with a means to measure threshold abilities to handle certain job related tasks and to integrate them into the appointment process in accordance with their relative value.

(d) The benefits expected to flow from this amended administrative regulation are candidates for appointment as cadet troopers who possess those sought after physical attributes consistent with the physical tasks that make up a state police officer's duties.

(e) The amended administrative regulation will be implemented as follows: An emergency amendment to an administrative regulation.

August 5, 1996

Kentucky Justice Cabinet

Department of Kentucky State Police

(1) Regulation Number and Title: Signage prohibiting the carrying of concealed deadly weapons to be posted at public buildings, **502 KAR 60:010**.

(2) The Department of Kentucky State Police 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 September 26, 1996 at 1 p.m. at Kentucky State Police Headquarters, 919 Versailles Road, 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 10 days prior to September 26, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Major Gail Williams, Legal Office, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation governing the signage to be posted at public buildings prohibiting the carrying of concealed deadly weapons is HB 40 passed by the 1996 General Assembly and signed by the Governor. This act mandates that public buildings which prohibit the carrying of concealed deadly weapons shall give notice by placing signs at each and every entrance of these facilities and that those regulations shall be promulgated by the Secretary of Justice.

(b) The necessity and function of the proposed administrative regulation is to provide a uniform method of notice to persons issued a concealed weapons permit that the carrying of concealed deadly weapons is prohibited in designated public buildings.

(c) The benefit expected from the administrative regulation is a uniform method of notification which will eliminate confusion to both carrying concealed deadly weapon license holders and owners and/or tenants of public buildings.

(d) The administrative regulation will be implemented as follows: An emergency administrative regulation.

August 9, 1996

Kentucky Justice Cabinet

Department of State Police

(1) Regulation Number and Title: Carry concealed deadly weapons licensing - **503 KAR 6:010, 503 KAR 6:020, 503 KAR 6:030, 503 KAR 6:040, 503 KAR 6:050, 503 KAR 6:060, 503 KAR 6:070, 503 KAR 6:080, 503 KAR 6:090, 503 KAR 6:100, and 503 KAR 6:110**.

(2) The Department of State Police 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 September 30, 1996 at 10 a.m. at Kentucky State Police, Post 12, 1250 Louisville Road, Conference Room, 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 10 days prior to September 30, 1996 the public hearing will be canceled.

(5) (a) Persons wishing to request a public hearing should mail their written request to: Mr. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing carrying concealed deadly weapons licenses is KRS Chapter 237 passed by the 1996 General Assembly and signed by the Governor. This act mandates that uniform administrative regulations be promulgated "by the Department of State Police to issue licenses to carry concealed deadly weapons."

ADMINISTRATIVE REGISTER - 1337

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the procedure to obtain a license from the local sheriffs office and the appeal process if an application is denied. It will also specify the procedures for the renewal of the license and the fees for an application for a license 503 KAR 6:010 is the definition section for the regulations. 503 KAR 6:020 establishes the data elements and physical characteristics of the application form. 503 KAR 6:030 establishes the criteria for the photograph necessary for a license application. 503 KAR 6:040 establishes the procedures for the completion of an application form. 503 KAR 6:050 establishes the procedure when a sheriff shall deny the issuance of an application form and explains the reconsideration procedure if an application is denied. 503 KAR 6:060 creates the procedures which pertain to the data extraction and imaging for the application documents to the Department of State Police. 503 KAR 6:070 establishes the information system and files to be accessed as a background analysis by the state police for an application. 503 KAR 6:080 creates the application processing standards for the sheriff and the notification of exceptions when a license is stolen or a duplicate is received or there is a change of address. 503 KAR 6:090 describes the license denial process and the appeal process. 503 KAR 6:100 establishes the procedures for the suspension and reinstatement of a license and 503 KAR 6:110 establishes the procedures for a license revocation and reinstatement.

(c) The necessity and function of the proposed administrative regulation is to establish a uniform procedure for the licensing process, and a uniform procedure for an appeal if an application for a license is denied.

(d) The benefits expected from the administrative regulation are the establishment of a uniform procedure for the licensing process and a uniform procedure for the appeal process.

(e) The administrative regulation will be implemented as follows: An ordinary administrative regulation.

TRANSPORTATION CABINET

August 15, 1996

Transportation Cabinet

(1) **603 KAR 5:115**, relating to the reporting of the transportation of coal and coal by-products.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the reporting of coal and coal by-products transported in Kentucky.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 25, 1996 at 1 p.m. local prevailing time, State Office Building, 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

(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 10 days prior to September 25, 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 Pullen Davis, 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 coal transportation is KRS 42.455 and 177.977.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend existing administrative regulation 603 KAR 5:115. The amendment will require transporters of coal to complete a new form identifying the routes used when submitting their coal transportation reports to the Transportation Cabinet.

(c) The "Necessity, Function, and Conformity" of the proposed administrative regulation relating to coal transportation is as follows: KRS 42.455 designates the Kentucky Transportation Cabinet as the agency responsible for the identification of public highways, roads, and streets that comprise the official coal haul highway system. In addition, both KRS 42.455 and 177.977 require the Transportation Cabinet to publish this information in a directory on an annual basis. In order to discharge this responsibility, the cabinet must gather pertinent information from all coal shippers or owners regarding the movement of coal in Kentucky. This administrative regulation specifies procedures and intervals to be used in reporting this information to the Transportation Cabinet. An amendment is being considered to this administrative regulation to incorporate by reference a new reporting form which will require the entity reporting the transportation of coal or coal by-products to specifically include the route over which the coal or coal by-product is transported. This information is needed in order to accurately identify the public highways, roads, and streets that comprise the official coal haul highway system. The existing reporting form does not distinctively and clearly identify these road segments.

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

1. The clear understanding of what forms must be filed and by whom relating to the transportation of coal and coal by-products.
2. The proposed new form will allow the Transportation Cabinet to precisely identify the routes being used to transport the coal or coal by-products.

3. Precise identification of road segments will provide for the accurate distribution of coal severance tax monies and identification of the road segments which are eligible for inclusion in the extended coal and coal by-products haul road system.

(e) The administrative regulation will continue to be administered through the Division of Transportation Planning. This office will mail the new reporting form to all known coal transporters every six months. After the completed forms are returned, the Division of Transportation Planning will compile the information submitted on the forms so that the amount of coal transported over each segment of Kentucky's public highways can be established each year.

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(8) If you wish to attend the public comment hearing and have a disability for which the Transportation Cabinet should make accommodations (such as providing an interpreter) please notify Sandra Pullen Davis at the above address by September 15, 1996. Her telephone number is 502-564-4890. Her fax number is 502-564-4809.

KENTUCKY BOARD OF EDUCATION

August 6, 1996

Kentucky Board of Education

(1) **701 KAR 5:065**, Repeal of 701 KAR 5:060, Code of ethics for state testing program.

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

(3) A public hearing to receive oral and written comments on the repealed administrative regulation has been scheduled for September 26, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 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 10 days prior to September 26, 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, phone (502) 564-4474, fax (502) 564-9321.

(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 repeal administrative regulation.

(a) The statutory authority for the repeal of an existing administrative regulation relating to the code of ethics for state testing program is in KRS 158.645 through 158.6455, and 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to repeal is 701 KAR 5:060, Code of ethics for state testing program.

(c) The necessity and function of the proposed administrative regulation is to implement KRS 158.645 through 158.6455.

(d) The benefits expected from repealing this administrative regulation is to repeal an outdated regulation that is no longer used.

(e) The administrative regulation will be implemented as follows: N/A

August 7, 1996

Kentucky Board of Education

(1) **702 KAR 4:150**, Energy conservation improvements.

(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 September 26, 1996, 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to September 26, 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, 500 Mero Street, Frankfort, Kentucky 40601, phone (502)564-4474, fax (502)564-9321.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to energy conservation improvements is KRS 156.070, 156.160, HB 655 (1996 General Assembly) and SB 157 (1996 General Assembly).

(b) The administrative regulation that the Department of Education intends to promulgate sets forth the guidelines for the approval of energy conservation projects in local school districts.

(c) The necessity and function of the proposed administrative regulation intends to promulgate sets forth the guidelines for approving energy conservation projects in local school districts and establishes procedures for approval of revenue bond issues related to these project.

(d) The benefit expected from the administrative regulation is to provide Department of Education guidance to ensure that a uniform procedure will be in place for the approval of energy conservation projects and, where appropriate, the issuance of revenue bonds.

ADMINISTRATIVE REGISTER - 1339

(e) The administrative regulation will be implemented as follows: This administrative regulation and other appropriate information will be provide to all 176 school districts, fiscal agents, and architectural and engineering firms that are involved in school construction in the Commonwealth.

August 7, 1996

Kentucky Board of Education

- (1) **702 KAR 5:150**, Transportation of preschool children.
- (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 September 26, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 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 10 days prior to September 26, 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, phone (502) 564-4474, fax (502) 564-9321.
 - (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
 - (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.
 - (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the amendment of an existing administrative regulation relating to the transportation of preschool children is KRS 156.160.
 - (b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 5:150.
 - (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 preschool children.
 - (d) The benefits expected from this administrative regulation are to implement statutory requirements and ensure the safety in the transportation of preschool children.
 - (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.

August 8, 1996

Kentucky Board of Education

- (1) **702 KAR 7:055**, Repeal of 702 KAR 7:010, 7:020, and 7:050. The proposed amended administrative regulation repeals 702 KAR 7:010, 7:020, and 7:050 and is replaced by promulgation of 702 KAR 7:125E.
- (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 September 26, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 26, 1996, the public hearing will be canceled.
- (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 (FAX No. 502-564-9321, Phone No. 502-564-4474).
 - (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
 - (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.
 - (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the amendment of an administrative regulation relating to the SEEK funding formula is KRS 156.070 and 156.160.
 - (b) The administrative regulation that the Department of Education intends to promulgate repeals 702 KAR 7:010, 7:020 and 7:050. 702 KAR 7:125 will revise, condense and supersede these regulations.
 - (c) The necessity and function of the proposed administrative regulation: Repeals 702 KAR 7:010, 7:020, and 7:050 which will be superseded by 702 KAR 7:125.
 - (d) The benefit expected from the administrative regulation is to provide the standard procedures for recording of pupil attendance which impacts SEEK funding for local school districts.

ADMINISTRATIVE REGISTER - 1340

August 8, 1996

Kentucky Board of Education

(1) **702 KAR 7:125**, Pupil attendance. The proposed administrative regulation sets forth the guidelines for the recording of pupil attendance and management of the school day, month and term. It replaces 702 KAR 7:010, Terms and month; 702 KAR 7:020, Calendar; and 702 KAR 7:050, Attendance; Resident, nonresident.

(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 Thursday September 26, 1996 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 26, 1996, the public hearing will be canceled.

(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 (FAX No. 502-564-9321, phone No. 502-564-4474).

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to pupil attendance is KRS 156.070, 156.160, 158.060 and 158.070.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate sets forth the guidelines for the recording of pupil attendance and management of the school day, month and term.

(c) The necessity and function of the proposed administrative regulation is to set forth the guidelines for the recording of pupil attendance and management of the school day, month and term.

(d) The benefit expected from the administrative regulation is to provide local school districts guidance in recording pupil attendance and compliance with current statutory mandates.

August 6, 1996

Kentucky Board of Education

(1) **703 KAR 3:060**, Procedures for determining rewards and sanctions.

(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 September 26, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 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 10 days prior to September 26, 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, phone (502) 564-4474, fax (502) 564-9321.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to the implementation of a primarily performance-based assessment and school/district accountability system is in KRS 158.645 through 158.6455, and 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 701 KAR 3:060, Procedures for determining rewards and sanctions.

(c) The necessity and function of the proposed administrative regulation is to implement KRS 158.645 through 158.6455.

(d) The benefits expected from this administrative regulation are the clarification of the procedures for distributing rewards to schools earning these rewards and procedures for assigning personnel to provide assistance to schools and districts in need of this assistance.

(e) The administrative regulation will be implemented as follows: The provisions of this regulation will be applied to the appropriate school and district assessment data bases and school/district rewards and assistance distributed accordingly.

ADMINISTRATIVE REGISTER - 1341

August 6, 1996

Kentucky Board of Education

- (1) **703 KAR 4:010**, The formula for determining successful schools.
- (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 September 26, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 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 10 days prior to September 26, 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, phone (502) 564-4474, fax (502) 564-9321.
- (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 implementation of a primarily performance-based assessment and school/district accountability system is in KRS 158.645 through 158.6455, and 156.070.
- (b) The administrative regulation that the Department of Education intends to amend is 701 KAR 4:010, the formula for determining successful schools.
- (c) The necessity and function of the proposed administrative regulation is to implement KRS 158.645 through 158.6455.
- (d) The benefits expected from this administrative regulation are the clarification of the procedures for calculating school and district accountability indices.
- (e) The administrative regulation will be implemented as follows: The formulas described in this regulation will be applied to the appropriate school data bases.

August 6, 1996

Kentucky Board of Education

- (1) **703 KAR 4:090**, Statewide Assessment and Accountability Program; school building and local district appeal of performance judgments.
- (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 September 26, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 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 10 days prior to September 26, 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, phone (502) 564-4474, fax (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the amendment of an existing administrative regulation relating to the implementation of a primarily performance-based assessment and school/district accountability system is in KRS 158.645 through 158.6455.
- (b) The administrative regulation that the Department of Education intends to amend is 701 KAR 4:090, Statewide Assessment and Accountability Program; school building and local district appeal of performance judgments.
- (c) The necessity and function of the proposed administrative regulation is to implement KRS 158.645 through 158.6455.
- (d) The benefits expected from this administrative regulation are providing consistency in the procedures for appealing performance judgments.
- (e) The administrative regulation will be implemented as follows: The provisions of this regulation will be communicated to each district in the event that the district or school may need to consider filing a formal appeal of an accountability performance judgment.

ADMINISTRATIVE REGISTER - 1342

August 6, 1996

Department of Education

Office of Curriculum, Assessment, and Accountability

(1) **703 KAR 4:110**, Code of ethics for state required testing.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, September 26, 1996, 10 a.m., at the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to September 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: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky 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 implementation of a primarily performance-based assessment and school/district accountability system is in KRS 158.645 through 158.6455, and 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is a new administration regulation. It will provide an administrative regulation which is necessary to implement KRS 158.645 through 158.6455.

(c) The necessity and function of the proposed administrative regulation is to implement KRS 158.645 through 158.6455.

(d) The benefits expected from this proposed administrative regulation are to formalize a standard code of ethical practices as related to both the preparation for, and the administration of, the Kentucky Instructional Results Information System (KIRIS) assessment components.

CABINET FOR WORKFORCE DEVELOPMENT

State Board for Adult and Technical Education

August 14, 1996

Cabinet for Workforce Development

State Board for Adult and Technical Education

(1) Regulation Number and Title: **785 KAR 1:010**, Testing program.

(2) The Cabinet for Workforce Development, State Board for Adult and Technical Education 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 September 23, 1996, at 9 a.m. in the Conference Room, 3rd 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 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 10 days prior to September 23, 1996, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Reecie Stagnolia, Director, Division of Management and Support Services, Department for Adult Education and Literacy, 3rd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Phone # (502) 564-5114, FAX # (502) 564-5436.

(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 Reecie Stagnolia, Director, Division of Management and Support Services, Department for Adult Education and Literacy 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 adult education testing programs is KRS Chapter 151B.

(b) The administrative regulation that the State Board for Adult and Technical Education intends to promulgate will amend 785 KAR 1:010, Testing program. It will increase the minimum standard passing score on each of the five GED tests from 35 to 40 as required by the Commission on Educational Credit and Credentials.

(c) The necessity and function of the amended administrative regulation: This administrative regulation establishes the means whereby

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adults may be tested by official GED testing centers to determine their eligibility for receiving a high school equivalency diploma.

(d) The benefits expected from this administrative regulation are to enable Kentucky to meet the new requirements of the Commission on Educational Credit and Credentials which sets the standards for the American Council on Education's adult education programs.

(e) The administrative regulation will be implemented as follows: The new requirements will be implemented by GED testing centers and the department.

LABOR CABINET Department of Workers' Claims

August 14, 1996

Labor Cabinet

Department of Workers' Claims

(1) Regulation Number and Title: **803 KAR 25:026**, Workers' compensation group self-insurers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation amendments has been scheduled for September 25, 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, 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 10 days prior to September 25, 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 group self-insurers is KRS 342.260, 342.340, 342.345 and 342.350.

(b) The administrative regulation that the commissioner intends to amend the existing administrative regulation on group self-insurers to permit an increase in the number of trustees that may serve on the Board of Trustees for a group self-insurance fund, and to consider whether the forms required are used by the Department of Workers' Claims in connection with group self-insurance funds should be revised or updated.

(c) The necessity and function of the proposed amendment is as follows: Requests have been received by the Commissioner of the Department of Workers' Claims for an increase in the number of trustees who may serve on the board of trustees of joint self-insurers. The forms used under the group self-insurance administrative regulation are currently being reviewed to determine if any revisions or updates would be beneficial at this time.

(d) The benefits expected from administrative regulation are: To permit group self-insurance funds to be administered by larger boards of trustees, and to update or revise the forms, if appropriate.

(e) The administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions about the two areas of potential amendments. The commissioner will then consider these comments and suggestions in determining what amendments, if any, will be filed with the Legislative Research Commission.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control

July 25, 1996

Department of Alcoholic Beverage Control

(1) The subject matter of this administrative regulation, **804 KAR 4:330**, Direct sales from out-of-state companies.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, September 26, 1996, at 10 a.m., in the Hearing Room of the Department of Alcoholic Beverage Control, 123 Walnut, 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 10 days prior to Thursday, September 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: Pamela Carroll Farmer,

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Kentucky Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601, phone 502-573-4850, fax 502-573-5672.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter of the administrative regulation is KRS 241.060, 244.165 and 244.167.

(b) The administrative regulation that the Department of Alcoholic Beverage Control intends to promulgate will not amend an existing administrative regulation.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation prohibits a person from another state or country, who is in the business of selling alcoholic beverages, from shipping or causing to be shipped, any alcoholic beverage directly to any Kentucky resident who does not hold a valid wholesale or distributor license issued by the Commonwealth of Kentucky.

(d) The benefits expected from the administrative regulation are: Prohibit sales of alcoholic beverages from unlicensed wholesalers and distributors; collection of monies from previously untaxed alcohol; prohibit minors from purchasing alcoholic beverages and having said beverages delivered to them, prohibit sales and deliveries of alcoholic beverages into dry territory.

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

PUBLIC PROTECTION AND REGULATION CABINET Public Service Commission

July 19, 1996

Kentucky Public Service Commission

(1) Regulation Number and Title: **807 KAR 5:003**. Utility filing of updated information.

(2) The Kentucky Public Service Commission intends to promulgate an administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 24, 1996, at 10 a.m., Eastern Daylight Time, in Hearing Room 1, 730 Schenkel Lane, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 24, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to a requirement that utilities file up-to-date information regarding their business addresses and contact persons is KRS 278.040(3), which provides that the commission may adopt reasonable regulations to implement the provisions of KRS Chapter 278, and KRS 278.230(3), which provides that utilities shall file information reasonably required by the commission.

(b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will be a new regulation. It will require the filing of updates to pertinent information regarding changes of address, telephone and fax numbers, and contact persons for purposes of the Kentucky operations of the utility.

(c) The necessity and function of the proposed administrative regulation is as follows: It is occasionally necessary for the commission to contact utilities regarding, among other things, tariff filings, annual reports, and complaints filed by customers. More and more frequently, particularly in regard to resellers of telecommunications services whose headquarters are located in other states, the commission has encountered difficulties in making the necessary contacts due to the utilities' failure to inform the commission of changes in telephone numbers and addresses. The proposed regulation requires such information to be filed within ten days of any change.

(d) The benefits expected from the proposed administrative regulation are: Up-to-date information filed pursuant to the proposed regulation will enable the commission to contact utilities in a timely manner when necessary. In addition, the time and expense currently necessary to ascertain the whereabouts of utilities will be conserved.

(e) The administrative regulation will be implemented as follows: The requirements of the regulation will be implemented and enforced as soon as they are effective.

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Department of Housing, Buildings and Construction

August 12, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:195**, Medical gas piping installations.

(2) The department intends to promulgate the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, September 24, 1996, at 10 a.m., local time, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to September 24, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130 and 198B.050(2) and (5).

(b) The department intends to promulgate an administrative regulation to define the term "medical gas piping" in accordance with industry practice, to identify the standard which licensed plumbers must use when installing this piping, and to identify the permitting, fee and inspection requirements for this special type of installation, pursuant to SB 242.

(c) The necessity and function of the proposed administrative regulation is as follows: The 1996 General Assembly in SB 242 amended the definition of plumbing to include medical gas piping. KRS Chapter 318 requires that any person installing any plumbing shall obtain a permit from the department prior to the installation and that the department shall cause such inspections as it may deem necessary.

(d) The benefits expected from this administrative regulation are: To protect the public from possible contamination in the use of gases which enter their building during medical and dental procedures.

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

CABINET FOR HEALTH SERVICES

Office of Inspector General

July 29, 1996

Cabinet for Health Services

Office of Inspector General

(1) **902 KAR 20:275** - Mobile health services.

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

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

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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- (a) The statutory authority for the promulgation of an administrative regulation relating to mobile health services is KRS 216B.042.
- (b) The administrative regulation that the Office of Inspector General intends to promulgate will replace 902 KAR 20:270, which was found deficient by the Interim Joint Committee on Health and Welfare at its November 15, 1995 meeting, and which expired on adjournment of the 1996 regular session of the General Assembly. The proposed administrative regulation sets minimum standards for the provision of mobile health services at more than one (1) location.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation provides for the licensure requirements for the operation and services of mobile health services.
- (d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with KRS 216B.042 which requires the establishment of standards for health facilities and health services.
- (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

CABINET FOR FAMILIES AND CHILDREN Department for Social Services Division of Aging Services

August 15, 1996
Cabinet for Families and Children
Department for Social Services
Division of Aging Services

- (1) **905 KAR 8:160**, Adult Day and Alzheimer's Respite Program.
- (2) The Department for Social Services 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 September 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 10 days prior to September 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Acting General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
 - 1. "I agree to attend the public hearing." or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Services, Cabinet for Human Resources, 6th Floor West, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (VTDD).
- (7) Information relating to the proposed administrative regulation.
 - (a) the statutory authority for the promulgation of an administrative regulation relating to Adult Day and Alzheimer's Respite Programs is KRS 194.050, 205.204(2) and 42 USC 3001 et seq.; Executive Order 96-862 effective 7-2-96.
 - (b) The administrative regulation that the Department for social Services intends to promulgate will amend 905 KAR 8:160, Adult Day and Alzheimer's Respite Program.
 - (c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the cabinet to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 and Executive Order 96-862 designates the Cabinet as the state agency to administer the Older Americans Act in Kentucky. The function of this administrative regulation is to set forth the standards of operation for the Adult Day and Alzheimer's Respite Program in Kentucky.
 - (d) The benefits expected from the administrative regulation are: This regulation will expand the case manager qualification to include degrees in gerontology, psychology, sociology or a field relevant to geriatrics and will amend terminology to comply with the Americans with disabilities Act of 1990.

August 15, 1996
Cabinet for Families and Children
Department for Social Services
Division of Aging Services

- (1) **905 KAR 8:180**, Homecare Program for the Elderly.
- (2) The Department for Social Services 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 September 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:

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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 10 days prior to September 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Acting General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing." or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13 A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Services, Cabinet for Human Resources, 6th Floor West, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the Homecare Program for the Elderly is KRS 194.050, KRS 205.204(2) and 42 USC 3001 et seq.; Executive Order 96-862 effective 7-2-96.
- (b) The administrative regulation that the Department for social Services intends to promulgate will amend 905 KAR 8:180, Homecare Program for the Elderly.
- (c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 and Executive Order 96-862 designates the Cabinet as the state agency to administer the Older Americans Act in Kentucky. The function of this administrative regulation is to set forth the standards of operation for the Homecare Program for the Elderly in Kentucky.
- (d) The benefits expected from the administrative regulation are: This regulation will expand the case manager qualification to include degrees in gerontology, psychology, sociology or a field relevant to geriatrics.

CABINET FOR HEALTH SERVICES Department for Medicaid Services

August 8, 1996
Cabinet for Health Services
Department for Medicaid Services

- (1) **907 KAR 1:450**, Nurse aide training criteria and registry.
- (2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 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 10 days prior to September 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 nurse aide training criteria and registry are KRS 194.050 and 42 USC 1396r.
- (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:450, Nurse aide training criteria and registry as follows: To comply with KRS CHAPTER 13A drafting requirements; to revise and update the incorporated by reference "Medicaid Service Manual for Nurse Aide Training and Competency Evaluation Program"; and to clarify current program policy.

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

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
2 KAR 2:010E

Emergency administrative regulation 2 KAR 2:010E is necessary in order to amend the form to be used for filing the updated registration statements and notice of termination of engagement statements by employers and legislative agents. The next filing deadline for the updated registration forms is September 15, 1996, for reporting period May through August 1996; accordingly forms are to be distributed in early August. Statutory changes in the Legislative Ethics Code enacted by HB 585 necessitated modifications in the updated registration forms. The effective date of the statutory changes falls on July 15, 1996 - within a reporting period. If the amended form is not in use for the September 15, 1996 deadline, this may necessitate duplicate filings by employers and agents - one (1) to address the time from May 1 through July 14, 1996, and the other to address the remainder of the reporting period. This office receives approximately 1,100 forms to be processed and entered into our database during a typical reporting period. In the interests of economy and of avoiding confusion, we are electing to use the amended forms for the entire reporting period. We are seeking approval of the new forms on an emergency basis, pursuant to KRS 13A.190(1)(a)3, to incorporate the statutory changes established by state law in time to meet our next filing deadline of September 15, 1996. Because the updated registration statements and the termination statements are essentially identical, we propose making the same changes in the latter forms at the same time. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Regulations Compiler in September 1996.

JUDGE GEORGE E. BARKER, Chairman

LEGISLATIVE ETHICS COMMISSION

2 KAR 2:010E. Legislative agent or employer registration statement, legislative agent's updated registration statement, legislative agent's notice of termination of engagement, employer's updated registration statement, employer's notice of termination of engagement.

RELATES TO: KRS 6.666(6) to (13), 6.807, 6.821, 6.824, 6.827

STATUTORY AUTHORITY: KRS 6.666(5)

EFFECTIVE: July 18, 1996 at 2 p.m.

NECESSITY, FUNCTION AND CONFORMITY: KRS 6.807 requires each legislative agent and employer to file an initial registration statement, periodic updated registration statements, and a notice of termination of engagements. This administrative regulation establishes the required forms.

Section 1. Definitions. "Personal expenses" mean expenses which are neither reimbursable to the legislative agent by the employer, nor deductible as a business expense under the Internal Revenue Code.

Section 2. The registration forms and termination forms required by KRS 6.807 shall be mailed to the Kentucky Legislative Ethics Commission, 22 Mill Creek Park (Room 318, Capitol Annex), Frankfort, Kentucky 40601.

Section 3. (1) The "Initial Legislative Agent/Employer Registration Statement", "Legislative Agents Updated Registration Statement",

"Legislative Agents Notice of Termination of Engagement", "Employers Updated Registration Statement", "Employers Notice of Termination of Engagement", are incorporated by reference on July 15, 1996.

(2) These documents may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, [Capitol Annex, Room 318,] Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

GEORGE E. BARKER, Chairman

EARL S. MACKEY, Executive Director

APPROVED BY AGENCY: July 18, 1996

FILED WITH LRC: July 18, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Stephanie Midkiff

(1) Type and number of entities affected: Affected by this amendment are approximately 400 employers and 600 legislative agents. This number varies and can only be approximate.

(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: not applicable.

(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: In the first year there will be a decrease in copying costs and the actual numbers of papers to be filed with the commission. There will also be some reduction in time spent in data entry due to amending information required to be reported on the forms.

2. Second and subsequent years: The costs, compliance, and paperwork requirements should be essentially the same each year unless there is a drastic reduction or increase in the number of registered legislative agents and employers.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs for printing of each page is approximately one cent. The original printing of 10,000 pages will cost \$100. The costs will be paid from money already budgeted from general and restricted funds, and fees collected.

2. Continuing costs or savings: The costs should be consistent on an annual basis.

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: KRS Chapter 6 requires that the commission shall make the completed forms available for public inspection, and shall maintain an alphabetical index. Completed forms shall be preserved for two years. The commission shall provide the Legislative Research Commission and every member of the General Assembly with a list of every registered agent and employer on or before the tenth day of the month except during session when a new list is furnished every Friday. This regulation adds no additional requirements.

(4) Assessment of anticipated effect on state and local revenues: NA

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds budgeted for

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these administrative costs will be used to cover the cost of printing of the updated registration statements and terminations for employers and legislative agents.

(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: NA

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: NA

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: NA

(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: NA

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not applicable as this regulation applies equally to all legislative agents and employers.

STATEMENT OF EMERGENCY 502 KAR 45:005E

No current provisions provide for a proper definition of an applicant as used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this and an emergency exists as the selection process will begin July 13, 1996 and authorization for the test must be in place prior to offers of employment thereafter. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

502 KAR 45:005E. Definitions.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the definitions to be used in the administrative regulations concerning the selection process.

Section 1. Definitions. (1) "Applicant" means a fully-qualified person as contemplated in KRS 16.040 who submits an employment application for the position of cadet trooper and who participates in the selection process.

(2) "Appointment" means selection by the commissioner of a cadet trooper for employment as an officer, upon successful completion of basic training at the Kentucky State Police Academy.

(3) "Cadet trooper" means an applicant for employment as an officer who is selected by the commissioner to attend the Kentucky State Police Academy and conditionally employed as a trainee.

(4) "Candidate" means an applicant for employment who has successfully completed all phases of the selection process and whose name has been placed on the register.

(5) "Content Based Task Test (CBTT)" means the physical fitness test consisting of simulated essential job tasks, used to determine if applicants can perform the essential job tasks required during basic training at the Kentucky State Police Academy.

(6) "Register" means the list of persons eligible for selection as a cadet trooper.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

(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 seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be created by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

STATEMENT OF EMERGENCY 502 KAR 45:035E

No current provisions provide for a content based pass/fail test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin July 13, 1996 and authorization for the test must be in place prior to offers of employment thereafter. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

502 KAR 45:035E. Application.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 and 16.050 provide that the Commissioner of the Kentucky State Police and the State Police Personnel Board may adopt such administrative regulations as necessary to assure appointment of qualified officers to the department. This administrative regulation requires applicants to complete a written application form.

Section 1. Applications shall be made on forms prescribed by the commissioner and provided by the department. The Application for Employment form was adopted May 12, 1996 [4-1994], and is hereby incorporated by reference. Application forms may be inspected and copied by contacting the Kentucky State Police Personnel Section, 919 Versailles Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. Failure to submit the application by the specified due date or to comply with all instructions for completion and submission shall disqualify the applicant from further consideration in the current selection process.

GARY W. ROSE, Commissioner
APPROVED BY AGENCY: August 13, 1996
FILED WITH LRC: August 14, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the

position of cadet trooper with the Department of State Police.

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

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

(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 seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be created by this regulation.

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

STATEMENT OF EMERGENCY 502 KAR 45:045E

No current provisions provide for a limitation on number of times a test may be taken in the selection process of Kentucky State Police cadet troopers. This amendment provides for this and an emergency exists as the selection process will begin July 13, 1996 and authorization for the test must be in place prior to offers of employment thereafter. This administrative regulation will be replaced by an

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ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

502 KAR 45:045E. Written examination.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes a written examination.

Section 1. The written examination shall be practical in nature and shall be designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department.

Section 2. Examinations shall be administered at such times and places as designated by the commissioner. The commissioner may direct that examinations be conducted regionally if he finds regional examinations to be convenient and practicable.

Section 3. An applicant may take the examination two (2) times ~~[only one (1) time]~~ in any twelve (12) month period. However, an applicant may only test one (1) time in a three (3) month period.

Section 4. Applicants shall have submitted a completed application prior to taking the written examination.

Section 5. ~~[Applicants who will not meet the age, educational, and experience requirements shall not be permitted to take the written examination.]~~

~~Section 6.]~~ Examinations shall be rated impartially, and each applicant shall be advised of his score.

Section 6. ~~[7.]~~ The written examination shall be pass/fail ~~[constitute thirty (30) percent of the total score].~~

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

(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 seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be created by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative:

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This administrative regulation applies only to applicants for the position of cadet trooper.

STATEMENT OF EMERGENCY 502 KAR 45:075E

This amendment provides for the testing and scoring procedure, and an emergency exists as the selection process will begin July 13, 1996 and authorization for the test must be in place prior to offers of employment thereafter. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

502 KAR 45:075E. Register.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

EFFECTIVE: August 14, 1996

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires the State Police Personnel Board to promulgate administrative regulations which include provisions for the establishment of eligibility lists as a result of competitive examinations, from which lists vacancies shall be filled. This administrative regulation establishes a register for the employment of cadet troopers.

Section 1. The commissioner shall establish and maintain a register of the names of applicants eligible for selection to the position of cadet trooper. The commissioner shall determine, based upon the needs of the department, projected attrition, authorized strength levels and number of applicants, the date of establishment of the register and the number of eligible applicants to be placed on the register.

Section 2. Applicants who have completed the written examination, the oral interview, the background investigation, and who have not been disqualified shall be placed on the register in rank order, as determined by the combined score of ~~[the written examination]~~ the CBTT, and the oral interview. The ~~CBTT [written examination]~~ score shall be combined with the ~~CBTT, and the~~ oral interview score to determine placement on the register. ~~[with the written examination score constituting thirty (30) percent of the final score.]~~ The CBTT score will constitute forty (40) ~~[constituting thirty (30)]~~ percent ~~[of the final score]~~ and the oral interview score will constitute sixty (60) ~~[constituting forty (40)]~~ percent. Applicants who receive the same score shall be ranked by random draw, with veterans receiving preference in accordance with the provisions of KRS 16.040(3).

Section 3. The commissioner shall select candidates for employment as cadet troopers in the order of placement on the register, but may deviate from that order when necessary to correct a manifest imbalance of underutilized groups ~~[minorities or women]~~ in the department, or when the background investigation reveals that a candidate is less suitable for employment than the candidate who occupies the next position on the register.

Section 4. The register shall be continuous, and when an applicant's name is placed on the register as a candidate for selection the applicant may not again participate in the selection process for a period of twelve (12) months. Any candidate who is not selected for employment within a period of twelve (12) ~~[twenty-four (24)]~~ months from the date of placement on the register shall have his name removed from the register.

Section 5. The commissioner may remove a candidate from the register for the following reasons:

- (1) Upon receipt of reliable information indicating grounds for disqualification or deferral;
- (2) When the candidate cannot be located by postal authorities;
- (3) When the candidate declines an offer of employment, fails to respond to an offer of employment, or indicates that they no longer wish[es] to be considered for employment;
- (4) Upon the expiration of a period of twelve (12) ~~[twenty-four (24)]~~ months from the date of placement on the register.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

- (1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: None anticipated.

(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 seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be created by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative:

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This administrative regulation applies only to applicants for the position of cadet trooper.

STATEMENT OF EMERGENCY 502 KAR 45:150E

This administrative regulation provides for the testing and scoring procedure, and an emergency exists as the selection process will begin July 13, 1996 and authorization for the test must be in place prior to offers of employment thereafter. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor

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GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

502 KAR 45:150E. Content Based Task Test (CBTT).

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires that persons appointed as officers be physically able to safely perform essential job tasks. This administrative regulation establishes the procedure to determine if the applicants are capable of performing the essential job tasks of an officer during basic cadet training.

Section 1. An appropriate number of applicants who have completed the written examination shall be eligible to participate in the Content Based Task Test (CBTT).

Section 2. The CBTT shall consist of tasks simulating the essential job tasks cadet troopers will be required to perform during basic training either with or without reasonable accommodation, which may include but not limited to running, climbing stairs, fences and hillsides, overcoming violent physical resistance from persons arrested or detained, handcuffing persons arrested or detained, lifting and carrying or dragging incapacitated persons, firing and reloading a handgun with either hand and firing and reloading a shotgun, identifying and describing the physical characteristics of suspects of crimes, identifying and describing the physical characteristics of stolen vehicles or vehicles used in crimes, identifying and describing hazardous materials identifiers or placards affixed to vehicles hauling hazardous materials.

Section 3. The CBTT shall be structured so that all applicants are required to perform the same tasks and be rated in the same manner.

Section 4. The CBTT score shall constitute forty (40) ~~thirty (30)~~ percent of the score. As soon as practical after the CBTT, each applicant shall be advised of his score and ranking, and may be requested to inform the department in writing as to whether the applicant wishes to continue to participate in the selection process and be scheduled for the oral interview.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

(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 seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be created by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative:

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This administrative regulation applies only to applicants for the position of cadet trooper.

STATEMENT OF EMERGENCY 502 KAR 60:010E

This administrative regulation provides for the uniform notification to persons holding a license to carry concealed deadly weapons that designated public buildings prohibit the carrying of concealed deadly weapons therein. This administrative regulation is being filed to meet a deadline for promulgation of administrative regulations established by KRS Chapter 237. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

GARY W. ROSE, Commissioner

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JUSTICE CABINET Department of State Police

502 KAR 60:010E. Signs to be posted at public buildings prohibiting carrying of concealed deadly weapons.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 237.110

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110 provides that no license issued pursuant to HB 40 shall authorize any person to carry a concealed deadly weapon into certain establishments or buildings as defined in KRS 237.110. KRS 15A.160 and 17.080 provide that the Secretary of Justice may promulgate and adopt such administrative regulations as are necessary to properly administer the cabinet.

Section 1. Public buildings as defined in KRS 237.110 shall give notice that carrying concealed deadly weapons are prohibited by placing signs at each and every entrance of these facilities. Signs shall meet the specifications as defined in Section 4 of this administrative regulation.

Section 2. Government entities that prohibit the carrying of concealed deadly weapons in buildings or portions of buildings which are rented or leased shall give notice by placing signs at each and every entrance to the restricted area. Signs shall meet the specifications as defined in Section 4 of this administrative regulation.

Section 3. An employer of a business or business enterprise prohibiting the carrying of concealed deadly weapons in a building or on the premises which are open to the public shall give notice by placing signs on or about the premises and by placing signs at each and every entrance. Signs shall meet the specifications as defined in Section 4 of this administrative regulation.

Section 4. Specifications of Signs to be Posted at Entrances or on Premises of Public Buildings. Signs shall meet the following specifications:

- (1) Shall state in black block lettering "Carrying concealed deadly weapons is prohibited in this area" on a white background;
- (2) Shall have the universal signage of "no firearms allowed" in the colors of black, yellow, and red;
- (3) Shall be constructed of a durable weather resistant material, i.e. plastic or metal;
- (4) Shall be no smaller than eight and one-half (8 1/2) inches by eleven (11) inches and no larger than twelve (12) inches by fifteen (15) inches; and
- (5) Shall conform to the signage specifications set forth in the American Disabilities Act of 28 CFR Part 36, Appendix A.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Major Gail L. Williams, (502) 695-6371

(1) Type and number of entities affected: All public buildings which choose to prohibit the carrying of concealed deadly weapons.

(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.

(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 should have little impact on cost of doing business in any geographical area.

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

1. First year following implementation: Public buildings prohibiting the carrying of concealed deadly weapons shall give notice by placing signs at each and every entrance of these facilities.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: No significant savings or costs anticipated.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: Not applicable.

(4) Assessment of anticipated effect on state and local revenues: This regulation will have no effect on state or local revenues.

(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: Administrative regulation will be implemented statewide. No public comments have been received.

(b) Kentucky: No public comments have been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: These administrative regulations were mandated by HB 40. No other alternatives existed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: License holders as well as tenants of public buildings will have a uniform method of notification of the prohibition of carrying concealed deadly weapons in public buildings.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Public safety could decline if persons holding carrying concealed deadly weapons licenses were permitted to carry concealed deadly weapons in public buildings.

(c) If detrimental effect would result, explain detrimental effect: Public safety would be reduced.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: None

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

STATEMENT OF EMERGENCY 503 KAR 6:010E

This emergency administrative regulation establishes the definitions to be used in administration of the carry concealed firearm or other deadly weapons license process. An emergency administra-

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tive regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:010E. Carry concealed deadly weapon licensing.

RELATES TO: KRS Chapter 237

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237
EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. KRS Chapter 237 establishes the legal framework for the Department of State Police to issue licenses to carry concealed firearms or other deadly weapons to qualified persons as provided for in KRS Chapter 237. This administrative regulation establishes the definitions to be used in administration of the carry concealed firearm or other deadly weapons license process.

Section 1. As employed in 503 KAR 6:010E through 503 KAR 6:110E unless the context requires otherwise:

(1) "Concealed deadly weapon license", hereinafter referred to as "license", means that license issued by the Department of State Police.

(2) "Concealed deadly weapon license applicant", hereinafter referred to as "applicant", means that individual who desires a license to carry a concealed firearm or other deadly weapon pursuant to KRS Chapter 237.

(3) "Concealed deadly weapon license application form", hereinafter referred to as "form", means that document created by the Department of State Police pursuant to KRS Chapter 237, for the explicit purpose of conducting a background check on the applicant.

(4) "General license prerequisites" means the residence, age, and training requirements as set forth in KRS Chapter 237(2)(a), (b), and (f).

(5) "Disqualifying information" means information related to the applicant that, by its nature, prohibits the issuance of a license as set forth in KRS Chapter 237(2)(c); or (d); or (e); or (g); or (h); or (3); or (10); or 18 USCS 922.

(6) "Criminal history record information system", hereinafter referred to as "CHRIS", means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(7) "National Crime Information Center", hereinafter referred to as "NCIC", means the nationwide computerized information system established as a service to all local, state, and federal criminal justice agencies.

(8) "Interstate Identification Index", hereinafter referred to as "IIL", means the automated system to provide for the interstate exchange of criminal history record information.

(9) "Application fee", hereinafter referred to as "fee", means that amount prescribed by KRS Chapter 237(4) to be presented to the sheriff by the applicant in order to receive an application for a license.

(10) "Sheriff" means the chief elected law enforcement officer of a county, and the authorized agents of the sheriff.

(11) "Valid applicant photo" means that color photo, which the applicant must provide to the sheriff of the county of residence prior

to completed application submission to the Department of State Police. The photo shall be in color and adequately display only full front head and facial features of the applicant. The sheriff shall ensure that the applicant is not utilizing eye glasses, wigs, makeup, or other contrivances, or a combination thereof that would hamper criminal justice officials in making a positive identification of said applicant. The photo shall be no less than three and one-half (3.5) by four (4) inches and shall not exceed four (4) by five (5) inches in size.

(12) "Certificate" means that document, photocopy thereof, or affidavit that certifies that the applicant has demonstrated competence with a firearm consistent with KRS Chapter 237 and 503 KAR 4:060E. A certificate is not required for those retired peace officers meeting the criteria set forth in KRS Chapter 237(4).

(13) "Single applicant packet", hereinafter referred to as "SAP", means that envelope prominently marked with "CCDW" that shall contain the applicant form, valid applicant photo, and required documents associated with a single application for a license.

(14) "Bulk mailer", hereinafter referred to as "BM", means that envelope used by the sheriff to submit, via US Mail, multiple SAPs to the Department of State Police for background processing.

(15) "Consideration form" means that form used when an individual has been denied an application form by the sheriff and the individual seeks a review of the denial by the Department of State Police. The sheriff is required to deny the issuance of an application form to an individual in only two (2) instances;

(a) The would-be applicant has failed to meet general license prerequisites; or

(b) The sheriff has knowledge of disqualifying information related to the individual.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

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(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 503 KAR 6:020E

This emergency administrative regulation establishes the data elements, and physical characteristics of the application form defined in KRS 237(4)(a) through (e) and 503 KAR 6:010E. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:020E. Carry concealed deadly weapon licensing application form.

RELATES TO: KRS Chapter 237(4)

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(4) mandates the Department of State Police to promulgate, by administrative regulation, that form to be completed by applicants for

a license to carry a concealed firearm or other deadly weapon. KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes the data elements, and physical characteristics of the application form defined in KRS Chapter 237(4)(a) through (e) and 503 KAR 6:010E.

Section 1. Form Physical Makeup. The Carrying Concealed Deadly Weapon Application Form, edition 1.0, August 13, 1996, is hereby incorporated by reference.

Section 2. The form may be inspected, copied, or obtained from the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

Section 3. Unique Application Number. The form shall be affixed with a preprinted unique number to be used as the identifier for the applicant. The number shall be both machine and human readable. All inquiries by the applicant or sheriff shall be made to the Department of State Police utilizing the application number.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 503 KAR 6:030E

This emergency administrative regulation establishes the photo requirements for the application. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:030E. The carry concealed deadly weapon licensing applicant identification photo.

RELATES TO: KRS Chapter 237(5)

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(5) mandates the Department of State Police to promulgate, by administrative regulation, the process to be completed by applicants for a license to carry a concealed firearm or other deadly weapon regarding the identification photo. KRS Chapter 237(5) further requires the applicant to submit to the sheriff of the applicant's county of residence a recent color photograph. KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes the photo requirements for the application.

Section 1. Physical Size. The photo shall be no less than three

and one-half (3.5) by four (4) inches and shall not exceed four (4) by five (5) inches in size.

Section 2. Color Photograph and View of Applicant. The photo shall be in a color and adequately display only full, front head and facial features of the applicant. The sheriff shall ensure that the applicant is not utilizing eye glasses, wigs, makeup, or other contrivances, or a combination thereof that would hamper criminal justice officials in making a positive identification of said applicant.

Section 3. Only "Hard Copy" Photographs Shall be Accepted. Images of photos resident on computer media, "paper" copies of photos generated from office copy equipment, or any other media other than a true photograph shall not be accepted by the sheriff.

Section 4. Department of State Police to Require New Photo. The Department of State Police shall require a new color photo of the licensee requesting a renewal of a license.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

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

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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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 503 KAR 6:040E

This emergency administrative regulation establishes the procedure for the completion of an application form. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:040E. Application form issuance, completion, and submission procedures.

RELATES TO: KRS Chapter 237(4)

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237(4)

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(4) mandates the Department of State Police to promulgate, by administrative regulation, that form to be completed by applicants for a license to carry a concealed firearm or other deadly weapon. KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes the procedures for the completion of an application form.

Section 1. Application Form Dispersal. The application forms shall be strictly controlled and maintained in good condition by the sheriff and not be placed in an area accessible to the public prior to issuance to the respective applicant. The sheriff shall not issue an application form to an applicant, nor accept the application fee:

(1) Unless the applicant meets the general license prerequisites as defined in 503 KAR 6:010E; and

(2) Has no disqualifying information known to the sheriff; and (3) Has received from the applicant all necessary documents required to complete the application submission to the Department of State Police.

Section 2. General License Prerequisites Verification Process. The sheriff shall issue an application form to an applicant only if said applicant has no disqualifying information known to the sheriff, provides positive identification documents related to those general license prerequisites as defined in 503 KAR 6:010E and data elements listed on the application form, and furnishes a valid color photo and acceptable training certification document (if required). For those information elements and requirements listed below, the sheriff shall minimally demand:

(1) A valid Kentucky drivers license, an official photo identification card issued by the Commonwealth, or a certified certificate of birth (name, date of birth, and gender elements).

(2) A county tax bill or most current state income tax return form (mailing and actual address; residency requirements).

(3) A Social Security card, official Social Security Administration correspondence addressed to the applicant, or the most current state income tax return form (Social Security number).

(4) Training certification consistent with KRS Chapters 237 and 503 KAR 4:060E (if required).

Section 3. Application Form Completion Process - Applicant. Subsequent to the validation process required by 503 KAR 6:040E, Section 2, the applicant shall complete the application form in the presence of the sheriff.

Section 4. Application Form Quality Control Process. Subsequent to the validation process required by 503 KAR 6:030E, Section 2, the sheriff shall ensure that the applicant has complied with the instructions listed on the application form. Should the applicant fail to follow said completion instructions, the sheriff may destroy the less than usable form and require the applicant to complete a new form or correct the existing form if discrepancies are not germane to the machine readable data extraction/imaging process.

Section 5. Application Form Completion Process - Sheriff. The sheriff shall place a single application form, photo, and any other required documents in a SAP for inclusion into a bulk mailer.

Section 6. Manner and Submission of Applicant Forms to the Department of State Police by the Sheriff. Consistent with that mailing schedule authorized by the Department of State Police, the sheriff shall submit completed and verified individual application forms, and other required material, to the Department of State Police via US mail in "bulk mailers". The mailers shall be provided by the department without cost to the sheriff, while the sheriff shall be responsible for actual mailing costs for this prescribed manner of applicant submissions.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, will be affected by this

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regulation.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 503 KAR 6:050E

This emergency administrative regulation establishes procedures when the sheriff shall deny the issuance of an application form to any individual and the reconsideration procedure. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:050E. Application form denial procedures and reconsideration process.

RELATES TO: KRS Chapter 237(4)

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237(2), (4)

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(2) mandates the Department of State Police to issue a license to carry a concealed firearm or other deadly weapon if the applicant meets criteria as specified. KRS Chapter 237(4) mandates the Department of State Police to promulgate, by administrative regulation, that form to be completed by applicants for a license to carry a concealed firearm or other deadly weapon. KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes procedures when the sheriff shall deny the issuance of an application form to any individual and the reconsideration procedure.

Section 1. The Individual Fails to Meet or Prove General License Prerequisites. The sheriff shall not issue an application form to, nor accept a fee from any individual that has not successfully satisfied the general license prerequisites as defined in KRS Chapter 237 and 503 KAR 6:030E.

Section 2. The Sheriff has Knowledge of the Existence of Disqualifying Information Related to the Individual. The sheriff shall not issue an application form to, nor accept a fee from, an individual in instances that the sheriff has knowledge of disqualifying information related to the individual.

Section 3. Denial of Application Form. (1) Individuals denied the issuance of an application form by the sheriff may request consideration of said denial from the Department of State Police. The sheriff shall:

(a) Provide the denied party with the appropriate consideration form;

(b) Ensure the denied party portion of the consideration request is completed in his presence;

(c) Complete the denying authority portion of the consideration request;

(d) Submit the consideration request to the Department of State Police utilizing the standard "BM" process.

(2) Upon receipt of a consideration form from the sheriff, the party requesting consideration of a denied application:

(a) Shall complete the denied party portion of the consideration request in the presence of the sheriff;

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(b) May provide supporting material with the consideration request.

Section 4. Department to Consider Application Denials. The Department of State Police shall review the consideration form and notify both the denied party and the sheriff of the results of said consideration within twenty (20) working days of receipt of a properly completed consideration request.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY

503 KAR 6:060E

This emergency administrative regulation establishes the procedures pertaining to the data extraction, imaging, and manipulation of applicant documents submitted by the sheriff to the Department of State Police. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor

GARY W. ROSE, Commissioner

JUSTICE CABINET

Department of State Police

503 KAR 6:060E. Data extraction/imaging of the application materials.

RELATES TO: KRS Chapter 237

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237(4), (14)

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(4) mandates the Department of State Police to promulgate, by administrative regulation, the form to be completed by applicants for a license to carry a concealed firearm or other deadly weapon. KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes the procedures pertaining to the data extraction, imaging, and manipulation of applicant documents submitted by the sheriff to the Department of State Police.

Section 1. Purging of Applicant Related Material. The Department of State Police shall, consistent with the agency's records retention schedule maintain applicant related material in image media per the following time frames on the data extraction/imaging system:

(1) Initial application: maintain until renewal then purge from file, otherwise purge after three (3) years.

(2) Invalid initial application: return to SO - do not automate.

(3) Certificate: maintain for duration of valid license, otherwise purge after three (3) years.

(4) Valid photo: maintain until renewal then purge from file, otherwise purge after three (3) years.

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- (5) Invalid photo: destroy - do not automate.
- (6) Other related documents: indefinite.

Section 2. Application Number. Initial application forms not containing a unique, machine readable number or a damaged number shall not be automated and shall be returned to the submitting sheriff for disposition.

Section 3. Missing Material/Error Laden SAPs. SAPs with erroneous or missing information or material shall be processed by the Department of State Police in the following manner:

- (1) Data extracted and imaged upon receipt or as soon as possible thereafter;
- (2) Noted as to the data/material that is missing; and
- (3) Cause the appropriate applicant and sheriff notification processes regarding erroneous or missing information and/or material to commence.

Section 4. Department Not to Process Incomplete SAPs. Since both the information contained on the application form and the required material is critical to the research effort of the Department of State Police, the background analysis process shall not be initiated until complete information or missing material related to a SAP is received from the applicant through the sheriff of authority. The ninety (90) working day issuance/denial mandate contained in KRS Chapter 237 becomes effective only upon receipt of a completed SAP.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 503 KAR 6:070E

This emergency administrative regulation establishes the information systems/files to be accessed, and applicant background analysis processing standards. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor

GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:070E. The applicant background analysis process.

RELATES TO: KRS Chapter 237(2), (4)

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237(2), (4)

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(2) mandates the Department of State Police to issue a license to carry a concealed firearm or other deadly weapon if the applicant meets criteria as specified. KRS Chapter 237(3) provides that the Department of State Police may deny a license if the applicant has been found guilty of certain crimes. KRS 15A.160 and 17.080, provide

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that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes the information systems/files to be accessed, and applicant background analysis processing standards.

Section 1. Systems/Files to be Accessed. Upon receipt of a valid, completed SAP, the following systems/files shall be accessed by Department of State Police Personnel:

- (1) NCIC;
- (2) III;
- (3) CHRIS;
- (4) DVO;
- (5) Kentucky wanted/missing persons;
- (6) Administrative Office of the Courts files.

Section 2. System/File "Denial" Criteria. The Department of State Police background analysis is based on comparison of applicant name and date of birth to that of the names and alias listed in the respective system/file or an exact match to the applicant's Social Security number with that of a Social Security number(s) listed in the target system/files.

Section 3. A Possible Applicant, System/File Denial Condition. Upon notification of a possible identification in one (1) or more of those systems/files listed in Section 1 of this administrative regulation, Department of State Police personnel shall use a two (2) step process to determine if reasonable grounds exist to deny the applicant a license:

(1) Step One. Does the name and date of birth or Social Security number of the applicant exactly match information found in one (1) of the files listed in 503 KAR 6:070E, Section 1. If the aforementioned is affirmative, then go to Step Two, otherwise issue the license.

(2) Step Two (only if Step One is valid). Is the information in file of a disqualifying nature; if the answer is affirmative, then deny the license, otherwise issue the license.

Section 4. A License Approval Condition Exists. If the systems/files background analysis process returns an approval result, a license shall be issued.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY

503 KAR 6:080E

This emergency administrative regulation establishes application exception processing standards, procedures for applicant/sheriff notification of exceptions, the method by which applicants may report lost/stolen licenses, receive duplicate licenses, notify the department of a change of address, and applicant/sheriff notification of license issuance, renewal, denial, suspension, or revocation. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor

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GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:080E. Applicant and sheriff notification processes and procedures.

RELATES TO: KRS Chapter 237

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(2) mandates the Department of State Police to issue a license to carry a concealed firearm or other deadly weapon if the applicant meets criteria as specified therein. KRS Chapter 237(3) provides that the Department of State Police may deny or revoke a license if the applicant has been found guilty of certain crimes. KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes application exception processing standards, procedures for applicant/sheriff notification of exceptions, the method by which applicants may report lost/stolen licenses, receive duplicate licenses, notify the department of a change of address, and applicant/sheriff notification of license issuance, renewal, denial, suspension, or revocation.

Section 1. Applicant Information Exception Standards. SAPs missing material or information shall be logically maintained. Subsequent to notification to the applicant and sheriff of jurisdiction, no further action shall be taken until the applicant responds to the notification.

Section 2. The Missing Information/Material Mailer Notification. The applicant will be notified of missing information or material needed to complete the SAP via a "mailer" process. The mailer, inclusive of a "return" portion, shall be initiated immediately upon recognition by the system. No further action shall be taken by the Department of State Police until the applicant provides the needed clarification or missing material to the sheriff and the "return" portion of the mailer is submitted by the sheriff to the Department of State Police. Upon receipt of a valid "return" mailer accompanied by the missing information or material, the ninety (90) working day denial or issue mandate shall be in effect.

Section 3. Applicant's Report of Lost or Stolen License. The applicant shall, within thirty (30) working days, notify the sheriff of the county of residence of a lost or stolen license. On a Lost or Stolen License Notification Form, the applicant shall list the appropriate information and, under oath administered by the sheriff, sign the affidavit. The sheriff shall sign the form and submit same via the standard "BM" process.

Section 4. Issuance of Duplicate License. Upon the receipt of a Lost or Stolen License Notification Form, the Department of State Police shall cause a duplicate license to be generated and forwarded to the appropriate sheriff of jurisdiction. The applicant shall be notified by mailer when the license shall be available from the sheriff. The applicant must present himself to the sheriff and show proper identification in order for the sheriff to issue the duplicate license to the applicant.

Section 5. Licensee to Report Change of Permanent Address. Within thirty (30) working days of change of permanent address, the licensee shall report a change of permanent address to the sheriff and obtain from the sheriff a change of address form. The applicant shall complete said form in the presence of the sheriff and the sheriff shall verify that the new address is valid. The sheriff shall sign same

and submit to the Department of State Police via the standard "BM" process.

Section 6. Standard Processing. (1) Mailers shall be generated pertaining to:

- (a) Issuance;
- (b) Renewal;
- (c) Denial;
- (d) Suspension;
- (e) On revocation.

(2) When appropriate, the applicant shall receive a notice or notices and the sheriff shall be notified via the monthly "printout" process.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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

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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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 503 KAR 6:090E

This emergency administrative regulation establishes the procedure when a license is denied by the Department of State Police. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:090E. The license denial process.

RELATES TO: KRS Chapter 237(2) - (4)

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237(2) - (4), 18 USCS 922

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(2) mandates the Department of State Police to issue a license to carry a concealed firearm or other deadly weapon if the applicant meets criteria as specified. KRS Chapter 237(3) provides that the Department of State Police may deny a license if the applicant has been found guilty of certain crimes. KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes the procedures when a license is denied by the Department of State Police.

Section 1. License Denial. The Department of State Police shall deny a license in instances where the applicant fails to meet those specific criteria as specified in KRS Chapter 237(2)(a), (b), and (f). The applicant and sheriff of authority shall be notified as specified in 503 KAR 6:070E, Section 6. The applicant may request reconsideration by the Department of State Police.

Section 2. License Denial. The applicant is found to have

disqualifying information. The Department of State Police shall deny a license in instances where the applicant is found to have disqualifying information as set forth in KRS Chapter 237(2)(c); or (d); or (e); or (g); or (h); or (3); or (10); or 18 USCS 922. The applicant and sheriff of authority shall be notified as specified in 503 KAR 6:070E, Section 6. The applicant may request reconsideration by the Department of State Police.

Section 3. License Denial. The applicant is found to have disqualifying arrests without final criminal justice disposition. In accordance with those procedures enacted by the Department of State Police pertaining to The Brady Handgun Violence Prevention Act, the applicant shall provide to the Department of State Police, certified, final disposition related to any outstanding arrests that prohibit the issuance of a license to said applicant. The applicant and sheriff of authority shall be notified of denial as specified in 503 KAR 6:070E, Section 6. The applicant may request reconsideration by the Department of State Police.

Section 4. Appeal. If a reconsideration is denied by the Department of State Police, the applicant shall be notified of a right to seek review in the district court of the applicant's residence.

GARY W. ROSE, Commissioner
APPROVED BY AGENCY: August 14, 1996
FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants

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exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 503 KAR 6:100E

This emergency administrative regulation establishes the procedure for the suspension of an issued license to carry a concealed firearm or other deadly weapon by the Department of State Police and the reinstatement of a suspended license. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:100E. The license suspension/reinstatement process.

RELATES TO: KRS Chapter 237(10)

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter 237(10)

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(2) mandates the Department of State Police to issue a license to carry a concealed firearm or other deadly weapon if the applicant meets criteria as specified. KRS Chapter 237(3) provides that the Department of State Police may deny a license if the applicant has been found guilty of certain crimes. KRS 15A.160 and 17.080 provide

that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes the procedures for the suspension of an issued license to carry a concealed firearm or other deadly weapon by the Department of State Police and the reinstatement of a suspended license.

Section 1. License Suspension. The Department of State Police shall suspend a license upon reasonable grounds to believe a domestic violence or emergency protective order has been issued against or served on a license holder pursuant to the provisions of KRS Chapter 403. The Department of State Police shall, as soon as practical:

(1) Make the necessary record notations causing the license to reflect a state of suspension in the application file and the LINK System;

(2) Notify the applicant and sheriff of authority of the suspension as specified in 503 KAR 6:080E, Section 6; and

(3) Cause the license to remain in a state of suspension until formally notified by the issuing judge that the order is no longer in effect. The applicant may request reconsideration by the Department of State Police as described in 503 KAR 6:090E.

Section 2. License Suspension Not to Change Expiration Date. In instances of license suspension, the date of expiration of the license shall not be extended to accommodate the time of suspension.

Section 3. License Reinstatement. Upon receipt of an order to terminate the suspension or the underlying DVO/EPO is no longer in effect from the appropriate court, the license shall be reinstated by the Department of State Police into the LINK System and the applicant and sheriff shall be so notified.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police startup cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary

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to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The Sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994 - 1996 biennium. Agency General Fund monies for startup costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 503 KAR 6:110E

This emergency administrative regulation establishes the procedure for the revocation by the Department of State Police of an issued license to carry a concealed firearm or other deadly weapon and the reinstatement of a revoked license. An emergency administrative regulation is necessary so the agency can comply with the statute by its implementation date of October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler when the emergency administrative regulation was filed.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET Department of State Police

503 KAR 6:110E. The license revocation/reinstatement process.

RELATES TO: KRS Chapter 237(10)

STATUTORY AUTHORITY: KRS 15A.160, 17.080, Chapter

237(10)

EFFECTIVE: August 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 237(2) mandates the Department of State Police to issue a license to carry a concealed firearm or other deadly weapon if the applicant meets criteria as specified. KRS Chapter 237(3) provides that the Department of State Police may deny a license if the applicant has been found guilty of certain crimes. KRS 15A.160 and 17.080, provide that the Secretary of Justice may adopt administrative regulations as are necessary to properly administer the cabinet. This administrative regulation establishes the procedures for the revocation by the Department of State Police of an issued license to carry a concealed firearm or other deadly weapon and the reinstatement of a revoked license.

Section 1. License Revocation. During the issuance or suspension period of a valid license, the Department of State Police shall revoke a license if the applicant:

(1) Fails to meet general license prerequisites as defined in 503 KAR 6:010E; or

(2) Is found to have disqualifying information as defined in 503 KAR 6:010E.

Section 2. The applicant and sheriff of authority shall be notified as specified in 503 KAR 6:080E, Section 6. The applicant may request reconsideration by the Department of State Police.

Section 3. License Revocation Not to Change Expiration Date. In instances of license revocation, the date of expiration shall not be extended to accommodate the time of revocation.

Section 4. License Reinstatement. Upon receipt of an order from the appropriate court to terminate the revocation or upon successful reconsideration by the Department of State Police, the license shall be reinstated into the LINK System by the Department of State Police and the applicant and sheriff shall be so notified.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, 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: 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 are 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: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for

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Department of State Police startup cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The Sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994 - 1996 biennium. Agency General Fund monies for startup costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(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 government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

STATEMENT OF EMERGENCY 702 KAR 7:055E

This administrative regulation repeals 702 KAR 7:010, 7:020, and 7050. 702 KAR 7:125 is being promulgated to revise, condense and supersede the provisions of 702 KAR 7:010, 7:020, and 7:050. This change needs to apply beginning with the 1996-97 school year.

PAUL PATTON, Governor
JOSEPH W. KELLY, Chairman

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of Finance

702 KAR 7:055E. Repeal of 702 KAR 7:010, 7:020, and 7:050.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.035, 159.170, 161.200
STATUTORY AUTHORITY: KRS 156.070, 156.160

EFFECTIVE: August 12, 1996

NECESSITY, FUNCTION, AND CONFORMITY: 702 KAR 7:055E is being promulgated to revise, condense, and supersede the provisions of 702 KAR 7:010, 7:020, and 7:050, and therefore, these administrative regulations are no longer necessary and are being repealed.

Section 1. The following administrative regulations are hereby repealed:

- (1) 702 KAR 7:010, Terms and months;
- (2) 702 KAR 7:020, Calendar; and,
- (3) 702 KAR 7:050, Attendance; resident, nonresident.

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: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.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 7:125E

This emergency administrative regulation, as approved by the Kentucky Board of Education, establishes procedures to be followed in recording of pupil attendance for the 1996-97 school year. The administrative regulation is necessary to conform to the amendment to KRS 158.060, which went into effect July 16, 1996, and provides for the equivalent of 1,050 instructional hours over the instructional school term.

PAUL PATTON, Governor
JOSEPH W. KELLY, Chairman

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education
Department of Education
Division of Finance

702 KAR 7:125E. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.035, 159.170, 161.200
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

EFFECTIVE: August 12, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program; KRS 157.360 bases SEEK funding upon average daily attendance; KRS 158.030 and 158.100 define the age for compulsory school attendance; KRS 158.060 defines the school day and month and make up of school days missed; KRS 158.070 defines the school term; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; KRS 161.200 requires attendance records to be kept by teachers. The purpose of this administrative regulation is to insure uniformity in recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar prior to May 15 of each year. The calendar shall establish the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days and days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) In addition to the minimum 1,050 hour instructional term, the school calendar shall include additional hours equal to the greatest number of hours missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

(6) Lack of compliance with minimum school term requirements shall result in a proportional reduction of funding under the Support Education Excellence in Kentucky (SEEK) Program, pursuant to KRS

157.350(2).

Section 2. (1) The local board of education shall file the adopted school calendar with the Department of Education prior to June 1 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education prior to May 1 of each year. Subsequent amendments to the school calendar shall be submitted to the Department of Education no later than five (5) calendar days after the meeting of the local board of education at which the amendment is approved.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year which do not have to be made up, which occurred as a result of school days shortened due to emergency.

(3) Except for the provisions of subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

(2) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days systemwide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(3) A local board of education request for disaster days when one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. (1) The following shall constitute the only activities to be conducted during the instructional school day:

(a) Courses and activities included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses not included in the "Program of Studies for Kentucky Schools, Grades Primary-12", which have been approved for the current school year by the Commissioner of Education pursuant to 704 KAR 10:050;

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between each class, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a schedule that delineates instructional time periods and noninstructional time periods.

Section 6. (1) Daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time in the morning, one (1) time in the afternoon and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by checking their attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade, time of late arrival, time of early departure, parent or legal guardian signature and any other information which may be required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity which has been authorized by the local board of education and is a definite part of the instructional program of the school; or

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035.

(5) Even if a pupil's absence is due to factors beyond the pupil's control, such as inclement weather or failure of the transportation system to operate, the pupil shall be counted absent.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 7. (1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of instructional time in the regularly scheduled school day for his grade level.

(2) A tardy shall be recorded for a pupil who is absent one (1) to thirty-four (34) percent of instructional time in the regularly scheduled school day for his grade level.

(3) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of instructional time in the regularly scheduled school day for his grade level.

(4) A full day absence shall be recorded for a pupil who is absent eighty-five (85) to 100 percent of instructional time in the regularly scheduled school day for his grade level.

(5) The percentages described in this section apply to the regularly scheduled instructional day approved by the local board of education and is applicable to entry level through grade level 12.

Section 8. A local board of education may permit released time as an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. Released time shall not be included in calculating the district's average daily attendance.

Section 9. A local board of education may permit shared time as an arrangement in which a pupil concurrently attends a public common school part time and a nonpublic school part time, pursuing part of his education under the direction and control of the public common school and part of his education under the direction and control of the nonpublic school. The time the student is served by the public school district shall be included in calculating the district's average daily attendance.

Section 10. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with disabilities in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month. The attendance shall be counted in the public school the child would otherwise attend in the district of residence.

Section 11. (1) If a local school district enrolls a pupil in the entry level program that will not be five (5) years of age by October 1 of the

year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(3) If a local school district enrolls a pupil that is at least twenty-one (21) years of age, the aggregate days attendance for the pupil upon age twenty-one (21) and following shall not be included in calculating the district's average daily attendance.

Section 12. The growth factor report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education prior to November 1 of each year.

Section 13. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education prior to November 1 of each year. The written agreement shall include the names of nonresident pupils enrolled in the district covered by the agreement.

(2) Changes may be made to the original nonresident pupil agreement up to the close of the school year to include only the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education with the local superintendent's annual attendance report prior to June 30 of each year.

Section 14. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, and student entry and exit logs shall be the original source of attendance data for all pupils enrolled in the public common schools.

(2) The school's records of daily attendance and teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years.

Section 15. The following attendance codes shall be used to indicate the daily attendance of pupils:

- (1) E - excused full day absence;
- (2) U - unexcused full day absence;
- (3) X - excused one-half (1/2) day absence;
- (4) N - unexcused one-half (1/2) day absence;
- (5) T - excused tardy;
- (6) Y - unexcused tardy;
- (7) S - full day suspension; and
- (8) D - one-half (1/2) day suspension.

Section 16. The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

- (1) E1 - a pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;
- (2) E2 - a pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;
- (3) E3 - a pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W6, W7, W10, W13, W14, W16 or W18 during the previous school year;
- (4) R1 - a pupil received from another homeroom in the same school;
- (5) R2 - a pupil received from another public school in the same public school district;
- (6) R3 - a pupil received from a nonpublic school in the same

public school district;

(7) R4 - a pupil received from a public school in Kentucky outside this public school district;

(8) R5 - a pupil received from a nonpublic school in Kentucky outside this public school district;

(9) R6 - a pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(10) R7 - a pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E1, E2 or E3;

(11) W1 - a pupil transferred to another homeroom in the same school. The reentry code to use with W1 shall be R1.

(12) W2 - a pupil transferred to another public school in the same public school district. The reentry code to use with W2 shall be R2;

(13) W3 - a pupil transferred to a nonpublic school in this public school district. The reentry code to use with W3 shall be R3;

(14) W4 - a pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W4 shall be R4, R5 or R7;

(15) W5 - a pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W5 shall be R4, R5 or R7;

(16) W5 - a pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W5 shall be R4, R5 or R7;

(17) W6 - a pupil who is sixteen (16), but not yet eighteen (18) years of age, has completed the required sixty (60) day waiting period pursuant to KRS 159.010 and has withdrawn. The reentry code to use with W6 shall be R6;

(18) W7 - a pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), that pose a threat in school environments, accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W7 shall be R6;

(19) W8 - a pupil withdrawn due to death;

(20) W9 - a pupil graduated prior to the end of the school term or year;

(21) W10 - a pupil discharged for the balance of the school term or year. The reentry code to use with W10 shall be R6 if withdrawn for the balance of the school term;

(22) W12 - a pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R6. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(23) W13 - a pupil withdrawn for a second or subsequent time who initially withdrew as a W6, W7, W10, W13, W14, W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R6;

(24) W14 - a pupil withdrawn after having given birth to, and in the process of, parenting a child. The reentry code to use with W14 shall be R6;

(25) W16 - a pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(26) W17 - an entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or

mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060; and

(27) W18 - a pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R6.

Section 17. The following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) 1 - white (not Hispanic) - a person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - black (not Hispanic) - a person having origins in any of the black racial groups of Africa;

(3) 3 - Hispanic - a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;

(4) 4 - Asian or Pacific Islander - a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(5) 5 - American Indian or Alaskan Native - a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and

(6) 6 - other.

Section 18. The request for records and other information involving the transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170. The local board of education shall adopt a form or process to comply with the requirements of KRS 159.170.

Section 19. The "Growth Factor Report" file layout, dated July 1, 1996, and the "Superintendent's Annual Attendance Report" file layout, dated July 1, 1996, are incorporated herein by reference and may be obtained, copied and inspected at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 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: August 8, 1996
FILED WITH LRC: August 12, 1996 at 4 p.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
703 KAR 3:060E

This emergency amendment to the administrative regulation implements the recommendations of technical experts who have reviewed the assessment and accountability system and formalizes changes communicated to the Kentucky Board of Education and various committees of the Kentucky General Assembly. In order to apply these changes to school and school district assessment performance judgment reports to be issued in October of 1996, it is necessary to promulgate this emergency amendment to the administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL PATTON, Governor
JOSEPH W. KELLY, Chairman

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Bureau of Learning Results Services

703 KAR 3:060E. Procedures for determining rewards and sanctions.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
EFFECTIVE: August 12, 1996
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 gives the Kentucky Board of Education [~~State Board for Elementary and Secondary Education~~] the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a particular A1 school in a local school district but who are certified staff assigned to the

district central office or an A2-A6 school. This administrative regulation establishes procedures for determining school and district rewards, levels of assistance, and sanctions. [~~Successful schools shall be defined in terms of student achievement of the goals set forth in KRS 158.6455, and these goals were adopted by the State Board for Elementary and Secondary Education on December 19, 1991, pursuant to KRS 158.6451. Finally, successful schools shall be defined with reference to the statewide assessment program set forth in KRS 158.6453.~~]

Section 1. Definitions. (1) "Accountability cycle one (1)" means that baseline data come from the 1991-92 data year, and that growth data come from the 1992-93 and 1993-94 years.

(2) "Accountability cycle two (2)" means that baseline data come from the 1992-93 and 1993-94 years, and that growth data come from the 1994-95 and 1995-96 years.

(3) "Accountability cycle three (3)" means that baseline data come from the 1994-95 and 1995-96 years, and that growth data come from the 1996-97 and 1997-98 years.

(4) "Accountability index" means the statistic which is the combination of the academic and noncognitive indices for a school or district pursuant to 703 KAR 4.010.

(5) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students during the first two (2) years of each four (4) year accountability cycle.

(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that accountability cycle but which is not five (5) or more points below its baseline, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(7) "Declines by five (5) percent or more" means obtains an average accountability index for an accountability cycle which is five (5) or more points below its baseline for that cycle and obtains a year two (2) accountability index below its improvement goal for that cycle.

(8) "Gained population" means students in grades at which accountability assessments are administered who now must attend a school because of boundary changes.

(9) "Growth accountability index" means the accountability index score that describes the school's or school district's percentage of successful students during the last two (2) years of a four (4) year accountability cycle.

(10) "Improvement goal" or "threshold" means the accountability index score which describes the amount of growth required for a school or school district for the accountability cycle.

(11) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a school because of boundary changes.

(12) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal for that accountability cycle, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(13) "Maximum reward amount" means the percentage of salary set by the Kentucky Board of Education. "Maximum reward amount" also may be called "Reward level fifty-one (51) amount".

(14) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" also may be called "reward level 1 amount".

(15) "Original threshold" means the threshold for the previous accountability cycle.

(16) "Performance judgment" is defined in 703 KAR 4:090.

(17) "School" means an A1 school as defined in 703 KAR 4:080.

(18) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(19) "Stable population" means students in grades at which

accountability assessments are administered who would have attended the school prior to and after boundary changes.

(20) "Year two (2) accountability index" means the accountability index a school or school district obtains in the last year of an accountability cycle.

(1) "School" means an A1 school as defined in 703-KAR-4:080.

(2) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(3) "Accountability index" means the statistic which is the combination of the cognitive and noncognitive indices for a school or school district pursuant to 703-KAR-4:010.

(4) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students at the beginning of each biennium.

(5) "Threshold" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.

(6) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.

(7) "Maximum reward amount" means the percentage of salary set by the State Board for Elementary and Secondary Education. "Maximum reward amount" also may be called "Reward level 51 amount."

(8) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" also may be called "Reward level 1 amount."

(9) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium of five (5) or more points below its baseline that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its threshold goal for the biennium.

(10) "Declines by less than five (5) percent" means obtains an average accountability index for the biennium of less than five (5) points below its baseline for that biennium and obtains a year two (2) accountability index below the threshold goal for the biennium.

(11) "Maintains the previous percentage of successful students" means obtains an average accountability index for the biennium not less than its baseline nor equal to or greater than its threshold for that biennium and obtains a year two (2) accountability index below its threshold goal for the biennium, and obtains a year two (2) accountability index below the threshold goal for the biennium.]

Section 2. When a school does not have an accountability grade (grades 4, 5, 7, 8, 11, or twelve (12)), that school shall be combined with the school having an accountability grade its students would subsequently attend.

Section 3. When a school has only one (1) of the two (2) accountability grades at the elementary school level (grades 4 and 5) or the middle school level (grades 7 and 8), the school shall be combined with the school having the higher grade level to which its students will be sent, forming a single accountability unit. If the school described in this section is sending or receiving its students to or from more than one (1) school, the affected schools shall be combined to form a single accountability unit.

Section 4. When a school has more than one (1) accountability level (elementary - grades 4 and 5, middle - grades 7 and 8, or high school - grades 11 and 12) [grade], the school's accountability index shall be the weighted average of the accountability indices for each accountability grade in the school.

Section 5. [4-] A school district's accountability index shall be the weighted average of its schools' accountability indices.

Section 6. (1) If a school or school district has declined in the first accountability cycle and has not met its original threshold in the second cycle and has not declined by five (5) or more points from its accountability cycle two (2) baseline, then its performance judgment shall be "in decline" for cycle two (2).

(2) If a school or district's performance judgment for accountability cycle one (1) was "improving", it met its original threshold in cycle two (2), but it did not meet its cycle two (2) threshold and did not decline below its cycle two (2) baseline, its performance judgment for cycle two (2) shall be "improving".

(3) A school or district shall be determined to meet its original threshold when the average of its reading, mathematics, writing, science, social studies and noncognitive indices for accountability cycle two (2) is equal to or greater than its threshold for cycle one (1).

Section 7. [6-] Certified staff in a school or school district shall earn the minimum reward amount when the school or school district's growth [average] accountability index for the accountability cycle [biennium] exceeds its threshold by one (1) point and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher. Unless the school or district has ten (10) percent or less of its students scoring in the novice range on average during the first two (2) years of the accountability cycle and maintains or reduces this percent in the last two (2) years of the accountability cycle, the novice reduction shall be required in order to receive rewards.

Section 8. [6-] Certified staff in a school or school district shall earn the maximum reward amount when the school or school district's growth [average] accountability index for the accountability cycle [biennium] exceeds its threshold by one (1) point plus the difference between the threshold and the baseline and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher. Unless the school or district has ten (10) percent or less of its students scoring in the novice range on average during the first two (2) years of the accountability cycle and maintains or reduces this percent in the last two (2) years of the accountability cycle, the novice reduction shall be required in order to receive rewards.

Section 9. [7-] Fifty-one (51) reward levels are established as follows:

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REWARD LEVELS ONE(1) TO FIFTY-ONE (51)

Reward Level	Reward Criteria	Reward Index <u>Example</u>	Amount
One	One point above threshold	38.00	50% of maximum
Two	One point above threshold plus 2% of difference between threshold and baseline	38.14	51% of maximum
Three	One point above threshold plus 4% of difference between threshold and baseline	38.28	52% of maximum
Four	One point above threshold plus 6% of difference between threshold and baseline	38.42	53% of maximum
Five	One point above threshold plus 8% of difference between threshold and baseline	38.56	54% of maximum
Six	One point above threshold plus 10% of difference between threshold and baseline	38.70	55% of maximum
Seven	One point above threshold plus 12% of difference between threshold and baseline	38.84	56% of maximum
Eight	One point above threshold plus 14% of difference between threshold and baseline	38.98	57% of maximum
Nine	One point above threshold plus 16% of difference between threshold and baseline	39.12	58% of maximum
Ten	One point above threshold plus 18% of difference between threshold and baseline	39.26	59% of maximum
Eleven	One point above threshold plus 20% of difference between threshold and baseline	39.40	60% of maximum
Twelve	One point above threshold plus 22% of difference between threshold and baseline	39.54	61% of maximum
Thirteen	One point above threshold plus 24% of difference between threshold and baseline	39.68	62% of maximum
Fourteen	One point above threshold plus 26% of difference between threshold and baseline	39.82	63% of maximum
Fifteen	One point above threshold plus 28% of difference between threshold and baseline	39.96	64% of maximum
Sixteen	One point above threshold plus 30% of difference between threshold and baseline	40.10	65% of maximum
Seventeen	One point above threshold plus 32% of difference between threshold and baseline	40.24	66% of maximum
Eighteen	One point above threshold plus 34% of difference between threshold and baseline	40.38	67% of maximum
Nineteen	One point above threshold plus 36% of difference between threshold and baseline	40.52	68% of maximum
Twenty	One point above threshold plus 38% of difference between threshold and baseline	40.66	69% of maximum
Twenty-one	One point above threshold plus 40% of difference between threshold and baseline	40.80	70% of maximum
Twenty-two	One point above threshold plus 42% of difference between threshold and baseline	40.94	71% of maximum
Twenty-three	One point above threshold plus 44% of difference between threshold and baseline	41.08	72% of maximum
Twenty-four	One point above threshold plus 46% of difference between threshold and baseline	41.22	73% of maximum
Twenty-five	One point above threshold plus 48% of difference between threshold and baseline	41.36	74% of maximum
Twenty-six	One point above threshold plus 50% of difference between threshold and baseline	41.50	75% of maximum
Twenty-seven	One point above threshold plus 52% of difference between threshold and baseline	41.64	76% of maximum
Twenty-eight	One point above threshold plus 54% of difference between threshold and baseline	41.78	77% of maximum
Twenty-nine	One point above threshold plus 56% of difference between threshold and baseline	41.92	78% of maximum
Thirty	One point above threshold plus 58% of difference between threshold and baseline	42.06	79% of maximum
Thirty-one	One point above threshold plus 60% of difference between threshold and baseline	42.20	80% of maximum
Thirty-two	One point above threshold plus 62% of difference between threshold and baseline	42.34	81% of maximum

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Thirty-three	One point above threshold plus 64% of difference between threshold and baseline	42.48	82% of maximum
Thirty-four	One point above threshold plus 66% of difference between threshold and baseline	42.62	83% of maximum
Thirty-five	One point above threshold plus 68% of difference between threshold and baseline	42.76	84% of maximum
Thirty-six	One point above threshold plus 70% of difference between threshold and baseline	42.90	85% of maximum
Thirty-seven	One point above threshold plus 72% of difference between threshold and baseline	43.04	86% of maximum
Thirty-eight	One point above threshold plus 74% of difference between threshold and baseline	43.18	87% of maximum
Thirty-nine	One point above threshold plus 76% of difference between threshold and baseline	43.32	88% of maximum
Forty	One point above threshold plus 78% of difference between threshold and baseline	43.46	89% of maximum
Forty-one	One point above threshold plus 80% of difference between threshold and baseline	43.60	90% of maximum
Forty-two	One point above threshold plus 82% of difference between threshold and baseline	43.74	91% of maximum
Forty-three	One point above threshold plus 84% of difference between threshold and baseline	43.88	92% of maximum
Forty-four	One point above threshold plus 86% of difference between threshold and baseline	44.02	93% of maximum
Forty-five	One point above threshold plus 88% of difference between threshold and baseline	44.16	94% of maximum
Forty-six	One point above threshold plus 90% of difference between threshold and baseline	44.30	95% of maximum
Forty-seven	One point above threshold plus 92% of difference between threshold and baseline	44.44	96% of maximum
Forty-eight	One point above threshold plus 94% of difference between threshold and baseline	44.58	97% of maximum
Forty-nine	One point above threshold plus 96% of difference between threshold and baseline	44.72	98% of maximum
Fifty	One point above threshold plus 98% of difference between threshold and baseline	44.86	99% of maximum
Fifty-one	One point above threshold plus 100% of difference between threshold and baseline	45.00	100% of maximum

Section 10. [8-] Sanctions shall be applied to schools and school districts pursuant to KRS 158.6455(3)-(7) and ~~the definitions provided in Section 1(9), (10), and (11) of~~ this administrative regulation.

Section 11. [9-] Reward Amounts. The maximum reward amount shall be ten (10) percent of the average (mean) salary of the certified personnel in the five (5) highest paying public school districts in Kentucky. This average shall be weighted by the number of certified personnel in each of these five (5) districts. The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed 1.75% of the total amount of total funds paid to certificated personnel within Kentucky's public schools during the last year of the accountability cycle. If the reward levels described in this section will result in the allocation of funds that exceed this amount, the reward for each school or school district shall be reduced proportionately.

Section 12. When, as a result of a change in service area boundaries or local policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than point eight (.8), the school shall be considered a reconfigured school.

Section 13. A school that is considered a reconfigured school in

the first year of an accountability cycle shall be treated as if not reconfigured, with the exception that the noncognitive index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school's noncognitive data, beginning with accountability cycle three (3).

Section 14. (1) A school that is considered a reconfigured school in the second year of the accountability cycle shall be offered the option of having its baseline calculated from the second year of the accountability cycle, as opposed to the normal weighted average of the first two (2) years of the cycle, with the noncognitive index for the district from the previous year at the corresponding level (elementary, middle, or high school) substituted for that school's noncognitive data beginning with accountability cycle three (3).

(2) A school that is considered a reconfigured school in the second year of an accountability cycle shall have the option of applying to itself the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.

Section 15. A school that is considered a reconfigured school in the third or fourth year of an accountability cycle shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.

Section 16. Reconfigured schools that have contained more than one (1) level (elementary, middle, and high school) and are reconfig-

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ured by removing an entire level of accountability grades may request that the portion of the school remaining stable be considered normally within the accountability system using its established historical data.

Section 17. Schools in transitions because of new buildings being built or because of new policies affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data so long as the request does not require the tracking of individual student data. This shall require the approval of all affected school councils (or the principal if a school is not required to have a council) and the superintendent of the district.

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.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

703 KAR 4:010E

This emergency amendment to the administrative regulation implements the recommendations of technical experts who have reviewed the assessment and accountability system formalizes changes communicated to the Kentucky Board of Education and various committees of the Kentucky General Assembly. In order to apply these changes to school and school district assessment performance judgment reports to be issued in October of 1996, it is necessary to promulgate this emergency amendment to the administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL PATTON, Governor

JOSEPH W. KELLY, Chairman

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Bureau of Learning Results Services

703 KAR 4:010E. The formula for determining successful schools.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

EFFECTIVE: August 12, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 gives the Kentucky Board of Education [~~State Board for Elementary and Secondary Education~~] the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a school in a local school district. This administrative regulation establishes procedures for determining successful schools and districts. [~~Successful schools must be defined in terms of student achievement of the goals set forth in KRS 158.645, and these goals were adopted by the State Board for Elementary and Secondary Education on December 10, 1991, pursuant to KRS 158.6451. Finally, successful schools must be defined with reference to the statewide assessment program set forth in KRS 158.6453.~~]

Section 1. Definitions. (1) "Academic index" means the statistic which describes school success on the cognitive goals set forth in KRS 158.6451(1)(b).

(2) "Accountability cycle" means a four (4) year period of which the first two (2) years furnish the baseline data and the second two (2) years furnish the growth index data.

(3) "Accountability index" means the statistic which is the combination of the academic and noncognitive indices for a school.

(4) "Alternate portfolio" means that component of the assessment system designed for students who cannot with all assistance and adaptive devices available participate in the regular assessment process.

(5) "Baseline" means the accountability index score which describes the school's percentage of successful students during the first two (2) years of each four (4) year accountability cycle.

(6) "Common open-ended questions" means assessment items which are taken by all students in the accountability grades and which require written answers.

(7) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that accountability cycle but which is not five (5) or more points below its baseline, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(8) "Declines by five (5) percent or more" means obtains an average accountability index for an accountability cycle which is five (5) or more points below its baseline for that cycle and obtains a year two (2) accountability index below its improvement goal for that cycle.

(9) "Improvement goal" or "threshold" means the accountability index score which describes the amount of growth required for a school or school district for the accountability cycle.

(10) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal for that accountability cycle, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(11) "Matrix-sampled open-ended questions" means assessment items which are taken by a sample of students and which require written answers.

(12) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(c), (d), (e), and (f).

(13) "Percentage of successful students" means the accountability index.

(14) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.

(15) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.

(16) "Portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring review procedures, to a collection of a student's best work in a given content area.

(17) "Year two (2) accountability index" means the accountability index a school or school district obtains in the last year of an accountability cycle.

~~(1) "Accountability index" means the statistic which is the combination of the academic and noncognitive indices for a school.~~

~~(2) "Baseline" means the accountability index score which describes the school's percentage of successful students at the beginning of each biennium.~~

~~(3) "Academic index" means the statistic which describes school success on the cognitive goals set forth in KRS 158.6451(1)(b).~~

~~(4) "Common open-ended questions" means assessment items which are taken by all students in the accountability grades and which require written answers.~~

~~(5) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium which is five (5) or more points below its baseline that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its improvement goal for the biennium.~~

~~(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that biennium, but which is not five (5) or more points below its baseline and obtains a year two (2) accountability index below the improvement goal for the biennium.~~

~~(7) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal assigned at the beginning of that biennium, and obtains a year two (2) accountability index below the improvement goal for the biennium.~~

~~(8) "Matrix-sampled open-ended questions" means assessment items which are taken by a sample of students and which require~~

~~written answers.~~

~~(9) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(e), (d), (e), and (f).~~

~~(10) "Percentage of successful students" means the accountability index.~~

~~(11) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.~~

~~(12) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.~~

~~(13) "Portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring review procedures, to a collection of a student's best work in a given content area.~~

~~(14) "Improvement goal" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.~~

~~(15) "Alternate portfolio" means that component of the assessment system designed for students who cannot with all assistance and adaptive devices available participate in the regular assessment process.~~

~~(16) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.]~~

Section 2. The data used in the formula for determining successful schools shall be the academic and noncognitive data gathered in the statewide assessment program during each accountability cycle [biennium] pursuant to KRS 158.6453.

Section 3. For the 1992-94 accountability cycle [biennium] the baseline shall be based on data from the 1991-92 assessment program. For subsequent accountability cycles [biennia] the baseline shall be based on the weighted average of the first two (2) years of assessment data of the four (4) year accountability cycle. [from the most recent previous biennium.]

Section 4. The points assigned to each performance level for purposes of computing the academic indices shall be: novice = zero; apprentice = two (2); proficient = five (5); and distinguished = seven (7).

Section 5. For purposes of computing the academic index the data shall be transformed to a scale such that a school with all of its students at the novice level shall receive a score of zero and a school with all of its students at the proficient level shall receive a score of 100.

Section 6. Computing the academic index for each content area (writing, reading, mathematics, science, social studies, arts and humanities, and practical living/vocational studies) shall require determining the percentage of students at each performance level with the following weighting and combining of data:

(1) For the 1991-92 to 1993-94 accountability cycle:

(a) Writing: portfolio scores - 100 percent;

(b) [(2)] Reading; common open-ended questions - fifty (50) percent, and matrix-sampled open-ended questions - fifty (50) percent;

(c) [(3)] Mathematics:

[(a) Grade 4:] common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent.

[(b) For the 1992-94 Biennium, Grade 8 and Grade 12 mathematics:] common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, performance events - twenty (20) percent, and mathematics portfolio scores - zero percent.

~~(e) For the 1994-96 Biennium, Grade 8 and Grade 12 mathematics: common open-ended questions - thirty (30) percent, matrix-sampled open-ended questions - thirty (30) percent, performance events - ten (10) percent, and mathematics portfolio scores - thirty (30) percent.~~

~~(d) [(4)] Science: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent;~~

~~(e) [(5)] Social studies: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent;~~

(2) For the 1992-93 to 1995-96 accountability cycle:

(a) Writing: portfolio - 100 percent;

(b) Reading: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;

(c) Mathematics: for grade 4: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent; and for grades 8 and 12: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - seventy (70) percent, and mathematics portfolio scores - thirty (30) percent;

(d) Science: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;

(e) Social studies: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent.

(f) [(6)] Arts and humanities: matrix-sampled open-ended questions - 100 [seventy (70)] percent[, and performance events - thirty (30) percent]; and

(g) [(7)] Practical living/vocational studies: matrix-sampled open-ended questions - 100 [eighty (80)] percent[, and performance events - twenty (20) percent].

(3) For the 1994-95 to 1997-98 accountability cycle:

(a) Writing: portfolio scores - seventy-five (75) percent, writing prompt - twenty-five (25) percent;

(b) Reading: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;

(c) Mathematics: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;

(d) Science: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;

(e) Social studies: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;

(f) Arts and humanities: matrix-sampled open-ended questions - 100 percent; and

(g) Practical living/vocational studies: matrix-sampled open-ended questions - 100 percent.

Section 7. Alternate Portfolios. ~~For the 1992-93 to 1995-96 accountability cycle and subsequent cycles, scores from alternate portfolios shall be included in the academic indices so that the data from each alternate portfolio completed by students eligible to participate in this assessment component contributes the same weight to the academic component of the accountability index as would a student participating in the regular components of the assessment program. [This shall be done by considering each alternate portfolio student's scores on all common and two (2) matrix items in all subject areas, on writing and mathematics portfolio, and on a practical living/vocational studies performance event which shall be the same as that student's alternate portfolio score.]~~

Section 8. Once the percentage of students at each performance level in each content area has been calculated, each percentage shall be multiplied by the appropriate points described in Section 4 of this administrative regulation and transformed to the scale described in Section 5 of this administrative regulation.

Section 9. Components of Noncognitive Index. The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values for retention rate and dropout rate shall be 100 minus the actual percentage reported.

Section 10. The weights assigned to each noncognitive variable shall be:

(1) Grade 4: attendance rate - eighty (80) percent and retention rate - twenty (20) percent;

(2) Grade 8: attendance rate - forty (40) percent, retention - forty (40) percent, and dropout rate - twenty (20) percent; and

(3) Grade 12: attendance rate - twenty (20) percent, retention - five (5) percent, dropout rate - thirty-seven and five-tenths (37.5) percent, and transition rate - thirty-seven and five-tenths (37.5) percent.

(4) Beginning with the accountability index calculated for the 1994-95 school year, noncognitive data shall be calculated using the data from the previous school year.

Section 11. To compute the noncognitive index the weights for each noncognitive variable described in Section 10 of this administrative regulation shall be multiplied by the value for each noncognitive variable described in Section 9 of this administrative regulation.

Section 12. To compute the accountability index for the 1991-92 to 1993-94 accountability cycle, the academic index for each content area and the noncognitive index shall be weighted at one-sixth (1/6) of the overall index. To compute the accountability index for the 1992-93 to 1995-96 accountability cycle and subsequent cycles the academic index for each content area and the noncognitive index shall be calculated by summing the weighted indices as follows:

	Weight
Reading Index	14
Mathematics Index	14
Science Index	14
Social Studies	14
Writing	14
Arts and Humanities	7
Practical Living/Vocational Studies	7
Noncognitive Index	16

Section 13. A school or local district's accountability index shall be calculated by aggregating the data from all of the students in that school or district.

Section 14. A school or local district's improvement goal shall be its baseline index ~~[as calculated per Section 13 of this administrative regulation]~~ plus one-tenth (0.1) the difference between 100 and the school's or district's baseline index.

Section 15. To determine whether a school or district is successful, its accountability index for the last two (2) years of the accountability cycle [biennium] shall be averaged and compared to its improvement goal ~~[calculated from the results of the previous biennium]~~. Schools and districts whose average accountability index is equal to or greater than its improvement goal shall be declared successful.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption

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by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.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 703 KAR 4:090E

This emergency amendment to the administrative regulation applies consistent appeals procedures to the school and school district accountability system. In order to apply these changes to

apply to accountability performance judgments to be issued in October of 1996, it is necessary to promulgate this emergency amendment to the administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL PATTON, Governor
JOSEPH W. KELLY, Chairman

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Bureau for Learning Results Services

703 KAR 4:090E. Statewide assessment and accountability program; school building and local district appeal of performance judgments.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6455

EFFECTIVE: August 12, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455(8) requires the establishment of procedures for appeals of performance judgments considered to be unfair resulting in the distribution of rewards or the applications of sanctions as specified in KRS 158.6455.

Section 1. Definitions. (1) "Accountability index" means the statistic that is the combination of the academic and noncognitive indices for the school or district.

(2) "Baseline accountability index" means the accountability index score that describes the school or school district's percentage of successful students during the first two (2) years of each four (4) year accountability cycle.

(3) "Growth accountability index" means the accountability index score that describes the school or school district's percentage of successful students during the last two (2) years of each four (4) year accountability cycle.

(4) "Performance judgment" means the decision to declare a school or school district:

- (a) Eligible for rewards;
- (b) Successful;
- (c) Improving;
- (d) In decline; or
- (e) In crisis.

[~~(1) "Accountability index" means the statistic that is the average of the cognitive and noncognitive indices for the school.~~

~~(2) "Baseline accountability index" means the accountability index score that describes the school or school district's percentage of successful students at the beginning of the biennium.~~

~~(3) "Performance judgment" means the decision to declare a school or school district:~~

- ~~(a) Eligible for rewards (level 5);~~
- ~~(b) Successful (level 4);~~
- ~~(c) As not meeting its threshold (level 3);~~
- ~~(d) In decline (level 2); or~~
- ~~(e) In crisis (level 1).]~~

Section 2. (1) A written request for a review of a performance judgment shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the performance judgments to the public.

(2) An additional twenty (20) working days shall be permitted to appeal a revised performance judgment if for any reason there are revisions in the performance judgment of a school or school district. If the performance judgment is subsequently revised, a written request for a review of a performance judgment shall be submitted to

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the Commissioner of Education within thirty (30) days after the school or district has received the official notification of the revised performance judgment.

(3) For districts, the request shall be signed by the superintendent upon the approval of the school board. For schools, the request shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the school board.

(4) [(2)] The appeal of a performance judgment shall clearly identify the basis for the wrongful effect on the:

(a) Baseline accountability index;

(b) Growth accountability index; or

(c) Baseline accountability index being established for the next accountability cycle [biennium].

(5) [(3)] The appeal shall detail the requested adjustment to be made to one (1) or more of these indices.

(6) With the advice of the State Advisory Committee for Educational Improvement, [(4)] the Kentucky Department of Education staff shall review the request against the standards set forth in KRS 158.6455, determine if additional information is required, and if the appeal is disputed, it shall submit the request to the hearing officer for the Kentucky Board of Education. [with a recommendation to the State Advisory Committee for Educational Improvement.]

(7) [(5)] The hearing officer [State Advisory Committee for Educational Improvement] shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the Board's consideration in rendering its final order, in accordance with KRS Chapter 13B. [communicate in writing its summary findings and recommendations to both the party appealing the judgment and to the Commissioner of Education. Within thirty (30) working days, the commissioner's office shall forward the committee's recommendation to the State Board for Elementary and Secondary Education with a recommendation to accept, reject, or modify the committee summary report, and notify the appealing party in writing.

[(6)] The appealing party shall have ten (10) days from when the report is received to submit written exceptions and responses to the state board.]

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.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 902 KAR 20:275E

This emergency administration regulation replaces 902 KAR 20:270 which was found deficient and expired on adjournment of the 1996 regular session of the General Assembly. This administrative regulation sets minimum standards for the provision of mobile health services at more than one (1) location. The need to promulgate this administrative regulation as an emergency is that without an administrative regulation establishing standards for mobile health services, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent to promulgate an administrative regulation will be filed with the Regulations Compiler for the August 15, 1996, filing.

PAUL E. PATTON, Governor
JOHN MORSE, Secretary

CABINET FOR HEALTH SERVICES Office Of Inspector General

902 KAR 20:275E. Mobile health services.

RELATES TO: KRS 216B.010 - 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, EO 96-862

EFFECTIVE: August 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulation establishing standards for Mobile Health Services, 902 KAR 20:270, was found deficient by the Interim Joint Committee on Health and Welfare at its November 15, 1995, meeting. The finding of deficiency resulted from the lack of guidelines to coordinate the

relationship between home I.V. therapy service and home health agencies. Legislation to establish such guidelines was not enacted during the 1996 regular session of the General Assembly. Therefore, pursuant to KRS 13A.333(1), 902 KAR 20:270 expired. KRS 216B.042 requires the cabinet to establish standards for health facilities and services, and authorizes it to promulgate administrative regulations. Without an administrative regulation establishing standards for Mobile Health Services, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. KRS 13A.333(6) prohibits an administrative body from promulgating an administrative regulation that is identical to or substantially the same as an administrative regulation that has expired. This administrative regulation is not identical to or substantially the same as 902 KAR 20:270, because:

(1) Only the lack of guidelines to coordinate the relationship between home I.V. therapy services and home health services was found deficient;

(2) This administrative regulation includes guidelines to coordinate the relationship between home I.V. therapy service and home health agencies; and

(3) It is required by the legislative mandate of KRS 216B.042.

Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Certified radiation operator" means a person who has been certified pursuant to KRS 211:870 and 902 KAR 105:010 to 105:070 as an operator of sources or radiation.

(2) "Computed tomography (C.T.) scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.

(3) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(4) "I.V. therapy" means the administration, by a registered nurse under the supervision of a licensed physician, of various pharmaceutical and nutritional products by intravenous, subcutaneous or epidural routes.

(5) "I.V. therapy service" means pharmaceutical and nursing services, including direct hands-on care, limited to and necessary for the:

(a) Preparation, dispensing and delivery of pharmaceutical and nutritional products and equipment; and

(b) Related clinical consultation, training, assessment and care incidental to the administration of I.V. therapy.

(6) "License" means an authorization issued by the cabinet for the purpose of operating mobile health services.

(7) "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones.

(8) "Magnetic resonance imaging (MRI)" means a diagnostic imaging modality which utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.

(9) "Other diagnostic and treatment services" means those health services which are determined to require licensure pursuant to KRS 216B.042 as a mobile health service.

(10) "Qualified anesthesiologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery and who otherwise meets the criteria established by the mobile health service's governing authority.

(11) "Qualified urologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery and who otherwise meets criteria established

by the mobile health service's governing authority.

(12) "Registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041.

Section 2. Scope of Operation and Services. Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services, and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for the service and for compliance with federal, state and local laws and regulations pertaining to the operation of the service, limited to the scope of the service's certificate of need.

(b) The licensee shall establish lines of authority and designate an administrator who will be principally responsible for the daily operation of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as the administrator of the service when it is being provided at the hospital where the designee is employed.

(2) Policies. There shall be written administrative policies which the service follows covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(e) A description of the administrative and patient care records and reports; and

(f) Procedures to be followed in the storage, handling and administration of drugs and biologicals.

(3) Personnel.

(a) Medical director. The service shall have a medical director. The medical director shall be a licensed physician or dentist with specialized training and experience in, and responsibility for, all medical aspects of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate medical director may be designated from each hospital's medical staff to serve as the medical director of the service when it is being provided at the hospital where the physician is on staff. If a service operates only diagnostic examination equipment, and if the service is offered only to licensed hospitals, and if the employees of the service makes no medical assessment of the diagnostic patient data collected, then the service shall be exempt from the requirements of this paragraph.

(b) The service shall employ, or provide for through a written contractual agreement, sufficient number of qualified personnel to provide effective patient care and all other related services. The licensee shall provide written personnel policies which shall be available to all employees, reviewed on an annual basis, and revised as necessary. If the staff-to-patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) There shall be an employee health program for mutual

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protection of employees and patients including provisions for preemployment and periodic health examination, tuberculin test, and other appropriate tests.

(e) Current personnel records shall be maintained for each employee which include the following:

1. Name, address and Social Security number;
2. Evidence of current registration, certification or licensure of personnel;
3. Records of training and experience; and
4. Records of performance evaluation.

(4) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities including thorough job orientation for new employees.

(5) Medical records.

(a) The service shall maintain medical records which contain at least the following:

1. Medical and social history relevant to the service(s) provided, including data obtainable from other providers;
2. Names of referring physician, if any, and physician's orders for special diagnostic services such as x-ray or CT scans;
3. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment diagnosis, services provided, medications and treatments prescribed, and disposition made;
4. Reports of all physical examinations, laboratory, x-ray, and other test findings relevant to the service(s) provided; and
5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The service shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the service shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer. Mammography and other radiology records shall be retained in accordance with federal requirements.

(e) A specific location shall be designated by the mobile health service for the maintenance and storage of the service's medical records.

(f) Provisions for storage of medical records in the event the mobile health service ceases to operate because of disaster, or for any other reason. The licensee shall safeguard the record and its content against loss, defacement and tampering.

Section 4. Vehicle Requirements. (1) All vehicles used in the provision of a health service, as provided by the service's certificate of need, shall be kept, in optimum order with clean interiors and equipment.

(2) The following standards shall apply only to those vehicles which the patient enters.

(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments.

(b) There shall be a minimum of two (2) potential power sources for the vehicle. To insure an immediately available source of power in the event of a power failure, one (1) must be self-contained on the vehicle. The other source must be an exterior source of power hookup.

(c) The vehicle shall be accessible to users with disabilities either through the use of a wheelchair lift or a ramp which complies with applicable American National Standards Institute (ANSI) requirements.

(d) The vehicle shall have adequate and safe space for staff and

examination procedures, as determined by the cabinet.

(e) Equipment. Vehicles used in the provision of a health service, as provided by the service's certificate of need, shall have the following essential equipment:

1. One (1) five (5) pound dry chemical fire extinguisher;
2. One (1) first aid kit;
3. Suction apparatus;
4. Oxygen equipment (portable) including:
 - a. One (1) "D" size oxygen cylinder;
 - b. One (1) pressure gauge and flow rate regulator;
 - c. Adaptor and tubing; and
 - d. Transparent masks for adults and children. Nasal cannulas may be substituted.

(f) Personnel. Each mobile health service vehicle shall at a minimum be staffed by one (1) person, who may also be the driver of the vehicle, who shall have the following qualifications:

1. Red Cross Advanced and Emergency Care Certification, each with supplemental CPR instruction certified by the American Red Cross or the American Heart Association; or
2. EMT-first responder certification; or
3. EMT-A certification; or
4. Licensure as a registered nurse, physician or dentist.

Section 5. Requirements for Provision of Services. A licensed mobile health service shall comply with the requirements listed in Sections 3, 4, and 6 of this administrative regulation, the service's program narrative, and the additional requirements of this section which relate to the particular service(s) offered by the licensee.

(1) Diagnostic services. Diagnostic services are those services which are performed to ascertain and assess an individual's physical health condition.

(a) Diagnostic services shall be performed only on the order of a physician except for mammography services.

(b) The service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, the name of the person performing the procedure, the date and the name of the physician to whom the results were sent.

(c) Diagnostic imaging services.

1. Diagnostic imaging services are those services which produce an image, either through film or computer generated video, of the internal structures of a patient. These services include:

- a. X-ray;
- b. MRI;
- c. CT scanning;
- d. Ultrasound;
- e. Mammography;
- f. Fluoroscopy; and
- g. Other modalities using directed energy to gain statistical, physiological or biological diagnostic imaging information.

2. Any mobile health service which provides diagnostic imaging services shall comply with the following:

- a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;
- b. There shall be a written preventive maintenance program which the service follows to ensure that imaging equipment is operative, properly calibrated, and shielded to protect the operator, patient, environment, and the integrity of the images produced. Recalibration shall occur every six (6) months by biomedical service personnel and annually by a consulting health physicist.

c. Diagnostic imaging services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes;

d. Imaging services shall have a current license or registration pursuant to applicable Kentucky statutes and any administrative regulations promulgated thereunder;

e. All personnel engaged in the operation of imaging equipment shall be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations;

f. There shall be a written training plan for personnel in the safe and proper usage of the mobile imaging equipment and system;

g. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be examined, and a statement concerning the condition of the patient which indicates why mobile imaging services are necessary; and

h. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation services in the event of a patient emergency.

(d) Other diagnostic services.

1. Other diagnostic services are those services which are provided through the use of diagnostic equipment, and physical examination. These services include:

- a. Electrocardiogram services;
- b. Electroencephalogram services;
- c. Holter monitor services;
- d. Disability determination services;
- e. Pulmonary function services;
- f. Aphresis services;
- g. Blood gas analysis services;
- h. Echosonography services; and
- i. Doppler services.

2. Equipment used for direct patient care shall comply with the following:

a. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

b. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and regulations; and

c. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

3. Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

a. Protocols for diagnostic examinations shall be developed by the medical director.

b. Personnel performing physical examinations shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations.

c. Personnel performing physical examinations shall be limited by the relevant scope of practice of Kentucky licensure.

(2) Treatment services. Treatment services are those services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of their maximum level of physical function.

(a) Mobile health clinic. A mobile health clinic is a health service providing both diagnostic and treatment services through the use of a mobile vehicle. A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physicians and one (1) or more advanced registered nurse practitioners. At least one (1) member shall not be a member of the mobile health clinic staff. The policies shall include:

a. A description of the services the mobile health clinic provides directly and those provided through agreement;

b. Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records; and

c. Procedures for review and evaluation of the services provided by the clinic at least annually.

2. Personnel. The mobile health clinic shall have a staff that

includes at least one (1) physician and at least one (1) advanced registered nurse practitioner. The clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

a. The physician shall:

(i) Be responsible for all medical aspects of the clinic and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

(ii) In conjunction with the advanced registered nurse practitioner(s), participate in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;

(iii) Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and

(iv) Be present for consultation weekly, and be available within one (1) hour, through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

b. The advanced registered nurse practitioner shall:

(i) Participate in the development, execution and periodic review of the written policies governing the services the mobile health clinic provides;

(ii) Participate with the physician in periodic review of patient health records;

(iii) Provide services in accordance with mobile health clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(iv) Arrange for, or refer patients to needed services not provided at the mobile health clinic; and

(v) Assure that adequate patient health records are maintained and transferred when patients are referred.

3. The mobile health clinic shall have linkage agreements or arrangements with each of the following:

a. Inpatient hospital care;

b. Physician services in a hospital, patient's home, or long-term care facility;

c. Additional and specialized diagnostic and laboratory services that are not available at the mobile health clinic;

d. Home health agency;

e. Emergency medical services;

f. Pharmacy services; and

g. Local health department.

4. The mobile health clinic shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

a. The utilization of clinic services including at least the number of patients served and the volume of services;

b. A representative sample of both active and closed clinical records; and

c. The mobile health clinic's health care policies.

5. The mobile health clinic shall develop and maintain written protocols, i.e., standing orders, rules of practice, and medical directives, which apply to services provided by the clinic and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected, and include rationale for each decision made. The protocols shall be signed by the staff physician.

6. The mobile health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

7. The mobile health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient,

including:

- a. Chemical examinations of urine by stick or tablet methods or both (including urine ketones);
- b. Microscopic examinations of urine sediment;
- c. Hemoglobin or hematocrit;
- d. Blood sugar;
- e. Gram stain;
- f. Examination of stool specimens for occult blood;
- g. Pregnancy tests;
- h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and
- i. Test for pinworms.

8. The mobile health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

9. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, the clinic's next scheduled visit, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled visits and hours of operation.

(b) Mobile dental clinic. A mobile dental clinic is a health service providing both diagnostic and dental treatment services at different locations through the use of a mobile vehicle or equipment.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist. These policies shall include:

- a. Guidelines which identify the dental problems which may not be performed in the mobile unit, and provisions for patient referral;
- b. Guidelines for the review and evaluation of the services provided by the clinic at least annually; and
- c. Guidelines for procedures to be followed in the event a patient has a medical emergency.

2. Personnel. The mobile dental clinic shall have a staff that includes at least one (1) licensed dentist and at least one (1) dental assistant.

a. The dentist shall:

- (i) Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and any administrative regulations promulgated thereunder;
- (ii) Be present in the clinic at all times that a patient is receiving dental care; and
- (iii) Provide direct supervision to all staff involved in the delivery of services.

b. The dental assistant shall:

- (i) Provide services in accordance with the mobile dental clinic policies and established protocols, KRS Chapter 313, and any administrative regulations promulgated thereunder; and
- (ii) Provide services only under the direct supervision of a licensed dentist.

3. Equipment. The mobile dental clinics shall have the following equipment:

- a. X-ray units;
- b. Sterilizer;
- c. High speed suction;
- d. Dental lights; and
- e. Emergency kit with the following drug types:
 - (i) Antiallergenic;
 - (ii) Vasodilators;
 - (iii) Anticonvulsives; and
 - (iv) Vasopressors.

(c) Mobile lithotripter service. A mobile lithotripter service is a health service which provides for a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at

various hospital locations.

1. Mobile lithotripter services may only be delivered on the grounds of the hospital utilizing the mobile lithotripter service.

2. Lithotripsy services shall be performed only on the order of a physician.

3. Lithotripsy services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.

4. The service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, and the name of the person performing the procedure.

5. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be exposed, and the anticipated outcome of treatment.

6. Policies. A mobile lithotripter service shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) qualified urologist and one (1) qualified anesthetist. At least one (1) member shall not be a member of the mobile lithotripter service staff. The policies shall include:

- a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;
- b. Procedures to be followed in the event a patient has a medical emergency;
- c. Guidelines for the review and evaluation of the service on an annual basis; and
- d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.

7. Personnel. The mobile lithotripter service shall employ at least one (1) lithotripter technician, and shall employ or make arrangements with the hospital utilizing the service for at least one (1) registered nurse, one (1) qualified urologist to be present in the unit during the delivery of lithotripsy services, and (1) qualified anesthetist to be available for procedures requiring anesthesia.

8. Lithotripsy equipment used for direct patient care shall comply with the following:

- a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;
- b. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative, properly calibrated, properly shielded, and safe for the patient, operator, and environment;
- c. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, certified or registered in accordance with applicable Kentucky statutes and administrative regulations; and
- d. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment; and
- e. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation in the event of a patient emergency.

(d) Other treatment services, including I.V. therapy services, shall be performed only on the order of a physician.

1. I.V. therapy shall only be performed by a registered nurse and shall be limited to nursing services which are required for the provision and administration of I.V. therapy.

2. If nursing services are required which exceed the basic provision of I.V. therapy, they shall be provided by an appropriately licensed agency to provide care under a physician's plan of care.

3. All services provided shall be under the supervision of a licensed physician. If a patient at home is referred by a physician for I.V. therapy, the decision regarding other necessary referrals for in-home care shall be the responsibility of the licensed physician.

4. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physician(s) and one (1) or more registered nurse(s). At least one (1) member shall not be a member of the service's staff. The

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policies shall include:

- a. A description of the services provided;
- b. A requirement to inform patients of other in-home services which can be provided only by other appropriately licensed agencies;
- c. A requirement for a written common plan for treatment and coordination of treatment with other licensed health care providers servicing the patient, and immediate verbal communication between providers of revisions in the common plan shall be documented in the plan of treatment;
- d. Guidelines for the medical management of health problems which include the conditions requiring medical consultation or patient referral, and the maintenance of health records;
- e. Procedures for review and evaluation of the services provided at least annually; and
- f. Guidelines for patient and environment assessment.

5. Personnel. The service shall have a staff that includes at least one (1) registered nurse. The service shall employ such other staff or ancillary personnel that are necessary and essential to the service's operation. The registered nurse shall:

- a. Participate in the development, execution and period review of the written policies governing the services provided;
- b. Participate with the physician in periodic review of patient health records;
- c. Provide services in accordance with established policies, protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(i) Arrange for or refer patients to needed services that cannot be provided by the service; and

(ii) Assure that adequate patient health records are maintained and transferred when patients are referred.

6. In-service training programs shall include instruction in:

- a. Use of equipment;
- b. Side effects and precautions of drugs and biologicals; and
- c. Infection control measures.

7. The service shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

- a. The utilization of the service including at least the number of patients served and the volume of services;
- b. A representative sample of both active and closed records; and
- c. The service's health care policies.

Section 6. Waste Processing. (1) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use, but shall be placed intact into a rigid container. The rigid containers of sharp wastes shall either be incinerated or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(2) The mobile health service shall establish a written policy for the handling and disposal of all pathological and microbiologic laboratory waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

(a) Pathological and microbiologic laboratory waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty-five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the mobile health service from which the waste is being removed, shall be attached to the bag in a conspicuous manner. These wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible.

(b) All unpreserved tissue specimens shall be incinerated off site.

(3) The following liquids shall be disposed of by incineration or by sanitary sewer:

- (a) Blood;
- (b) Vaginal or cervical secretions or exudates;

- (c) Semen;
- (d) Cerebrospinal, synovial, pleural, pericardial, peritoneal or amniotic fluids;
- (e) Saliva in dental procedures;
- (f) Fluids visibly contaminated with blood; and
- (g) Mixed fluids where any of the above may be involved.

JOHN MORSE, Secretary

TIMOTHY L. VENO, Inspector General

APPROVED BY AGENCY: August 1, 1996

FILED WITH LRC: August 13, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle. There are presently 65 licensed mobile health services.

(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: To be determined after the Notice of Intent public 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 comment received: To be determined after the Notice of Intent public hearing.

(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: To be determined after the Notice of Intent public hearing.

(b) Kentucky: To be determined after the Notice of Intent public hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This emergency administrative regulation will replace 902 KAR 20:270 which expired on adjournment of the 1996 regular session of the General Assembly. No alternatives were considered.

(8) Assessment of expected benefits:

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

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(c) If detrimental effect would result, explain detrimental effect:
Mobile Health Services would be unregulated.

(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? (Explain why tiering was or was not used.) No. This is a licensure program and, as such, applies to all licensed services.

ADMINISTRATIVE REGULATIONS 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 August 5, 1996, unless otherwise noted.

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended)

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 incorporate by reference ~~[reflect]~~ the application form for KHEAA grants for use in 1996-97 ~~[1995-96]~~.

Section 1. (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.]~~

(2) 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.

(3) 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. (1) If the student provides written notification of a change of the 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.

(2) 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.

Section 3. Incorporation by Reference. (1) The 1996-97 Free Application for Federal Student Aid (FAFSA) and its instructions are incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, Monday through

Friday, 8 a.m. to 4:30 p.m.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: March 29, 1996

FILED WITH LRC: June 14, 1996 at 9 a.m.

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended)

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. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. ~~[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)(e).]~~

(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)(d).]~~

(7) The definition of "semester" is governed by KRS 164.769(2)(f). ~~[1994 Ky. Acts ch. 163 Sec. 1(2)(e).]~~

(8) The definition of "summer term" is governed by KRS 164.769(2)(g).

(9) "Teaching" means performing classroom instruction in a

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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 prior to July 15, 1996 shall be eligible to apply for and be awarded a renewal 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 information 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) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) A recipient who received a teacher scholarship prior to July 15, 1996, in return for agreeing to obtain the appropriate recertification and to teach in a critical shortage area upon completion of the recertification program shall receive cancellation of the repayment obligation if the recipient renders qualified teaching service in that area or in another critical shortage area. [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.]

(3) [(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, the [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.

(4) [(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 to commence rendering [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 promissory notes [outstanding teacher scholarships] and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for

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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 these funds [hereunder]. The institution's [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.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

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.325(9) authorizes the board to promulgate administrative regulations for the administration of the Kentucky Educational Savings Plan Trust. KRS 164A.330(7) and (8) establishes the statutory framework for the substitution of a beneficiary. KRS 164A.325(5) authorizes the board to promulgate, impose, and collect administrative fees and charges for trust transactions. This administrative regulation establishes the requirements for the substitution of a beneficiary and an administrative fee for multiple substitutions, and permits a participant with more than one (1) account and beneficiaries to substitute a beneficiary from one (1) account to another in lieu of cancelling one (1) of the accounts. [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 subject to KRS 164A.330(7). 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." An [No] administrative fee shall not 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 per substitution.

(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.

COUNCIL ON HIGHER EDUCATION (As Amended)

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: KRS 164.020(8) requires that the Council on Higher Education approve 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.

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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 1995-96 ~~[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) If [When] the level of achievement for a particular objective exceeds 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 and the percentage attained in 1987, divided by the difference between the percentage expected by 1995-96 ~~[1994-95]~~ and the percentage attained in 1987.

2. Example of the use of the equation identified in subparagraph 1 of this paragraph:

	1987	1991-92	<u>1995-96</u> [1994-95]
	5.0%	6.0%	8.0%
annual progress	= 100 ((6.0 - 5.0)/(8.0 - 5.0))		
	= 100 (1.0/3.0)		
	= 100 (0.333)		

= 33.3%

(b) If [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	<u>[1994-96]</u>	<u>1995-96</u>
	5.0%	4.0%	<u>[9.0%]</u>	<u>8.0%</u>
annual progress	= 100 ((4.0/5.0) - 1)			
	= 100 (0.8 - 1)			
	= 100 (-0.2)			
	= -20%			

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 if [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 in Section 1 of this administrative regulation which applies specifically to the community colleges, objectives (1), (6), (7), and (8); 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 1995-96 ~~[1994-92]~~ data shall mean that an institution may submit degree programs for approval in calendar year 1997 ~~[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

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b. Community colleges which shall exhibit progress in two (2) of the four (4) objectives in Section 1 of this administrative regulation which applies specifically to the community colleges, objectives (1), (6), (7), and (8); 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 1995-96 ~~[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:

- Commitment of funds to equal opportunity related activities;
- Financial aid distribution;
- Student services activities;
- High school visitations and results; and
- Academic support services.

5. Employee-related data or plans may include:

- Number of interviews;
- Offers made that are accepted or rejected;
- Utilization of funds to stimulate units to improve their employment data;
- Special actions for units within the institutions ~~if [where]~~ additional efforts are required; and
- 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 1995-96 ~~[1991-92]~~ data shall mean that an institution may submit degree programs for approval in calendar year 1997 ~~[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.]~~

~~[(4) [(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.

GENERAL GOVERNMENT CABINET Kentucky Commission on Human Rights (As Amended)

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 344.180(3), 344.190(8), (9), (10), (14) ~~[, 446.930]~~

NECESSITY AND FUNCTION: KRS 344.180 and 344.190 require the commission to receive, investigate, conciliate, and hold hearings on complaints alleging unlawful discrimination. This administrative regulation establishes procedures for the filing of complaints alleging unlawful discrimination and administrative hearings relating thereto. [This administrative regulation informs the public of the procedures followed by the Kentucky Commission on Human Rights in processing and resolving [conciliating] complaints of unlawful discrimination under KRS 344.010 to 344.500, 344.600 to 344.680 and 344.990.]

Section 1. Definitions. (1) "Commission" means the Kentucky Commission on Human Rights established by KRS 344.150.

(2) "EEOC" means the United States Equal Employment Opportunity Commission.

(3) "HUD" means the United States Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity.

Section 2. 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 ~~shall~~ ~~[on Human Rights may]~~ reduce information received by telephone to writing on the appropriate [prescribed] complaint form. The commission [and] may send the form [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 or a designated commission staff member:

- 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 an appropriate [a-] complaint form[.]

(b) A complaint may be filed on one (1) of the following forms:

1. For employment, housing, public accommodation, or financial transactions complaints, "Complaint of Discrimination" form;

2. For housing discrimination complaints dual-filed with the commission and HUD, "Housing Discrimination Complaint" form;

or
3. For employment discrimination complaints dual-filed with the commission and EEOC, "Charge of Discrimination" form.

(c) ~~A~~ ~~[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. ~~[(4)]~~ 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.~~

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(e) 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 as provided in subsection (4) of this section.

(4) [(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.

(c) ~~It shall be the responsibility of~~ The person or office with whom a complaint is filed shall ~~to~~ timely file the complaint at the commission's Louisville office.

(5) [(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 in writing that the hearing be postponed.

2. A hearing shall not be postponed for more than ten (10) days after the original hearing date.

(6) [(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 3. [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.

(b) A complainant or respondent may request in writing that the location of a hearing be changed.

Section 4. [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:

(a) Admit or deny the allegations in the complaint;

(b) State in concise, plain language, [State in short and plain language] the defenses to each claim asserted;

(c) Specifically state:

1. A defense of lack of jurisdiction; and

2. A brief statement of the facts upon which the defense is based; [-

(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) Specifically state whether [(f)] the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation or claim; [- the answer shall so state.]

(e) ~~The answer shall~~ Contain the mailing address of the:

1. ~~The~~ Respondent; and
2. If applicable, respondent's attorney of record.

(3) [(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.

(4) [(5)] 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.

(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 (4) [(3)] of this section.

Section 5. [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.

(b) The hearing officer may be a commissioner or may be a person appointed by the chair.

(c) [(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) Joiner. [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;

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~~(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.~~

~~(4) [(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.~~

~~(5) [(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.]~~

~~(6) [(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.~~

~~(7) [(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 [commissioners].~~

~~(8) [(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.~~

~~[(11) 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 6. [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 that [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 of Discrimination Form (April 1996 [February, 1993])"; [and]~~

~~(b) "How to File a Complaint of Discrimination (April 1996)";~~

~~(c) "Housing Discrimination Complaint Form (HUD 903) (February 1991)";~~

~~(d) "Charge of Discrimination (EEOC 5) (June 1992)"; and~~

~~(e) "Request for Reconsideration (April 1996)". [Instructions for Completing the Complaint Form (February, 1993).]~~

(2) This material which is made available upon request to persons with disabilities in alternative formats 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) Requested at any time by calling:

1. (502) 595-4024 (voice);

2. (800) 295-5566;

3. (502) 595-4084, (TTY) ~~[(TDD)]~~, for the speech and hearing impaired;

4. Kentucky Relay Service, (800) 648-6056 ~~(TTY)~~ ~~[(TDD)]~~, (800) 648-6057 (voice).

(c) Material may be inspected, copied, or obtained, 8 a.m. to 4:30 p.m., Monday through Friday.

BEVERLY L. WATTS, Executive Director

HOWARD O. MANN, Chairperson

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: June 14, 1996 at noon

GENERAL GOVERNMENT CABINET State Board of Accountancy (As Amended)

201 KAR 1:040. Procedures for conducting examination.

RELATES TO: KRS 325.270

STATUTORY AUTHORITY: KRS 325.240, 325.270

NECESSITY AND FUNCTION: KRS 315.270 requires the board to hold examinations for certified public accountants. 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.

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(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 of]~~ 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.

GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (As Amended)

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

RELATES TO: KRS 313.520 ~~[313.010(4)]~~

STATUTORY AUTHORITY: KRS 313.220, 313.510(3), 313.520

NECESSITY AND FUNCTION: KRS 313.520 requires the board to issue a certificate of authority to perform as a dental laboratory or as a dental laboratory technician upon the board's determination that the registrant has complied with the provisions of KRS 313.510 to 313.540 and the administrative regulations promulgated by the board. This administrative regulation establishes guidelines for registration of dental laboratories and dental laboratory technicians with the Board of Dentistry and for the issuance of certificates of authority to them. ~~[Establishes guidelines for registration of dental laboratories and dental laboratory technicians with the Board of Dentistry.]~~

Section 1. (1) The board shall not issue a certificate of authority to any commercial dental laboratory that is not operated under the direct and continual supervision of at least

one (1) certified dental technician, unless the commercial dental laboratory has been operated under the direct and continual supervision of an owner or manager who has maintained continuous registration with the board since March 1, 1976. ~~[Each dental laboratory owner, and dental laboratory technician already currently engaged in dental laboratory technology on March 1, 1976, shall be granted a certificate of authority upon proper application and upon payment of the proper fee to the board as required by KRS Chapter 313, and these administrative regulations.]~~

~~Section 2. After March 1, 1976,] [The board shall not register or renew a ~~[issue a certificate of authority to any new]~~ commercial dental laboratory unless the applying dental laboratory is operated under the direct and continual supervision of either an owner or manager who has maintained continuous registration with the board since March 1, 1976 or one (1) certified dental technician. Although a dental laboratory may employ any number of certified dental technicians, each dental laboratory shall have at least ~~[only]~~ one (1) certified dental technician or owner/manager as described in this section supervising that dental laboratory at all times. No such person ~~[certified dental technician]~~ shall]~~

(2) A person shall not supervise more than one (1) dental laboratory at any given time.

(3) A certified dental technician is an individual recognized as such by the "National Board for Certification" (official name of certifying agency).

(4) The board may place a dental laboratory or dental laboratory technician on probation, or deny, revoke, suspend, or refuse to renew a certificate of authority to perform as ~~(the registration of)~~ ~~[a certificate of authority to perform as]~~ a dental laboratory or ~~[as]~~ a dental laboratory technician upon the board's determination that an applicant, registrant, or certificate holder has violated any provision of KRS Chapter 313 or the ~~[these]~~ administrative regulations of 201 KAR Chapter 8. Prior to the initiation of any action pertaining to the suspension, revocation, probation, or refusal to renew the certificate of authority to perform as a dental laboratory or as a dental laboratory technician, the board shall issue an order to cease and desist the ~~[said]~~ violation. If the violation reoccurs after the issuance of the ~~[such an]~~ order, the board shall take appropriate disciplinary action in accordance with KRS Chapter 313 and the ~~[these]~~ administrative regulations of 201 KAR Chapter 8.

Section 2. ~~[3.]~~ Any individual having completed two (2) years of training or having acquired two (2) years of practical experience in dental laboratory technology by employment in either a licensed dentist's office or in a commercial dental laboratory, or an individual having a degree in dental laboratory technology from an accredited school upon the completion of a two (2) year course of study shall be classified as a dental laboratory technician and is required to obtain a certificate of authority from ~~[register with]~~ ~~[obtain a certificate of authority from]~~ the board in order to practice dental laboratory technology. An ~~[No]~~ employee, other than a dental laboratory technician, shall not be required to obtain a certificate of authority from the board. ~~[register.]~~ ~~[obtain a certificate of authority from the board.]~~

Section 3. ~~[4.]~~ Each commercial dental laboratory shall pay a fee of fifty (50) dollars and each dental laboratory technician shall pay a fee of ten (10) dollars to the board before a ~~[registration]~~ certificate of authority ~~[of authority]~~ shall be issued to the applicant. An additional fee of twenty-five (25) dollars for laboratories and five (5) dollars for technicians shall be paid if renewal applications are not received by December 31 of each year.

Section 4. ~~[5.]~~ Upon the granting of a certificate of authority to perform as ~~[registration of]~~ ~~(the granting of a certificate of authority to perform as)~~ a dental laboratory, the board shall assign to that

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laboratory a registration number. The laboratory registration number shall appear on all invoices of the laboratory.

Section 5. If a dentist uses a commercial dental laboratory, the commercial laboratory shall [must] be [6. A dentist may use only the services of a commercial dental laboratory which is] duly registered with the board as required by KRS Chapter 313, and ~~the [these]~~ administrative regulations of 201 KAR Chapter 8. The dentist shall [is required to] keep on file in his or [A] her office a copy of the current [registration] certificate of authority for all laboratories with which he or she is doing business. If the board determines that a dentist has violated this administrative regulation, the board shall issue an order pursuant to KRS 313.220(5) requiring that ~~the [such]~~ dentist cease and desist ~~the [said]~~ violation. If the violation reoccurs after the issuance of ~~the [such an]~~ order, the board shall take appropriate disciplinary action in accordance with KRS Chapter 313, and ~~the [these]~~ administrative regulations of 201 KAR Chapter 8.

Section 6. ~~[7.]~~ All commercial dental laboratories operating, doing business or intending to operate or do business within this state shall register with the board and pay the fee required by the board. A dental laboratory shall be considered as operating or doing business in this state if its work product is prepared pursuant to a written authorization originating within this state.

STEPHEN T. SCHULER, DMD, President

APPROVED BY AGENCY: May 11, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

COMPILER'S NOTE: The following administrative regulation, 201 KAR 8:430, was amended by the promulgating agency and the Administrative Regulation Review Subcommittee on August 5, 1996. However, the administrative regulation was deferred to the September meeting of the Subcommittee, and will not be referred at this time to the second appropriate legislative committee for review.

GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (As Amended)

201 KAR 8:430. Unprofessional conduct.

RELATES TO: KRS 313.130(3)

STATUTORY AUTHORITY: KRS 313.140, 313.220

NECESSITY AND FUNCTION: KRS 313.220 authorizes the board to promulgate administrative regulations regulating the practice of dentistry and the use of dental auxiliary personnel. This administrative regulation establishes definitions of unprofessional conduct for which disciplinary action may be taken against a licensee by the Board of Dentistry.

Section 1. "Unprofessional conduct" means:

(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.

(2) ~~[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.

(3) ~~[Section 3.-(4)]~~ Failing to keep written dental records and medical history records justifying the course of treatment of ~~[or]~~ the patient including~~[, but not limited to,]~~ patient histories, examination

results, and X-rays if taken.

(4) ~~[(2)]~~ Failure to provide and maintain reasonable sanitary facilities and conditions.

(5) ~~[(3)]~~ Failure to provide adequate radiation safeguards.

(6) ~~[(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.

(7) ~~[(5)]~~ Practicing beyond the scope of dentistry.

(8) ~~[(6)]~~ Presigning blank prescription or laboratory work-order forms.

(9) ~~[(7)]~~ Administering anesthesia or failing to report any injuries to patients in any manner which violates an administrative regulation promulgated by the board ~~[subject to the provisions of KRS Chapter 43A].~~

(10) ~~[(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.

(11) ~~[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" shall ~~[is deemed to]~~ have the same meaning as specified in KRS 304.40-320.

(12) ~~[Section 5.]~~ Prescribing, procuring, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance:

(a) ~~[(4)]~~ Other than in the course of the professional practice of the dentist;

(b) ~~[(2)]~~ In excessive amounts or inappropriate quantities not in the best interest of a patient; or

(c) ~~[(3)]~~ To himself or herself any medicinal drug appearing on Schedule I, II, III, or IV, as set forth in KRS Chapter 218A.

(13) Practicing the profession when unable to provide ~~[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, the board may ~~[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.

(14) ~~[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.

(15) Violating any section of KRS Chapter 313, an administrative regulation promulgated by the Board of Dentistry, or a lawful order of the board entered in a disciplinary hearing; or failing to comply with a subpoena issued by the board. [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

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~~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.]~~

(16) ~~[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 **KRS Chapter 313**. ~~[this chapter.]~~

(17) ~~[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 PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction (As Amended)

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

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics. This amendment is necessary to extend [delete] continuing education requirements by one (1) year and to include the teaching experience of an HVAC teacher as equal to one (1) year work experience. This amendment is in compliance with HB 189 of the 1996 General Assembly. [This amendment is necessary to delete language regarding the "grandfather clause" and update the application form to the current date.]

Section 1. Definitions. (1) "HVAC" means heating, ventilation and air conditioning, hydronic and burner service systems as defined in KRS 198B.650(1), (2), (8), (9) and (15).

(2) "Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and is authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems.

(3) "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and is authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master HVAC contractor.

Section 2. General Requirements. (1) Mandatory licensure. Effective July 1, 1995, any person engaging in HVAC work shall comply with the applicable requirements in this administrative regulation.

(2) **Continuing education. Beginning July 1, 1997, each**

journeyman licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year. ~~[Continuing education. Beginning July 1, 1996, each journeyman licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.]~~

~~{3}~~ **(3)** The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a journeyman license shall meet all of the following application requirements:

(a) The applicant shall submit the journeyman HVAC Mechanic Application Form HVAC 2, September, 1995, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application shall be accompanied by a nonrefundable initial license application fee of fifty (50) dollars; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the applicant's experience in the installation, alteration, maintenance and performance of repairs on and alteration of HVAC systems, as required by Section 5 of this administrative regulation; and

(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. Each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the test known as "Kentucky Journeyman Heating, Ventilation and Air Conditioning Mechanic Examination" with a passing score of seventy (70) percent; or, the applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, Block and Associates, 5209 Linbar Drive, Suite 626, Nashville, Tennessee 37211 ~~[the National Assessment Institute, 793 Old Hickory Boulevard, Suite 265, Brentwood, Tennessee 37027]~~, or other testing agency approved by the board.

(5) The examination fee shall be forty (40) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the

experience requirements of this section. (1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be for work as an actively engaged and lawfully qualified self-employed contractor/mechanic and for work under another Kentucky HVAC contractor.

(c) Credit for completion of one (1) year of teaching experience in a board or state approved HVAC technical education program shall be considered equivalent to one (1) year employment.

(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours to be completed as part of the two (2) years experience requirement of subsection (1) of this section.

(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

Section 6. Renewal Requirements and Procedures. (1) Applications for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of twenty-five (25) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) The application for renewal of a licensed journeyman HVAC mechanic shall be denied if any of the following occur:

(a) [any of the following occur: (a)] The applicant fails to pay the fees required for renewal and restoration, if applicable; or

(b) The applicant fails to comply with the continuing education requirements of the board [; or

(b) The applicant fails to comply with the continuing education requirements of the board].

Section 7. Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses, pursuant to Section 6(3) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 8. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 30, 1996

FILED WITH LRC: May 13, 1996 at noon

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of State and Local Health Administration
(As Amended)

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755, EO 96-862 [96-79] [211.090, 212.170, 1994 Ky. Acts ch. 336]

NECESSITY AND FUNCTION: KRS 211.170 and 211.1755 [211.090, 212.170, and 212.870] requires the cabinet to supervise the personnel functions of local health departments and ~~[-House Bill 631 provides that the cabinet shall]~~ establish policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees. Executive Order 96-862, signed July 2, 1996, [96-79, effective 12-28-96,] reorganizes the Cabinet for Human Resources by establishing the Cabinet for Health Services and [places] the Department for Public Health within the cabinet. [Health Services and its programs under the Cabinet for Health Services.]

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if the employee [he] meets the minimum requirements of the position having a higher salary and is certified by the department.

(2) The employee shall serve a probationary period to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.

(3) An employee who is promoted shall have the employee's [his] salary raised to the greater of the following:

(a) The amount required to raise the salary of the employee to the minimum established for the class;

(b) Three (3) percent of the employee's current salary if the promotion is to a class having a one (1) grade higher salary range; or

(c) Six (6) percent of the employee's current salary if the promotion is to a class having a salary range which is two (2) or more grades higher.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(5) A permanent employee promoted from a classified position to an unclassified position retains the employee's [his] status in the classified service. If separated from an unclassified position following promotion, an employee shall revert to the class in which the employee [he] previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department. Time served in an unclassified position shall count towards years of service and seniority.

Section 2. Transfers. (1) A transfer of a permanent employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency, may be made at any time by the appointing authority.

(2) A transfer of a permanent employee from a position in one class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon certification of the department. The department may require a qualifying examination.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority.

(a) Accumulated annual and sick leave shall be transferred.

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(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency.

(c) The annual increment date shall be retained by the employee.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period;

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;

(c) Documented disciplinary problems or the inability of an employee to perform the duties and responsibilities required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) The salary of an employee who voluntarily requests demotion shall be reduced by five (5) percent if the demotion is to a classification ~~having a~~ one (1) ~~grade~~ or two (2) ~~grades~~ lower ~~salary~~.

(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.

(4) Except as provided in subsection (6) of this section, the salary of an employee who is demoted because of documented disciplinary problems or inability to perform the duties and responsibilities required of the position, shall be reduced to a salary level determined by adding the total percentage difference, as described by the compensation plan, between the employees current grade level and the grade of the classification to which the employee is demoted.

(5) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(6) If an employee is demoted during the initial probationary period, the employee shall continue in the employee's ~~his~~ probationary period as if the original appointment had been to the position of the lower class.

(7) An employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall have the employee ~~his~~ salary reduced to the level prior to promotion.

RICE C. LEACH, ~~MD~~, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 14, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amended After Hearing)

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, FUNCTION, AND CONFORMITY: 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 evaluation of a person's substance abuse performed by a certified chemical dependency counselor, a certified driving under the influence (DUI) assessor, or other mental health professional in a licensed treatment facility. ~~[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 or substance abuse treatment, or for which medical or substance abuse 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 medical 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) Substance abuse assessment reports from a licensed treatment facility, certified chemical dependency counselor, or certified driving under the influence (DUI) assessor; [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:

- (a) There shall not be diabetic neuropathy or other complication which interferes with safe driving;
- (b) There shall not be frequent and functionally impaired hypoglycemic reactions; and
- (c) There shall not be evidence of use of alcohol or other drugs to an extent that interfere with the person's prescribed treatment program for the condition.

Section 7. Conditions Affecting Musculoskeletal Function. (1) With respect to conditions affecting musculoskeletal function, the Medical Review Board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Rheumatoid arthritis;
- (b) Paralysis; and
- (c) Other musculoskeletal disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's musculoskeletal functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting musculoskeletal function of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet of the following musculoskeletal function criteria:

- (a) Pain shall not interfere with the person's ability to safely operate a motor vehicle;
- (b) The person's operation of a vehicle in a driving evaluation demonstrates adequate compensation for any weakness or limitations in range of motion or mobility; and
- (c) There shall not be effects or side effects of medication interfering with safe driving.

Section 8. Conditions Affecting Neurological or Neuromuscular Function. (1) With respect to conditions affecting neurological or neuromuscular function, the review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Central nervous system diseases or disorders;
- (b) Demyelinating diseases;
- (c) Muscular diseases or disorders; and
- (d) Seizure disorders.

(2) The department or Medical Review Board may require information on neurological or neuromuscular functional abilities or disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting neurological or neuromuscular function of this subsection and a person who applies for, renews, or holds for motor vehicle operator's license shall meet all of the following neuromuscular function criteria:

- (a) There shall not have been a seizure episode as set forth in KRS 186.411;
- (b) The person adequately compensates for any paralysis or sensory deficit when operating a vehicle;
- (c) Fatigue, weakness, muscle spasm or tremor at rest does not impair safe driving;
- (d) There shall not be effects of or side effects of medication that interferes with safe driving; and
- (e) There shall not be a decline in cognition to an extent that interferes with safe driving.

Section 9. Conditions Affecting Mental or Emotional Function. (1) With respect to conditions affecting psychosocial, mental or emotional function, the review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

- (a) Substance and alcohol abuse; and
- (b) Other mental or emotional disorder or dysfunction.

(2) The department or Medical Review Board may require information on mental or emotional functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting mental and emotional function of this subsection and a person who applies for, renews, or

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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: August 5, 1996

FILED WITH LRC: August 9, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: 900 new cases are presented to the Medical Review Board annually. Over 5,000 cases are reviewed annually. All 5,900 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

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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.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 15, 1996

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:021. Manual of Policies and Procedures.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Finance and Administration Cabinet is required by KRS 45A.045(2) to promulgate administrative regulations to govern purchasing by various state agencies, and to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation implements the requirement that this manual be incorporated by reference as an administrative regulation. This administrative regulation repeals 200 KAR 5:020, Finance and Administrative Cabinet Manual of Policies and Procedures, which is a previous version of the manual incorporated by reference in this administrative regulation.

Section 1. The ~~[purchasing policies and procedures of the]~~ "Finance and Administration Cabinet Manual of Policies and Procedures (August 1996 Edition)", is hereby adopted and incorporated by reference, the same as if set forth at length, in and as a part of the administrative regulations of the Finance and Administrative Cabinet adopted pursuant to KRS Chapter 45A. The "Finance and Administration Cabinet Manual of Policies and Procedures (August 1996 Edition)" shall be available for public inspection and copying Monday through Friday, excluding state holidays, from 8 a.m. to 4:30 p.m. at the Office of Management and Budget, Finance and Administrative Cabinet, Capitol Annex, Frankfort, Kentucky.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 15, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1996 at 3 p.m. at the Capitol Annex Building, Room 386. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by September 17, 1996, five days prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: Karen Powell, General Counsel, Office of Legal and Legislative Services, Finance and Administration Cabinet, Capitol Annex Building, 702 Capitol Avenue, Room 374, Frankfort, Kentucky, 40601, Telephone: (502) 564-6660, FAX: (502) 564-9875.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell, General Counsel

(1) Type and number of entities affected: This regulation will affect the agencies of the Finance and Administration Cabinet and relate to procurement matters and related issues governing the purchasing and fiscal affairs of all state agencies within the executive

branch of state government. It will also affect state employees who participate in the automobile liability insurance rider reimbursement provisions.

(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 anticipated costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are possible savings to vendors by registering with the state through the Vendor Information Program, including savings in paper, printing, postage, and labor costs associated with written registration and initiating business with the Commonwealth. A public hearing on this regulation has not yet taken place.

(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: Since agencies currently gather the information that the Finance Cabinet requests in these regulations, no cost increase is anticipated. Only state agencies, rather than the private sector, will have some reporting demands. There may be a cost decrease in the employee liability insurance rider reimbursements.

2. Second and subsequent years: In following years, the same reporting and compliance standards will apply under the manual incorporated by this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The revised policies give state agencies greater authority over their own minor procurements. This change allows the Division of Purchases to dedicate more time to major procurements. No actual cost savings will accrue, only a better use of personnel is anticipated. There will be fewer state employees eligible for reimbursement under the liability insurance rider program and thus, less paperwork and actual reimbursements.

2. Continuing costs or savings: The Division of Purchases and Accounts expects similar costs and savings throughout the duration of the policies implemented by this regulation.

3. Additional factors increasing or decreasing costs: Costs of the goods and services procured could decrease as the Division of Purchases uses its time more efficiently for research into its major procurement projects.

(b) Reporting and paperwork requirements: By increasing the smaller purchases authority of state agencies, the Division of Purchases will reduce its reporting and paperwork requirements. The Division of Accounts should see a reduction in the number of applications from state employees for reimbursement for liability insurance riders. Other changes to the procedures manual should have a negligible impact on the division's paperwork.

(4) Assessment of anticipated effect on state and local revenues: This regulation should have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue for implementation and enforcement of this regulation will be the individual agencies' current general fund appropriations.

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

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(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulation.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is an alternative to the existing policy manual, which has not received significant updating for several years.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No impact is expected.

(c) If detrimental effect would result, explain detrimental effect: Inapplicable

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Division of Purchases and the Division of Contracting and Administration, the only conflicting, overlapping, and duplicative administrative regulation was this regulation's predecessor 200 KAR 5:021, which this regulation and manual will replace.

(a) Necessity of proposed regulation if in conflict: Inapplicable

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

(10) Any additional information or comments: None

11. TIERING: Is tiering applied? No. Tiering was not applied because the Manual of Policies and Procedures is meant to be a standardized guide for conducting the business of the Finance and Administration Cabinet.

FINANCE AND ADMINISTRATION CABINET Department for Administration Division of Purchases (Amendment)

200 KAR 5:304. Application to be placed on source list.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035(2)(e)

NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.035(2)(e) and 45A.110. This amendment changes the references to "bidders' list" and "application to be placed on vendors' list" to "source list" and "source application."

Section 1. Any person, firm or corporation desiring to receive ~~written~~ notice of procurement requirements of the Commonwealth ~~shall apply [may make application]~~ to have his name placed on a source list ~~for the types or kinds of procurement activities or functions he wishes to supply or provide~~. Upon request to ~~either~~ the Division of Purchases, for commodities, supplies, equipment, contractual services and related matters, or the Division of Contracting and Administration, for construction services and related activities and functions, a "source application", or electronic registration instructions, shall [will] be sent to any prospective bidder. Complete information as requested in the application or in the electronic registration instructions, whichever is provided to the vendor, shall [must] be submitted by the prospective bidder before his name shall [will] be placed on a source list, regardless of the format in which that source list is maintained.

Section 2. (1) Upon receipt of a completed "source application", or upon completion of electronic registration, the qualifications of the prospective bidder may be verified in terms of:

(a) The ability and capacity to perform on a timely basis under contract for goods and services which he desires to bid on and furnish.

(b) Good character, integrity, reputation, and experience.

(c) Satisfactory performance in prior dealings with the Commonwealth of Kentucky and its agencies.

(d) Previous satisfactory compliance with the health rules and administrative regulations of the Commonwealth of Kentucky.

(e) Previous satisfactory compliance with the equal employment rules and administrative regulations of the Commonwealth of Kentucky.

(2) The purchasing agencies may refuse to list any prospective bidder not meeting the minimum qualifications set forth above. The prospective bidder has the burden of showing that he meets the qualifications for inclusion on the source lists to which he seeks to gain entry. The prospective bidder ~~shall [will]~~ be promptly advised if his application is disapproved and the reason or reasons for disapproval. A prospective bidder may appeal the disapproval of his application to the Secretary of the Finance and Administration Cabinet. The appeal ~~shall [must]~~ be in writing and filed in the office of the secretary within two (2) calendar weeks after the date of the notice of disapproval of the application. Grounds for the appeal shall be stated with reasonable particularity and shall relate directly to reason or reasons for disapproval of the application. Any prospective bidder whose "source application" is disapproved may reapply after the expiration of six (6) months following the date of disapproval of his last application.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1996 at 11 a.m. at the Capitol Annex Building, Room 386. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by September 17, 1996, five days prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: Karen Powell, General Counsel, Office of Legal and Legislative Services, Finance and Administration Cabinet, Capitol Annex Building, 702 Capitol Avenue, Room 374, Frankfort, Kentucky, 40601, Telephone: (502) 564-6660, FAX: (502) 564-9875.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell, General Counsel

(1) Type and number of entities affected: This regulation will affect agencies of the Finance and Administration Cabinet, particularly the Division of Purchases and the Division of Contracting and Administration, which purchase goods and services for the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no anticipated costs or savings on the cost of living and employment in the

geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are possible savings to vendors by registering with the state through the Vendor Information Program, including savings in paper, printing, postage, and labor costs associated with written registration and initiating business with the Commonwealth. A public hearing on this regulation has not yet taken place.

(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: Vendors who choose to participate in the electronic source list program must comply with this regulation by requesting from either the Division of Contracting and Administration or the Division of Purchases the electronic registration instructions. Since vendors may choose to register either electronically or in writing, only those vendors choosing to participate in the electronic source list will be affected by this portion of the amendment and any possible compliance, reporting, or paperwork costs or savings. The upcoming public hearing will allow comments on other effects on compliance, reporting, paperwork, or competition.

2. Second and subsequent years: There are no additional anticipated compliance, reporting, or paperwork requirements. There should be no effect on competition. A public hearing on this regulation has not yet taken place.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Finance Cabinet's Division of Purchasing will realize some savings in the form of reduced photocopying and mailing expenses.

2. Continuing costs or savings: The Finance Cabinet's Division of Purchasing may realize savings up to \$30,000 annually from reduced copying and postage expense as more vendors choose to register electronically and to view and download invitations electronically.

3. Additional factors increasing or decreasing costs: The Commonwealth and the vendor community will save money as vendors increase their familiarity with electronic commerce.

(b) Reporting and paperwork requirements: No impact on reporting and paperwork requirements is anticipated.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Division of Purchases' General Fund budget will supply the revenue to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulation.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is an alternative to the older paper method for allowing vendors to register and do business with the Commonwealth. The paper method is outdated, inefficient, and costlier to both the Commonwealth and the vendor community.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No impact is expected.

(c) If detrimental effect would result, explain detrimental effect: Inapplicable

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Division of Purchases and the Division of Contracting and Administration, no statutes, administrative regulations, or government policies conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Inapplicable

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not used because all vendors will have equal access to either the paper method of vendor registration or the electronic method.

**FINANCE AND ADMINISTRATION CABINET
Department for Administration
Division of Purchases
(Amendment)**

200 KAR 5:306. Competitive sealed bidding.

RELATES TO: KRS 45A.080

STATUTORY AUTHORITY: KRS 45A.035, 45A.080

NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). [The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.080. This administrative regulation is amended to more clearly state that this administrative regulation pertains only to those contracts exceeding the small purchase limits established by KRS 45A.100. These amendments also change the reference to "bidders' list" to "source list" and "purchasing official" and "buyer" to "purchasing officer." These amendments further provide that only those late bids postmarked prior to the scheduled opening date shall be considered for award, and that facsimile bids and responses shall not be accepted by the Division of Purchases. These amendments make revisions to bring the administrative regulation into compliance with the drafting rules established under KRS Chapter 13A.]

Section 1. The purchasing agencies of the Commonwealth shall cause adequate public notice of invitations for bids pursuant to [for furnishing procurement requirements of the Commonwealth and its agencies through newspaper advertisement in the manner set forth in] KRS 45A.080(3). For those contracts estimated to exceed \$25,000, adequate public notice shall include publication of a notice in either or both the Louisville and Lexington daily newspapers not less than seven (7) days prior to the date set for the opening of bids. The agencies shall transmit [and shall solicit bids from interested persons listed on the source lists for particular requirements by sending] invitations for bids not less than fourteen (14) days prior to the date set for the opening of bids, to prospective vendors. The agencies shall transmit invitations for bids by either sending a hard copy to at least ten (10) persons listed in such source lists, and if less than ten (10), all potential bidders listed in the source lists as interested in supplying the particular requirement; or agencies may electronically upload bid invitations or notices of invitations to the electronic Vendor Information Program bulletin board system operated by the Division of Purchases, Finance and Administration Cabinet. [If there are not ten (10) persons listed on a particular source list,

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~~invitations shall be sent to all persons listed on that particular list.~~

Section 2. Bidders shall complete, execute and submit their bids in strict compliance with the instructions contained in the invitation for bids. Bid forms shall be provided by the purchasing agencies in paper or electronic format and a bidder responding to an invitation for bids shall use only the bid form or form of proposal furnished by the purchasing agency in submitting his bids.

Section 3. Bidders shall submit their bids at the place and at, or prior to the date and hour set in the invitation for bids. Bids received after the hour set for opening bids shall be marked late ~~(are late bids and shall be so marked)~~. A late bid shall not be considered for an award unless no other bid is received in response to an invitation for bids. The late bid, together with the envelope in which the bid was submitted bearing the stamped date and hour of receipt of the bid, shall be retained in the invitation for bids file ~~(pertaining to the invitation for bids)~~. Only those late bids postmarked prior to the scheduled opening date shall be considered for award.

Section 4. All bids, and any modifications to bids previously filed, received prior to the date and hour fixed for opening bids shall be kept secure and unopened. Envelopes containing bids but not marked to indicate that they contain a bid and listing the invitation for bids number and the date and hour of opening bids for that invitation may be opened to identify ~~(for the purpose of identification of)~~ the contents of the envelope and shall ~~(will)~~ be marked and resealed.

Section 5. The purchasing officer or other employee of the purchasing agency designated to open the bids shall determine when the time set for opening bids has arrived and shall so declare the time to those present for the bid opening. He shall then and there personally, in the presence of the bidders or their representatives and anyone else who may wish to attend the bid opening, open all bids received as of that date and hour; when practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Except where it may be deemed impractical, due to the nature or complexity of an invitation for bids, ~~(it may be deemed impractical)~~ a bid tabulation summary sheet shall be prepared for each invitation for bids recording the name of each bidder, a description of the supplies or services bid and the amounts of the bids received. The bid tabulation summary sheet shall be permanently retained in the file pertaining to that invitation for bids and shall be available for public inspection. Inspection of bids by interested persons shall not be permitted ~~(or authorized)~~ during the formal bid opening process.

Section 6. The bids shall be examined by the purchasing officer responsible for the procurement for any clerical or technical errors, reviewed for technical compliance with the terms of the invitation for bids, and the supplies or services bid evaluated for conformity with the specifications contained in the invitation for bids. Every bidder shall, when requested by the purchasing officer responsible for the particular procurement, clarify ~~(or explain)~~, in writing, any matter contained in his bid about which the purchasing officer may have question or believes in good faith needs to be clarified ~~(and explained)~~. The bid of any bidder who fails or refuses, within a reasonable time, to give a written clarification ~~(or explanation)~~ of his bid, or any part thereof, when requested to do so by the purchasing officer, shall not be considered further for an award on the basis of that invitation for bids. The written clarification ~~(or explanation)~~ of a bid, or a part of a bid, shall be incorporated in ~~(and become a part of)~~ any contract awarded on the basis of that bid. ~~(In due course, and)~~ After a reasonable bid evaluation period, the contract shall be awarded to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price, whichever is determined by the purchasing officer to be in the best interests of the Common-

wealth or as designated in the invitation for bids as the basis for award of the contract. ~~(If)~~ After evaluation of the bids, including consideration of any clarifying ~~(or explanatory)~~ information submitted by the bidders, the purchasing officer may determine ~~(it is determined by the purchasing officer)~~ that no satisfactory bid has been received and ~~(;)~~ all bids may be rejected. At ~~(and, in)~~ the discretion of the purchasing officer, the invitation for bids may be cancelled and ~~(;)~~ new bids invited on the basis of the same or revised specifications, or competitive negotiations undertaken for the procurement. The basis for the rejection of all bids and subsequent action taken or to be taken with respect to the invitation for bids shall be recorded in writing and filed in the invitation for bids file relating to the particular procurement.

Section 7. (1) The right to reject any ~~(and all)~~ bid[s] and to waive technicalities and minor irregularities in bids shall be ~~(maintained and)~~ preserved in the case of all invitations for bids issued by purchasing agencies within the Finance and Administration Cabinet or pursuant to delegations of purchasing authority by the Finance and Administration Cabinet.

(2) Grounds for the rejection of bids include :

(a) Failure of a bid to conform to the essential requirements of an invitation for bids.

(b) Any bid which does not conform to the specifications contained or referenced in any invitation for bids shall be rejected unless the invitation authorized the submission of alternate bids and the items offered as alternatives meet the requirements specified in the invitation.

(c) Any bid which fails to conform to a delivery schedule established in an invitation for bids.

(d) A bid imposing conditions which would modify the terms and conditions of the invitation for bids, or limit the bidder's liability to the state on the contract awarded on the basis of such invitation for bids.

(e) Any bid determined by the purchasing officer in writing to be unreasonable as to price.

(f) Bids received from bidders determined to be not responsible bidders.

(g) Failure to furnish a bid guarantee when required by an invitation for bids.

(h) For other cause as documented by the purchasing officer pursuant to a written determination and finding.

(3) Technicalities or minor irregularities in bids which may be waived when the purchasing officer determines that it will be in the Commonwealth's best interest to do so, are mere matters of form not affecting the material substance of a bid or some immaterial deviation from or variation in the precise requirements of the invitation for bids and having no or a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of the services being procured, the correction or waiver of which will not affect the relative standing of, or be otherwise prejudicial to other bidders. The purchasing officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in his bid, or waive such deficiency where it is advantageous to the Commonwealth to do so.

Section 8. Where a mistake in a bid is claimed, and the evidence is clear and convincing that a material mistake was made in the bid and that due to such mistake, the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. It shall be the duty of all contractors bidding to carefully review and verify the accuracy of their bids both before submitting them and prior to execution of a contract. When a mistake in a bid is claimed after the award and execution of a contract, on the basis of such bid, the contractor shall be required to perform according to the terms and conditions of the contract unless it is established by clear and convincing evidence that a material mistake had been made in the original bid and that the contractor would sustain a financial loss if

required to perform the contract according to its terms; a reduction or diminution in profit margin shall not be deemed a financial loss under this section. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract, and the contractor will sustain a financial loss if required to perform the contract, the contract shall be rescinded and the contractor shall be ineligible to submit a bid upon readvertisement for the commodity or service.

Section 9. The following matters shall ~~apply~~ ~~be applicable~~ to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities, supplies and equipment pursuant to KRS 45A.080 and this administrative regulation:

- (1) Time discounts or cash discounts shall not be considered.
- (2) ~~Trade discounts~~ Trade discounts shall ~~be~~ ~~deducted~~ by the vendor in calculating the unit price quoted, unless otherwise indicated in the bid.
- (3) ~~Quantity discounts~~ Quantity discounts shall be included in the price of the item. When not included in the item price, the discount shall be considered only if the purchasing agency deems it to be in the Commonwealth's best interests. The unit price shown on the contract shall be the net price, less the discount, unless otherwise indicated in the bid.
- (4) ~~Unit prices~~ In case of a discrepancy in the extension of a price, the unit or item price shall govern over the total price of all items.
- (5) ~~Awards on an aggregate or individual item basis~~ An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the Commonwealth's best interest. The methods and bases of award of contract and of evaluation of bids shall be stated in the invitation for bids.
- (6) ~~Telegraphic or facsimile bids~~ When the purchasing agency has invited competitive sealed bids or request for proposals, telegraphic or facsimile responses shall not be accepted.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1996 at 1 p.m. at the Capitol Annex Building, Room 386. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by September 17, 1996, five days prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: Karen Powell, General Counsel, Office of Legal and Legislative Services, Finance and Administration Cabinet, Capitol Annex Building, 702 Capitol Avenue, Room 374, Frankfort, Kentucky, 40601, Telephone: (502) 564-6660, FAX: (502) 564-9875.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell, General Counsel

(1) Type and number of entities affected: This regulation will affect the Division of Purchases and Division of Contract Administration and the Commonwealth's purchasing agencies. In the private sector, all prospective bidders will be affected by the additional choices that this regulation provides.

(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 discernable costs or savings on the cost of living and employment associated with this administrative regulation. However, a public hearing has yet to be held on this 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 possible savings to vendors by registering with the state through the Vendor Information Program, including savings in paper, printing, postage, and labor associated with written registration and initiating business with the Commonwealth. A public hearing on this regulation has not yet taken place.

(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: For the first year, as more vendors exploit the electronic bulletin board, there are anticipated reductions in paperwork and mass mailing costs, as well as savings attributable to more efficient use of employee time with the substitution of electronic databases for the more time-consuming bid invitation preparation and mailing process. However, a public hearing has yet to be held on this regulation.

2. Second and subsequent years: There are no additional anticipated compliance, reporting, or paperwork requirements. There should be no effect on competition. A public hearing on this regulation has not yet taken place.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some savings will be realized by the Finance Cabinet's Division of Purchasing in the form of reduced photocopying and mailing expenses.

2. Continuing costs or savings: Anticipated savings of up to \$30,000 per year in copying and postage may be realized by the Finance Division of Purchases as more and more vendors choose to register electronically and to view and download invitations electronically.

3. Additional factors increasing or decreasing costs: Increased vendor familiarity with electronic commerce will tend to increase the savings to both the Commonwealth and the vendor community.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The cost of implementation and enforcement is minimal and is available in the Division of Purchases's General Fund budget.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulation.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is an alternative to the older, paper method for allowing vendors to register and do business with the state. The paper method is outdated, inefficient, and more costly to both the Commonwealth and the vendor community.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

(b) State whether a detrimental effect on environment and public

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health would result if not implemented: No impact is expected.

(c) If detrimental effect would result, explain detrimental effect: Inapplicable

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Division of Purchases, there are no statutes, administrative regulations, or governmental policies which conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied to this regulation because the competitive sealed bidding process applies equally to bidders choosing the written or the electronic method of conducting business with the Commonwealth.

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:010. Temporary licensure.

RELATES TO: KRS 238.525

STATUTORY AUTHORITY: KRS 238.515(9), 238.525(4), 238.530(1), (2), 238.535(11), 238.555(1)

NECESSITY, FUNCTION, AND CONFORMITY: [~~If the processing of the application for licensure is unduly delayed;~~] The Division of Charitable Gaming [~~will have procedures by which it~~] may issue temporary licenses to those qualifying charitable organizations, manufacturers, distributors and charitable gaming facilities who have substantially complied with the licensure requirements.

Section 1. Application for Temporary Licensure. A temporary license may be issued by the Division of Charitable Gaming to a charitable organization, manufacturer, distributor or charitable gaming facility if ~~the~~ [:-

~~(1) There exists an undue delay in completing background checks or otherwise processing the application for regular licensure; and~~

~~(2) The~~ applicant has exhibited substantial compliance with licensure requirements by completing and supplying the information requested on the appropriate licensure application form prescribed by the Division of Charitable Gaming.

Section 2. Form of Temporary Licenses. A temporary license issued by the Division of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Address of the licensee;

(3) Date of issuance of the temporary license;

(4) Expiration date of the temporary license;

(5) Premises or location at which the charitable gaming will be conducted, if the temporary license is for a charitable organization or a charitable gaming facility;

(6) Type of temporary license issued; and

(7) Address of the Division of Charitable Gaming.

Section 3. Processing Fee. (1) A processing fee of twenty-five (25) dollars shall accompany each application for temporary licensure.

(2) The twenty-five (25) dollar processing fee shall be credited to any balance due on the regular license at the time it is issued.

Section 4. Incorporation by Reference. (1) The following temporary application forms and materials are incorporated by reference:

(a) Form CG[-T]-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (6/96 [8/94])".

(b) Form CG[-T]-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment (6/96 [8/94])".

(c) Form CG[-T]-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (6/96 [8/94])".

(d) Form CG[-T]-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (6/96 [8/94])".

(e) Form CG[-T]-Schedule A, "Application for [~~to Conduct~~] Special Limited Charitable Gaming License/Special Charity Fundraising Event License [Game(e)] (For Use With Form CG[-T]-1) (6/96 [8/94])".

~~[(f) Form CG-T-Schedule B, "Notice of Intent of Suborganization or Subordinate Organization of a Licensed Charitable Organization to Conduct Charitable Gaming (For Use With Form CG-T-1) (8/94)"]~~

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100 [~~Room 104~~], Frankfort, Kentucky 40601-2639 [~~2690~~] 8 a.m. to 4:30 p.m., Monday through Friday.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, September 24, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1996, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by September 24, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensees (manufacturers, distributors, charitable gaming facilities and charitable gaming organizations) seeking renewal licensure with the division (currently about 1000 licensees) and an undetermined number of first-time applicants which substantially meet licensure requirements.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Any applicant (manufacturer, distributor, charitable gaming facility and charitable gaming organization) will incur initial cost of doing business of temporary licensure processing fee (\$25) to be applied/credited towards permanent licensing fee.

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

1. First year following implementation: Extensive application forms with information necessary to compile requisite background checks will be required of each licensee.

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2. Second and subsequent years: Similar renewal applications will be required in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the license applications will be the only significant cost incurred by the division.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the application forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to types and classes of applicants, locations (by county) of licensees, money generated/received by categories of licensees, money due from each applicant prior to receiving permanent license, and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: To the extent the processing fees charged do not cover the cost of implementation, funds from the Charitable Gaming Regulatory Account [KRS 238.570(2)] 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All applicants for licensure are charged the same processing fee of \$25 despite the fact that permanent licensure fees will vary among groups/types of applicants. The uniform processing fee was designed to speed up processing of initial and subsequent licensure applications, and the processing fee will be credited towards the permanent licensure fee due.

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:015. Permanent licensure.

RELATES TO: KRS 238.515(3), 238.525(3)

STATUTORY AUTHORITY: KRS 238.515(2), (3), (9), 238.530(1), (2), 238.535(11), 238.555(1)

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Application for Licensure. (1) Unless complete application was made for temporary licensure under 500 KAR 11:010, applicants for permanent licensure shall submit to the division a complete application on a form prescribed by the division at least sixty (60) days prior to engaging in the conduct to be licensed.

(2) If the applicant satisfactorily meets the requirements for licensure prescribed in KRS Chapter 238, the division shall issue a permanent license.

Section 2. Information Required on License. A permanent license issued by the Division of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Address of the licensee;

(3) Date of issuance of the license;

(4) Expiration date of the license;

(5) Premises or location at which the charitable gaming will be conducted, if the license is for a charitable organization or a charitable gaming facility;

(6) Type of license issued; and

(7) Address of the Division of Charitable Gaming.

Section 3. Fees for Licensure. (1) The division shall collect fees for applications for permanent licensure and for renewal applications.

(2)(a) The annual license fees for each license issued shall be as follows:

1. Manufacturer - \$500.

2. Distributor - \$250.

3. Charitable gaming facility - \$2,500.

4. Charitable gaming organization with gross receipts not in excess of \$100,000 - \$100.

5. Charitable gaming organization with gross receipts over \$100,000, but not in excess of \$250,000 - \$200.

6. Charitable gaming organization with gross receipts over \$250,000 - \$300.

(b) A processing fee of twenty-five (25) dollars shall accompany each application for licensure. The twenty-five (25) dollar processing fee shall be credited to any balance due on the license at the time it is issued.

(3) A permanent license shall not be issued until the annual license fee is paid in full.

(4) The permanent license shall be effective for one (1) year from the date of issuance.

Section 4. Renewals. (1) A licensee wishing to renew its license shall make application to the division on a form specified in Section 5(1) of this administrative regulation, prescribed by the division no later than sixty (60) days prior to the expiration date on the renewal applicant's current license.

(2) Annual fees for renewal licenses shall be the same as those set forth in Section 3(2) of this administrative regulation.

(3) Failure to timely renew as directed in subsection (1) of this section may result in issuance of a renewal license after the expiration date of the applicant's current license. Activities authorized by any license shall not continue after the expiration date on the license, and the licensee shall cease the activities until receipt of the renewal license.

Section 5. Incorporation by Reference. (1) The following application forms and materials are incorporated by reference:

(a) Form CG[-T]-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (6/96 [8/94])".

(b) Form CG[-T]-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment (6/96 [8/94])".

(c) Form CG[-T]-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (6/96 [8/94])".

(d) Form CG[-T]-4, "Application for License to Operate a Charita-

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ble Gaming Facility in the Commonwealth of Kentucky (6/96 [8/94])".

(e) Form CG[-T]-Schedule A, "Application for ~~to Conduct~~ Special Limited Charitable Gaming License/Special Charity Fundraising Event License ~~[Game(s)]~~ (For Use With Form CG[-T]-1) (6/96 [8/94])".

~~[(f) Form CG-T Schedule B, "Notice of Intent of Suborganization or Subordinate Organization of a Licensed Charitable Organization to Conduct Charitable Gaming (For Use With Form CG-T-1) (8/94)"]~~

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100 ~~[Room 104]~~, Frankfort, Kentucky 40601-2639 ~~[2690]~~, 8 a.m. to 4:30 p.m., Monday through Friday.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, September 24, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1996, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by September 24, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensees (manufacturers, distributors, charitable gaming facilities and charitable gaming organizations) seeking renewal licensure with the division (currently about 1,000 licensees) and an undetermined number of first-time applicants which meet the licensure requirements.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Any applicant (manufacturer, distributor, charitable gaming facility and charitable gaming organization) will incur initial cost of doing business of licensure processing fee (\$25) to be applied/credited towards permanent licensing fee. Permanent license fee structure is as follows: manufacturer - \$500; distributor - \$250; charitable gaming facility - \$2,500; charitable gaming organization with gross receipts not in excess of \$100,000 - \$100; charitable gaming organization with gross receipts over \$100,000, but not in excess of \$250,000 - \$200; and charitable gaming organization with gross receipts over \$250,000 - \$300.

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

1. First year following implementation: Extensive application forms will be required of each licensee.

2. Second and subsequent years: Similar renewal applications will

be required in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the license applications and licenses will be the only significant costs incurred by the division.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the application forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to types and classes of applicants, locations (by county) of licensees, money generated/received by categories of licensees, money due from each applicant prior to receiving permanent license, and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: To the extent the processing fees and license fees charged do not cover the cost of implementation, funds from the Charitable Gaming Regulatory Account [KRS 238.570(2)] 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All applicants for licensure are charged the same processing fee of \$25 despite the fact that permanent licensure fees will vary among groups/types of applicants.

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:025. Quarterly reports.

RELATES TO: KRS 238.550, 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550, 238.570(1)

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Quarterly Reporting Period Defined. ~~[With the exception of the initial start-up quarterly reporting period, which shall cover the time period from March 16, 1994, through September 30, 1994,~~

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and which shall be due on or before November 15, 1994.] A quarterly report shall be filed by each licensed charitable organization no later than thirty (30) days following the close of each calendar year quarter.

Section 2. Quarterly Reports. ~~[(4)]~~ Quarterly reports shall be submitted on forms prescribed by the division and shall be signed by an authorized officer of the licensed charitable organization and, if prepared by an individual other than an authorized officer, by the preparer.

~~[(2) If a suborganization of the licensed charitable organization has conducted charitable gaming during the reporting period, the suborganization's earnings and activities shall be reported by the licensed charitable organization, but on a form separate from that of the parent organization.]~~

Section 3. Fees Due. The fees imposed by KRS 238.570(1) on gross gaming receipts of licensed charitable organizations shall be remitted by check or money order made payable to "Kentucky State Treasurer" at the time the quarterly reports are due.

Section 4. Late Fees. (1) If the quarterly fee imposed by KRS 238.570(1) is not remitted when due, then a late fee of twenty-five (25) dollars per day, not to exceed \$250 dollars per quarter, shall be imposed on the licensed charitable organization until the quarterly fee has been received by the division.

(2) The late fee imposed in subsection (1) of this section shall be paid within ten (10) days of receipt of an invoice from the division and shall be by check or money order made payable to "Kentucky State Treasurer".

Section 5. Incorporation by Reference. (1) The following reporting forms are incorporated by reference:

(a) Form CG[F]-QR, "Quarterly Activity Report (6/96 [40/94])".

(b) Attachment A, "Charitable Gaming Accounting Summary (6/96 [40/94])".

(c) Attachment B, "Report of All Prize Winners of \$600 or More (6/96 [42/94])".

(d) Attachment C, "Special License Activity Report (6/96) [Sub-organization Activity Report (10/94)]".

(e) Attachment D, "Summary of Gaming Activity (6/96)".

(f) Attachment E, "Report of Charitable Contributions Made by Licensee (6/96)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100 [Room 104], Frankfort, Kentucky 40601-2639 [2699], 8 a.m. to 4:30 p.m., Monday through Friday.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, September 24, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1996, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by September 24, 1996. Send written notification to attend

the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensed charitable organizations (currently about 850 licensees).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Implements statutory fee imposed on one-half of one percent of all gross gaming receipts of licensed organizations. Also imposes late fee for failure to timely remit quarterly payment.

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

1. First year following implementation: Quarterly reporting forms and attachments.

2. Second and subsequent years: See 2(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the quarterly reporting forms and attachments will be the only significant cost incurred by the Division of Charitable Gaming.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the quarterly forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to fees generated/received by licensees (based on geographic location, types of organizations, types of gaming), and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account [KRS 238.570(2)] 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Late fee considered necessary to ensure timely filing and payment of quarterly fees. Lower amounts considered not a sufficient deterrent, and higher amounts appear a little excessive.

(8) Assessment of expected benefits:

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

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

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

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

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

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

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(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. KRS 238.570(1) did not provide for tiering.

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:060. Tipping prohibited.

RELATES TO: KRS 238.540(4)

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.540(4)

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Tipping Prohibited. (1) Tipping or other gratuitous conduct constitutes compensation prohibited by KRS 238.540(4). The charitable organization conducting gaming shall take one (1) or more of the following [appropriate] measures to inform the public that its volunteers are unable to accept tips or other forms of gratuitous conduct:

(a) Post signs in a conspicuous location that volunteers are not permitted to accept tips;

(b) Include a notation in a conspicuous location on an occasion program, if any, that volunteers are not permitted to accept tips; or

(c) Make an announcement immediately prior to the beginning of the charitable gaming session or event that volunteers are not permitted to accept tips.

(2) Except as provided in subsection (3) of this section, a charitable organization shall not pay remuneration or expenses other than those authorized in KRS 238.550(4), or award or otherwise provide any sort of benefits, to or for or on behalf of any person engaged as a volunteer in the conduct of charitable gaming sponsored by the charitable organization.

(3) A charitable organization shall be permitted to provide volunteer workers the following:

(a) Food or drink of a value not to exceed ten (10) dollars in one (1) day to be consumed on the premises where charitable gaming occurs or at any other location with prior written approval by the division; and

(b) Any article of clothing worn by the volunteers on the premises where charitable gaming occurs which identifies the volunteer worker as a volunteer for the charitable organization; and

(c) Any noncash item not to exceed twenty-five (25) dollars in fair market value given to volunteers upon achievement of predetermined goals in the conduct of a raffle held in connection with a charity fundraising event or special limited charitable games.

(4) All expenditures made by charitable organizations for volunteers as allowed under subsection (3) of this section shall be reported on Form CG-QR, "Quarterly Activity Report (6/96)".

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, September 24, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1996, five (5) workdays prior to the hearing, of their

intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by September 24, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensed charitable organizations (approximately 850) and those charitable organizations qualifying for exemption from licensure requirements under KRS 238.535 (approximately 200 per year).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

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

1. First year following implementation: Minimal cost associated with notifying patrons of no-tipping rule and reporting of allowed expenditures.

2. Second and subsequent years: Minimal cost associated with notifying patrons of no-tipping rule and reporting of allowed expenditures.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account [KRS 238.570(2)].

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11. Notification required by regulation is widely utilized. In addition, \$25 noncash items given to volunteers for certain raffles determined to be sufficiently high for an award yet not too high as to constitute opportunity for fund diversion or commercialization.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Regulation applies equally to all charitable organizations conducting gaming.

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:070. Exempt activities.

RELATES TO: KRS 238.535

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.535(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Any charitable organization which otherwise fully qualifies for licensure but claims to be exempt from licensure under KRS 238.535(1) shall submit to the division, thirty (30) days before the exempt charitable gaming activities first occur, a satisfactorily completed form entitled "Notice of Exemption From Charitable Gaming Licensure Requirement", Form CG[-T]-Exempt. The division shall acknowledge receipt of Form CG[-T]-Exempt and the charitable organization may present such acknowledgment to licensed distributors or other vendors or entities requiring verification of licensure status as proof that the charitable organization has notified the division of its exempt status. Provided the gaming activities of the charitable organization remain exempt, no additional exemption notice shall be filed with the division. The charitable organization shall promptly notify the division of any changes in information contained on the Form CG[-T]-Exempt.

Section 2. Incorporation by Reference. (1) Form CG[-T]-Exempt, "Notice of Exemption From Charitable Gaming Licensure Requirement, (6/96 (3/95))", is hereby incorporated by reference.

(2) This form may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639 [2690], 8 a.m. to 4:30 p.m., Monday through Friday.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, September 24, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1996, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by September 24, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All charitable organizations conducting exempt charitable gaming will be affected. It is estimated that approximately 200 charitable organizations may 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 costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No license fee will be required of the charitable organization, and no statutory fee (one-half of one percent of all gross gaming receipts) will be required.

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

1. First year following implementation: Form CG-Exempt will be filed by all exempt charitable organizations the first year and acknowledgments will be sent out by the Division of Charitable Gaming.

2. Second and subsequent years: Only charitable organizations who have not previously filed a Form CG-Exempt will do so in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the Form CG-Exempt will be the only significant cost incurred by the Division of Charitable Gaming.

2. Continuing costs or savings: The printing of the Form CG-Exempt will be the only significant cost incurred by the Division of Charitable Gaming.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the Forms CG-Exempt themselves, it is anticipated that the division will establish methods by which to acknowledge receipt of the exemption notice and to keep records (based on geographic location, type(s) of organization(s), type(s) of gaming), and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account [KRS 238.570(2)] 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 238.535 directs that notice be given the Division of Charitable Gaming of exempt activities. The use of a form is most convenient for both the charitable organization and the Division of Charitable Gaming.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

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the geographical area in which implemented and on Kentucky: None

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. KRS 238.535(2) did not provide for tiering. Tiering is inapplicable.

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:080. Special charity fundraising event.

RELATES TO: KRS 238.505(9)

STATUTORY AUTHORITY: KRS 238.505(9), 238.515(2), (9), 238.535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.505(9) authorizes a special charity fundraising 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.

Section 1. A special charitable fundraising event ~~limited~~ license shall be issued to a licensed charitable organization for the special charity fundraising event described in KRS 238.505(9) if:

(1) The licensed charitable organization submits the satisfactorily completed CG[-]-Schedule A referred to in 500 KAR 11:010 and 500 KAR 11:015;

(2) The total cash or fair market value of all prizes to be awarded at the event on games of chance does not exceed \$5,000, exclusive of charity game ticket prizes and bingo prizes awarded at a regularly scheduled bingo session, for which a change of location was approved by the division director pursuant to KRS 238.540(1); and

(3) The event does not last longer than five (5) continuous days.

Section 2. No more than two (2) special charity fundraising event licenses will be issued to any one (1) licensed charitable organization in one (1) year.

Section 3. There shall be no separate fee charged by the Division of Charitable Gaming for the issuance of a special charity fundraising event license.

Section 4. If special limited games are conducted at a special charity fundraising event, the licensed charitable organization shall also be licensed to hold the special limited games in accordance with KRS 238.545(4).

Section 5. If bingo is held at a special charity fundraising event licensed under Section 1(2) of this administrative regulation, the provisions of KRS 238.545(1) limiting the frequency and duration of bingo are inapplicable.

Section 6. A special charity fundraising event licensed under Section 1 of this administrative regulation may be held at a location other than the location specified on the charitable organization's license to conduct charitable gaming issued under KRS 238.535.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, September 24, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1996, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by September 24, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: Licensed charitable organizations which conduct fairs, bazaars, festivals or carnivals (estimate 350 in number).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: 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: Costs of producing and issuing special events licenses and reviewing CG-Schedule A applications resulting in increased staff time.

2. Continuing costs or savings: Costs of producing and issuing special events licenses and reviewing CG-Schedule A applications resulting in increased staff time.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Quarterly reports are required of all licensees. A separate license will be issued for each such event.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account [KRS 238.570(2)].

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives

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were rejected: Alternative prize amount ceilings and lengths of duration were considered, but it was believed that the regulation arrived at fairly and adequately addresses the organizations conducting these "special charity fundraising events".

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: 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. This regulation will apply equally to all licensed charitable organizations.

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:090. Special limited charitable games.

RELATES TO: KRS 238.505(17) ~~(14)~~

STATUTORY AUTHORITY: KRS 238.505(17) ~~(14)~~, 238.515(2), (9), 238.535(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Division of Charitable Gaming is authorized to approve games to be included among those classified as "special limited charitable games", to establish circumstances under which such games will be conducted, and to establish reporting requirements.

Section 1. In addition to those special limited charitable games described in KRS 238.505(17) ~~(14)~~, all games of chance shall be considered special limited charitable games requiring licensure by the division of charitable gaming where:-

~~(1)~~ the winner is selected on the spinning of a wheel and:

~~(1)~~ ~~(2)~~ The cost of each chance to win exceeds two (2) dollars;

or
~~(2)~~ ~~and (3)~~ The fair market value of any one (1) noncash prize awarded the winner exceeds \$100.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, September 24, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1996, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by September 24, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to:

Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensed charitable organizations conducting wheel games (estimate as many as 450 organizations per year).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs of producing and issuing special events licenses and reviewing CG-Schedule A applications resulting in minimal increased staff time.

2. Continuing costs or savings: Costs of producing and issuing special events licenses and reviewing CG-Schedule A applications resulting in minimal increased staff time.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Quarterly reports are required of all licensees. A separate license will be issued for each such event.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account [KRS 238.570(2)].

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative prize amounts and cost levels of participation were considered, but it was believed that the regulation arrived at fairly and adequately addresses the organizations conducting non-cash prize wheel games.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All charitable organizations will be treated the same.

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JUSTICE CABINET Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: 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 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", (August 13 ~~July 11~~), 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
- 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 (Amended 8/13/96)
- 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
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- 13.3 Medical Alert System
- 13.4 Health Program Audits
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- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
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- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties [~~(Amended 7/11/96)~~]
- 15.3 Meritorious Good Time
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- 25.11 Victim Notification
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- 27-05-01 Testimony, Court Demeanor and Availability of Legal Services
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 27-09-01 Kentucky Community Resources Directory
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 27-12-02 Risk Assessment
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 27-12-08 Supervision Plan
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 27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
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 27-17-01 Absconder Procedures
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 27-26-01 Assistance to Former Clients and Dischargees
 27-27-01 Restoration of Civil Rights
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 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 Presence/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: August 12, 1996

FILED WITH LRC: August 13, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for September 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, Staff Attorney Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494.

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 1996-1998 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

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(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

501 KAR 13:010. Life safety issues.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures to provide protection for basic life safety in county jails which do not house state prisoners [~~Class-D felons~~].

Section 1. Definitions. (1) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 67B.020, operated by and under the supervision of any county, regional jail authority, city or urban county government which does not house state prisoners [~~Class-D felons~~] as defined by KRS 532.100.

(2) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

Section 2. Staffing. Each jail shall provide twenty-four (24) hour awake supervision for all inmates.

Section 3. Physical Plant. (1) All furnishings in the jail shall be noncombustible and [~~or~~] nontoxic as approved by the Department of Corrections.

(2) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the State Food Service Code, 902 KAR 45:005.

(b) Commercial type stoves and refrigeration units.

(c) Walls, floors, and ceiling shall be approved fire rated masonry, concrete or steel construction.

(3) Gauges, indicators, and alarms shall be located in an area monitored by staff [~~that staff can monitor~~].

(4) The jail shall provide ventilation to meet air exchange as required in the state health codes.

(5) Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers.

(6) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which shall be secure.

(7) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(8) A set of duplicate keys shall be maintained in a separate, secure place.

Section 4. Fire Safety. (1) Each jail shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of inmates, visitors, and staff. These shall include but not be limited to:

(a) Provision for fire emergency planning sessions for staff at

least quarterly.

(b) Written documentation of fire planning sessions.

(c) A fire safety inspection by the Department of Corrections at least once a year.

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.

(e) Smoking restrictions and regulations.

(f) Written evacuation plan coordinated with local fire officials.

(2) Each jail shall comply with the NFPA Life Safety Code (1981 Edition) which is hereby incorporated by reference and may be obtained, copied or inspected in the offices of the Division of Local Facilities, Department of Corrections, Frankfort, Kentucky during business hours of 8 a.m. to 4:30 p.m. (eastern standard time), Monday through Friday.

(3) Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(4) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(5) In all areas where an inmate may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and [~~be~~] operated by emergency power.

(6) Each jail shall have an approved fire alarm and smoke detection system.

Section 5. Sanitation; Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh and purified air circulating within inmate living and activity areas.

(4) All inmates shall be provided with hot and cold running water in showers and lavatories.

Section 6. Medical Services. (1) Deputy jailers and correctional officers shall have current training in standard first aid as offered by the American Red Cross and the office of Corrections Training, Department of Corrections.

(2) The jail shall have first aid kits available at all times.

(3) A health status (including current medications, known allergies, diet or other special medical needs) shall be completed on each inmate during admission.

(4) Each inmate shall be afforded access to necessary medical care.

Section 7. Food Services. (1) The jail shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) Inmates shall receive three (3) meals per day. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(3) The jailer shall provide for medical diets if [~~where~~] prescribed by a medical authority.

(4) The jail shall have sufficient cold and dry food storage facilities.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: August 12, 1996

FILED WITH LRC: August 13, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for September 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, Staff Attorney Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

TRANSPORTATION CABINET Department of Highways Division of Transportation Planning Division of Operations (Amendment)

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

RELATES TO: KRS 177.9771, 189.230

STATUTORY AUTHORITY: KRS 177.9771

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 177.9771(1) requires that roads which are currently, or have been in the past, state-maintained toll roads always be included on the extended weight coal or coal by-products haul road system. KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the limits prescribed in KRS 177.9771 on any bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceed certain limits. This administrative regulation identifies in an official order which is incorporated by reference the extended weight coal or coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight limit for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration. The official order incorporated by reference sets forth the road segments which were reported to the Transportation Cabinet as having had 50,000 tons or more of coal or coal by-products transported over them during calendar year 1995, the toll roads, and the bridges which are posted for lower weight limits.

Section 1. Definitions. The following terms when used in this administrative regulation or the material incorporated by reference in the administrative regulation shall have the following meanings:

(1) "AASHTO" means the American Association of State Highway and Transportation Officials.

(2) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(3) "CO" means county.

(4) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.

(5) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(6) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.

(8) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(9) "LN" means line.

(10) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(11) "P" means parallel bridge.

(12) "PKWY" means parkway.

(13) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road

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system.

(14) "TY I" means a single unit truck consisting of two (2) single axles.

(15) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(16) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(17) "TY IV" means a tractor-semitrailer combination with five (5) or more axles.

(18) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

~~(19) "TY I" means a single unit truck consisting of two (2) single axles.~~

~~(2) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.~~

~~(3) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.~~

~~(4) "TY IV" means a tractor-semitrailer combination with five (5) or more axles.~~

~~(5) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.~~

~~(6) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.~~

~~(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.~~

~~(8) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.~~

~~(9) "MP" means milepoint.~~

~~(10) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal haul road system.~~

~~(11) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal haul road system.~~

~~(12) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.~~

~~(13) "AASHTO" means the American Association of State Highway and Transportation Officials.~~

~~(14) "CO" means county.~~

~~(15) "LN" means line.~~

~~(16) "Mpt." means milepoint.~~

~~(17) "PKWY" means parkway.~~

~~(18) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.~~

~~(19) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.~~

~~(20) "P" means parallel bridge.]~~

Section 2. Evaluation of Bridges. (1) The Department of Highways shall determine the bridges on the extended weight coal or coal by-products haul road system which may be damaged or destroyed to the point of catastrophic failure by motor vehicles operating at the weights authorized by KRS 177.9771. This determination shall be based upon an analysis of the bridges in accordance with the guidelines and ratings set forth in the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions. The load factor method of analysis may be used only when a bridge is known to have been designed by that method. When the allowable stress method of analysis is used the maximum allowable stress in steel members shall not exceed sixty-nine (69) percent of the yield strength of the steel.

(2) When the analysis specified in subsection (1) of this section cannot be applied to a bridge, the Department of Highways shall determine if any bridge may be damaged or destroyed to the point of catastrophic failure in accordance with the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985

Interim Revisions. Before making such a determination the Department of Highways shall conduct an on-site inspection to determine whether the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.

Section 3. Limiting Weight on Bridges. When the Department of Highways determines that a bridge on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure, the department may adopt a weight limit for the bridge in accordance with the guidelines set forth in the AASHTO Manual for Maintenance Inspection Bridges, 1983 edition and 1984 and 1985 Interim Revisions.

Section 4. Dimension Limits on the Extended Weight Coal Haul Road System. Motor vehicles displaying a valid extended weight coal haul decal or cooperative license plate issued pursuant to KRS 177.9771 and being operated on a road segment set forth in the official order incorporated by reference in Section 10 ~~[Section 6]~~ of this administrative regulation may be operated at, but shall not exceed, the dimension limits ~~[but shall not exceed the dimension limits]~~ set forth in 603 KAR 5:070, Section 4.

Section 5. The Extended Weight Coal and Coal By-product Highway System and Limited Bridges. (1) The highways listed in Official Order _____ [96616], or portions of those highways, are certified as meeting the criteria of and are designated as the extended weight coal and coal by-products haul road system.

(2) The Department of Highways has determined that the bridges listed beneath the highways on the extended weight coal or coal by-products haul road system in Official Order _____ [96616] may be damaged or destroyed to the point of catastrophic failure as provided in Section 2 of this administrative regulation and has established a weight limit for each as set forth in Section 3 of this administrative regulation.

(3) Official Order _____ [96616, effective on October 13, 1995,] is incorporated by reference in Section 10 ~~[as a part]~~ of this administrative regulation.

Section 6. Restricted Bridge Use. A person shall not operate, or knowingly cause to be operated, on any bridge listed in Official Order _____ [96616] any vehicle whose gross vehicle weight exceeds the weight limits specified for that bridge.

Section 7. Bridge Posted Weight Limits. In accordance with KRS 189.230(3), the Department of Highways shall post the gross vehicle weight limits for each bridge listed in Official Order _____ [96616].

Section 8. Additional Bridge Restrictions. A person shall not operate, or knowingly cause to be operated, on any bridge on the extended weight coal or coal by-products haul road system any vehicle whose gross vehicle weight exceeds the limits specified by a notice posted pursuant to KRS 189.230(3).

Section 9. Local Resolutions. Resolutions of local governing bodies issued pursuant to KRS 177.9771(9) making recommendations to the Secretary of Transportation shall be submitted to: Secretary of Transportation, Transportation Cabinet, 501 High Street, State Office Building, Frankfort, Kentucky 40622. The resolution shall set forth a specific description of the road or road segments under consideration. The resolution shall further set forth with specificity those conditions which give rise to inherent and definite hazards or create special conditions which the Secretary of the Transportation Cabinet needs to consider.

Section 10. Incorporation by Reference. (1) The following material ~~[A copy of the AASHTO Manual for Maintenance Inspection of~~

Bridges, 1983 edition and 1984 and 1985 Interim Revisions] is hereby incorporated by reference as part of this administrative regulation:

(a) AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions; and

(b) Transportation Cabinet Official Order _____ adopted by the Transportation Cabinet on August, 1996.

(3) A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be viewed at the Transportation Cabinet, Department of Highways, Division of Operations, 7th Floor, State Office Building, 501 High Street, Frankfort, Kentucky. Office hours are 8 a.m. until 4:30 p.m., eastern time on weekdays. Copies of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, N.W., Suite 225, Washington, D.C. 20001.

(4) [(2)] Official Order _____ [96616] incorporated by reference in [Section 5 of] this administrative regulation may be viewed, copied, or obtained from the Office of the Secretary, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4890. The business hours are 8 a.m. until 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: August 6, 1996

FILED WITH LRC: August 12, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 25, 1996 at 1:30 p.m. local prevailing time in the Fourth Floor Hearing Room of the State Office Building, 501 High Street, Frankfort, Kentucky. Any person who intends to attend this meeting must in writing by September 18, 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 September 18, 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 September 25, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, Phone: (502) 564-4890, Fax: (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: The 6,000 coal transporters operating in Kentucky as well as all other persons using the highways included in the Extended Weight Coal Haul Road System.

(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: The administrative regulation is to be implemented state-wide but the largest concentration of roads are located in the coal fields of eastern and western Kentucky. The general perception of the public is that if there are more highways in the Extended Weight Coal Haul Road System, there will be more mining jobs created and therefore an improvement in the economy. This hypothesis has neither been proven nor disproven. However, it is quite true that the more roads there are in

the system, the fewer trucks that will be needed to transport the coal which is mined. This means fewer jobs for the coal transporters and a down-turn in their economy.

(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: It will cost less for the coal owners to have the coal transported in those areas with road segments in the system. However, there is insufficient Road Fund money to maintain the extended weight roads at what is generally considered to be an acceptable level of service. Therefore, more maintenance is required on all of the vehicles routinely using the roads in the Extended Weight Coal Haul Road System, thus increasing the price 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: Savings incurred as a result of being allowed to transport coal at extended weights over additional roads. At the same time a number of roads are being deleted from the system causing an additional cost for the coal transporters who have been operating on those routes. The savings and cost to the industry as a whole should balance. However, individual companies can see a large swing in their cost/savings.

2. Second and subsequent years: Same as 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The road segments added to the extended weight system will require more maintenance.

1. First year: The cost of additional maintenance for roads added to the system will be thousands of dollars. Almost all the highways which are being deleted from the system will still have to have additional maintenance or reconstruction because of the earlier transportation of coal at extended weights. Therefore, there will be no off-setting savings for the Transportation Cabinet.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs: The lifespan of bridges which are used at these extended weights is considerably shortened. Therefore, the cost to the Transportation Cabinet over the life of the extended weight coal haul road system will be additional millions of dollars.

(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 - Department of Vehicle Regulation, Division of Motor Vehicle Enforcement and Department of Highways.

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

(a) Geographical area in which administrative regulation will be implemented: It is generally perceived that including roads in the Extended Weight Coal Haul Road System has a positive effect on the economy of a coal producing region, and a neutral to negative effect elsewhere. Conversely, removing roads from the Extended Weight Coal haul Road System (unless all mines in the area are permanently closed) is generally perceived as having a negative impact on the economy in a coal producing region.

(b) Kentucky: See (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 177.9771 mandates the annual update of the extended weight coal haul road system listing. Therefore, legally there was no alternative to the annual update. However, KY 205 was removed from the Extended Weight Coal Haul Road System because of the extremely unsafe condition of the highway. The Transportation Cabinet chose to remove the road from the Extended Weight Coal Haul Road System rather than having to close the road to all traffic. In addition, because of the reconstruction of US 23 in Johnson

County will be completed later this year, the Transportation Cabinet chose to add two versions of Johnson County in the Official Order. The first version is effective until the completion of US 23 and the second version is effective after the completion of the reconstruction project. This was done to prevent at least one amendment to the 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: The roads on the Extended Weight Coal Haul Road System will suffer much more damage than the other state-maintained highways. A road which is not in good condition is much unsafer than one in good condition.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Most of the impacts of the administrative regulation, both positive and negative are mandated by KRS 177.9771. Unless there is a change in state law, there are very few effects generated by the implementation of the administrative regulation.

(11) TIERING: Is tiering applied? Yes. The entire administrative regulation is a tiering of weight and axles allowed on certain roads.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of Chief State School Officer

(Amendment)

701 KAR 5:020. 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

NECESSITY, FUNCTION, AND CONFORMITY: 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.]~~

~~(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.~~

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who

wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Chief State School Officer (Amendment)

701 KAR 5:055. Removal hearing procedures.

RELATES TO: KRS 156.132

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: 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 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.]~~

~~(1) [(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) [(4)]~~ 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) [(4)]~~ 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) [(4)]~~ 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.

~~[(9) If the hearing is held by a hearing officer or panel pursuant to KRS 156.074:~~

~~(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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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.

ADMINISTRATIVE REGISTER - 1425

(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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Chief State School Officer
(Amendment)

701 KAR 5:090. Teacher disciplinary hearings.

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS ~~[156.029]~~ 156.070, 161.790

NECESSITY, FUNCTION, AND CONFORMITY: 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 hearing officer

~~[office of the chief state school officer]~~, and the hearing officer ~~[chief state school officer or his designee]~~ shall consider and grant or deny all prehearing continuance ~~[such]~~ requests.

~~[(5) 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.

~~[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.]~~

ADMINISTRATIVE REGISTER - 1426

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Management Support Services (Amendment)

702 KAR 1:080. Transfer of annexed property; hearing.

RELATES TO: KRS ~~[156.034]~~ 160.045

STATUTORY AUTHORITY: KRS 156.070, 156.160, 160.045

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 156.034 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 [held-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 160.046 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 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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If

you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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.

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EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of Finance
(Amendment)

702 KAR 3:100. Data form, professional staff.

RELATES TO: KRS 157.320 [456.034], 157.390, 157.420

STATUTORY AUTHORITY: KRS 156.070, 157.320

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 456.034 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 157.390 sets forth that the SEEK base funding level of a local school district for teachers' salaries shall be based on categories of experience set forth therein; and 157.420 sets forth various restrictions on a local district's teachers' salaries allotment. This administrative regulation allows the Department of Education to collect [assignment and] salary data on teachers employed by the school district.

Section 1. Definition. "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the Commonwealth.

Section 2. The Department of Education professional staff data form, dated November 10, 1990, is hereby incorporated by reference, and shall be completed [during the week of September 15] for any teacher paid by [and/or under the supervision of the local district as of September 15 and shall be submitted to the Department of Education prior to October 1 of each school year. [board of education. The completed forms shall be forwarded to the Division of School District Finance not later than October 1 of each school year. This form may be copied or viewed at the Department of Education, Capital Plaza Tower, Monday through Friday, from 8 a.m. to 4:30 p.m.]

Section 3. Amendments to the professional staff data form shall be submitted to the Department of Education no later than ten (10) days after the close of the school year. The amendment shall include new teacher employees and teacher terminations for the current school year which occurred between September 15 and the close of the school year. [2. Changes of personnel, vacancy, new position staffed, or position abolished between September 15 and January 31 shall be reported on the February amendment to the professional staff data form. This amendment shall be completed February 1 and is due in the Division of School District Finance on or before February 5.]

Section 4. The professional staff data form file layout, dated July 1, 1996, is incorporated herein by reference and may be obtained, copied and inspected at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings to those affected: None
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: None
 2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
 - (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
- (c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments: None
- (11) Tiering: Was tiering applied? No. Tiering was not appropriate

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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 District Support Services
(Amendment)

702 KAR 3:270. SEEK funding formula.

RELATES TO: KRS 156.035, 156.070, 157.360, 157.410, 157.440, 157.620, 160.476, 160.477

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.035 and 156.070 set forth the Kentucky [State] Board of [for Elementary and Secondary] Education's plenary powers over the management and control of local school districts and disbursement of state appropriations. KRS 156.160 gives the Kentucky [State] Board of [for Elementary and Secondary] Education the authority to promulgate administrative regulations deemed necessary for the preparation of budgets and salary schedules for the school districts under its management and control. This administrative regulation is necessary to provide guidelines for the calculations to distribute the funds to school districts through the program to Support Education Excellence in Kentucky (SEEK).

Section 1. Definitions. (1) "At-risk student amount" means fifteen (15) percent of the per pupil guaranteed base funding provided pursuant to KRS 157.360(1) times the average of the highest number of approved applications for free meals in each of the eight (8) months (September through May excluding December) of the prior fiscal year and times the number of state agency children served pursuant to KRS 158.135.

(2) "Calculated base SEEK funding" means the guaranteed base funding provided in the biennial budget pursuant to KRS 157.360(1) plus the add-on components of the SEEK calculation including at-risk, home and hospital, exceptional children and transportation per KRS 157.360(2).

(3) "Collection rate" means the tax receipts collected for the prior year divided by the maximum revenue collectible. The maximum revenue collectible shall be the prior year's permissive tax revenue plus the levied rates per \$100 of assessed value for real and tangible property and motor vehicles times the prior year assessment of real and tangible property and motor vehicles.

(4) "Debt service outstanding" means the amount of debt service in excess of eighty (80) percent of the allotment for the capital outlay component of SEEK plus the local revenue generated by the five (5) cent equivalent tax levy required for the Facility Support Program of Kentucky participation per KRS 157.620(1)(a).

(5) "Exceptional child amount" means the December 1 exceptional child count of the preceding fiscal year by exceptionality weighted as follows:

(a) 2.35 times the per pupil base funding per KRS 157.360(1) for students with severe disabilities;

(b) 1.17 times the per pupil base funding per KRS 157.360(1) for students with moderate disabilities; and

(c) .24 times the per pupil base funding per KRS 157.360(1) for students with communications disabilities.

(6) "Growth" means the percent change in the second month average daily attendance times the prior year adjusted average daily attendance.

(7) "Home and hospital instruction amount" means the total of the prior year's home and hospital average daily attendance ~~current year's first semester home and hospital average daily attendance plus the prior year's second semester home and hospital average daily~~

~~attendance~~, times the per pupil base funding per KRS 157.360(1), less the allotment for capital outlay as set forth in the Biennial Budget.

(8) "Levied equivalent tax rate" means estimated permissive tax revenue plus the current year's levied real estate tax rate, tangible tax rate and motor vehicle tax rate per \$100 of assessed value times the current year's assessment of real estate, tangible property and motor vehicles times the prior year's collection rate divided by the total current year's property and motor vehicle assessment.

(9) "Release time" means regularly scheduled time missed by students with school district approval.

(10) "Shared time average daily attendance" means the average daily attendance for nonresident ~~nonresident~~ students who attend the district's ~~public~~ schools on a part-time basis while enrolled in another district or nonpublic school.

(11) "State equalization amount" means 150 percent of the statewide average per pupil property assessment as provided in the biennial budget.

(12) "Tier I revenue" means revenue produced by a school district tax levy which, when equalized by state funds with the state equalization amount per KRS 157.440(1)(a), generates up to the maximum revenue allowable per KRS 157.440(1)(a), fifteen (15) percent above the calculated base SEEK funding.

(13) "Tier II revenue" means revenue produced by a school district tax levy above the Tier I tax levy which generates no more than the maximum revenue allowable per KRS 157.440(2), thirty (30) percent above the combined calculated base SEEK funding and Tier I revenue.

(14) "Transportation funding" means prior fiscal year calculated transportation costs for students in grades primary through twelve (12) transported by school districts as calculated by the Division of Pupil Transportation, Department of Education, pursuant to KRS 157.370 and adjusted by current year second month growth in transported students.

(15) "Vocational educational deduct" means a deduct factor to be applied against the per pupil guaranteed base funding in those instances where a student spends a portion of the school day at a state-operated vocational center.

Section 2. SEEK Calculation Formula. (1) Required data for the SEEK calculation shall include:

(a) Property assessments from the Department of Property Taxation, Revenue Cabinet provided per KRS 160.470(5);

(b) Tax rates levied by school districts;

(c) Equivalent tax rates based on tax levies;

(d) Home and hospital average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education;

(e) Prior year adjusted average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education (in accordance with subsection (3) calculation below);

(f) The growth factor report from the Pupil Attendance Branch, Division of Finance, Department of Education;

(g) Transportation funding reported by the Division of Pupil Transportation, Department of Education;

(h) The number of at-risk students reported by the Division of School and Community Nutrition, Department of Education;

(i) The number of exceptional students in each disability category as reported by the Division of Exceptional Children Services, Department of Education;

(j) Vocational education average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education; and

(k) The state equalization amount.

(2) Assumptions used in the SEEK calculation shall include:

(a) Equivalent tax rates (ETR) shall be the lower of the ETR levied in the prior odd numbered year per KRS 157.440(1)(a) and the current year;

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(b) Adjusted average daily attendance (AADA) plus growth shall be the prior year AADA plus the second month's percent attendance growth times prior year AADA; and

(c) Percentage reduction in the allotments may be made to at-risk student, exceptional child, and home and hospital instruction amounts and to the state portion of Tier I funding and to transportation funding due to appropriations in the biennial budget.

(3) AADA shall be calculated for students in grades primary through twelve (12) as follows:

(a) Aggregate days attendance as reported by local school districts:

1. Divided by the number of school days taught as reported by local school districts;

2. Equals average daily attendance (ADA);

(b) ADA:

1. Plus shared time ADA as reported by local school districts;

2. Minus ADA for noncontract, nonresident students as reported by local school districts;

3. Minus release time as reported by local school districts;

4. Minus one-half (1/2) of the total aggregate kindergarten days attendance as reported by local school districts divided by the number of days taught;

5. Minus ADA for overage students as reported by local school districts;

6. Equals adjusted average daily attendance.

(4) The SEEK calculation shall be determined as follows:

(a) Per pupil guaranteed base funding per KRS 157.360(1):

1. Times prior year AADA plus growth;

2. Plus at-risk student amount;

3. Plus exceptional child amount;

4. Plus home and hospital instruction amount;

5. Plus transportation funding;

6. Equals calculated base SEEK funding;

(b) Calculated base SEEK funding:

1. Minus local effort required per KRS 160.470(12)(a);

2. Equals total state SEEK base;

3. Plus total state Tier I funding (in accordance with subsection (6) of this section calculation below);

4. Minus vocational education deduct amount (in accordance with subsection (7) of this section calculation below);

5. Plus hold harmless provision if provided in the biennial budget;

6. Plus prior year adjustments (if any);

7. Minus pro rata adjustments per KRS 157.430 (if any);

8. Equals state SEEK funding.

(5) The formula for the maximum Tier I equivalent tax rate allowable per KRS 157.440(1)(a) shall be as follows: guaranteed base funding per KRS 157.360(1):

(a) Plus calculated at-risk, exceptional child, home and hospital and transportation amounts:

(b) Times fifteen (15) percent;

(c) Divided by the greater of the state equalization amount and the local district per pupil assessment.

(6) State Tier I and Tier II funding formulas.

(a) For local districts which have levied an equivalent tax rate at or above the maximum Tier I equivalent tax rate, the state Tier I funding formula shall be as follows:

1. Total calculated base SEEK funding per KRS 157.360;

a. Times maximum Tier I participation fifteen (15) percent per KRS 157.440(1)(a);

b. Equals total Tier I revenue;

c. Divided by prior year AADA plus growth;

d. Equals total per pupil Tier I revenue;

2. Total per pupil Tier I revenue:

a. Minus per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

b. Equals state portion per pupil Tier I funding;

c. Times prior year AADA plus growth;

d. Minus pro rata adjustments due to appropriation in the biennial budget;

e. Equals total state Tier I funding.

(b) For local districts which have not levied at or above the maximum Tier I equivalent tax rate per KRS 157.440(1)(a), the state Tier I funding formula shall be as follows:

1. Levied equivalent tax rate:

a. Minus required minimum thirty (30) cents equivalent tax rate per KRS 160.470(12)(a) and five (5) cents levy per KRS 157.620(1)(a);

b. Equals levied Tier I equivalent tax rate;

c. Times state equalization amount;

d. Equals per pupil total Tier I revenue;

2. Per pupil total Tier I revenue:

a. Minus per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

b. Equals state portion per pupil Tier I funding;

c. Times prior year AADA plus growth;

d. Minus pro rata adjustments due to appropriation in the biennial budget;

e. Equals total state Tier I funding.

(c) The Tier II calculation formula shall be as follows: Levied equivalent tax rate:

1. Minus required minimum thirty (30) cents equivalent tax rate per KRS 160.470(12)(a), the five (5) cents levy per KRS 157.620(1)(a), and the maximum Tier I equivalent tax rate;

2. Times total district assessment of property and motor vehicles;

3. Equals Tier II local revenue (not subject to state equalization).

(7) The vocational education (voc ed) deduct formula shall be as follows: Total state SEEK base:

(a) Divided by calculated base SEEK funding;

(b) Times per pupil guaranteed base funding per KRS 157.360(1);

(c) Times voc-ed deduct percentage as provided for in the biennial budget;

(d) Equals per pupil deduct amount;

(e) Times voc-ed ADA;

(f) Equals total voc-ed deduct amount.

Section 3. Facilities Support Program of Kentucky (FSPK) Calculation. (1) Data required for the FSPK calculation formula shall include:

(a) Property assessments from the Department of Property Taxation, Revenue Cabinet, per KRS 160.470(5);

(b) Equivalent tax rates based on tax levies from school districts;

(c) Prior year AADA as reported by the Pupil Attendance Branch, Division of Finance, Department of Education;

(d) Total annual debt service for school building revenue bonds; and

(e) State equalization amount.

(2) Assumptions used in the FSPK calculation shall include:

(a) No school district shall receive state equalization funds until the full five (5) cent equivalent tax required for participation has been levied;

(b) A school district ~~[School districts]~~ which ~~has~~ have levied a five (5) cent equivalent tax for building purposes per KRS 157.620(1)(a) shall qualify to receive state equalization funding when the district's outstanding debt service as of October 1 of each odd-numbered year is within \$10,000 of the required amount; and

(c) A school district's eligibility for participation in the FSPK program shall be based on prior year AADA. State equalization funds shall be calculated based on prior year AADA plus growth.

(3) The FSPK eligibility calculation shall be as follows: Amount generated by a five (5) cent equivalent tax levy per KRS 157.620(1)(a):

(a) Equals total revenue available for debt service;

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(b) Minus total current year debt service (from school district's outstanding school revenue bond issues);

(c) Equals debt service needed for equalization (positive amounts indicate ineligibility for equalization).

(4) Once a school district has been determined eligible for state FSPK funds, the state equalization calculation shall be as follows: Maximum eligibility (state equalization amount times .0005):

(a) Minus local effort (per pupil assessment times .0005);

(b) Equals per pupil state equalization;

(c) Times prior year AADA plus growth;

(d) Times pro rata adjustments due to appropriation in the biennial budget;

(e) Equals prorated state FSPK amount.

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected: None

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

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

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(Amendment)

702 KAR 5:130. Vehicles designed to carry nine (9) passengers or less [~~fewer than ten (10) passengers~~], standards for.

RELATES TO: KRS 156.153, ~~[156.031,]~~ 156.160, 189.540

STATUTORY AUTHORITY: KRS 156.070, 156.160, 189.540

NECESSITY, FUNCTION, AND CONFORMITY: [~~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; and~~] KRS 156.160 requires the Kentucky [State] Board of [for Elementary and Secondary] Education to adopt administrative regulations relating to the transportation of children to and from school and those deemed necessary or advisable for the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate an administrative regulation to govern the operation of district-owned passenger vehicles designed to carry nine (9) passengers or less and used for approved school activities. This administrative regulation establishes the guidelines and requirements relative to the transportation of pupils by local school districts in vehicles designed to carry nine (9) passengers or less [~~fewer than ten (10) passengers~~] and which are not classified as school buses.

Section 1. Definition. [~~For the purpose of this administrative regulation, the word~~] "Vehicle" [~~shall~~] means any vehicle owned by a school [~~district~~] board or contracted to the board which is significantly used to transport pupils to and from school and which is designed by the manufacturer to carry fewer than ten (10) passengers.

Section 2. Before any vehicle owned by a school [~~district~~] board or contracted to the board is used to transport pupils, the superintendent of a local school district shall request permission from the

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Division of Pupil Transportation for authorization to use the [such] vehicle, [-and] When the vehicle has been approved, it shall be entered on the district's school bus inventory.

Section 3. Any vehicle of nine (9) or fewer passengers, including the driver, that is owned by a school board may be used for the transportation of pupils from areas not accessible by a regular school bus to the nearest road available for the safe transfer of pupils to a regular school bus or vice versa, emergency transportation of students, approved school activities and for qualified special needs pupils. Drivers of these vehicles are restricted to school district employees or employees contracted by the districts. ~~[Any vehicle owned by a school district board or contracted to the board shall be restricted to the transportation of pupils from areas not accessible to a regular school bus to the nearest road available for safe transfer of pupils to a regular school bus or vice versa; provided, that this requirement shall not apply to transportation of qualifying handicapped pupils or emergency transportation of pupils.]~~

Section 4. No vehicle owned by a school ~~[district]~~ board or contracted to the board shall be used to carry more pupils than the manufacturer's designed passenger capacity for that particular vehicle.

Section 5. Each vehicle owned by a school ~~[district]~~ board or contracted to the board shall have occupant restraint systems [seat belts] equal in number to the manufacturer's designed passenger capacity and installed in accordance with the original equipment manufacturer's specifications.

Section 6. Liability or indemnity insurance shall be purchased for each vehicle owned by the school ~~[district]~~ board or contracted to the board. The coverage limits shall [should] be at least these ~~[minimum]~~ amounts:

Property Damage Each Accident	\$ 100,000
Bodily Injury Liability Per Person	250,000
Bodily Injury Liability Per Accident	1,000,000
Uninsured Motorist Coverage	Allowable Limit
	Per Person-Per Accident
"No-fault" Coverage Per Person	10,000

Section 7. Before any vehicle owned by the school ~~[district]~~ board or contracted to the board is initially used to transport pupils, a safety inspection shall be made on the vehicle by a competent person to certify the vehicle is in safe operating condition. If the vehicle is found to be in unsafe operating condition, it shall not be used to transport pupils until necessary repairs are made.

Section 8. Each vehicle owned by the school ~~[district]~~ board or contracted to the board shall be inspected at least once each month that the vehicle is used to transport pupils, utilizing the same criteria for inspection as for standard school buses. The written inspection shall be filed with the Division of Pupil Transportation on the "District Monthly Inspection Report".

Section 9. Each vehicle owned by the school ~~[district]~~ board or contracted to the board when being used to transport pupils shall display a sign in clear view in the rear of the vehicle stating: "This vehicle is being used to transport school children."

Section 10. Each school year the school ~~[district]~~ board shall ~~[each school year,]~~ provide the owner of any vehicle that is contracted to the board with a written contract in which the responsibilities of the contractor are clearly defined. A copy of the contract and the method of determining the contract award shall be kept on file in the superintendent's office.

Section 11. The "District Monthly Inspection Report" form dated June, 1996, is hereby adopted and incorporated by reference. This form may be inspected, copied, and 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.

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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: possible increase (exact amount unknown depending on the number of districts purchasing these units for use in transporting students)

2. Second and subsequent years: N/A

(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: House Bill 610 new permits the use of vehicles to transport nine (9) passengers or less.

(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.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: 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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work 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

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proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Randy Kimbrough

- (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 Division of Management Assistance Programs (Amendment)

703 KAR 3:205. Management improvement program.

RELATES TO: KRS 158.780, 158.785

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.780, 158.785

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.

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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 in 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

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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.

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Special Instructional Services (Amendment)

707 KAR 1:180. 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, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: 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

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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

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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 decisionmaking 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 decisionmaking; 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) ~~Notice of~~ Hearing requests.

(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.

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(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.

~~(e) 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) ~~(s)~~ 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.]

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(b) ~~[All information not disclosed prior to the hearing shall become inadmissible unless the parties agree otherwise.]~~

~~(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) [(e)]~~ 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.]~~

~~(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) ~~[(5)(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

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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

(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.

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M.

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Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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.

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

EDUCATION, ARTS, AND HUMANITIES CABINET Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment [devices] for the deaf, hard of hearing and speech impaired.

RELATES TO: KRS 12.290, 163.510

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications equipment (STE) [devices] to any deaf, hard of hearing, or speech-impaired persons qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the criteria for awarding (STE) [assistance] and the [procedures for] application and certification procedures.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(2) "Application" means the KCDHH TDD Distribution Program application which is entitled "TDD Distribution Program Application and Certification [Application and Certification to Receive Specialized Telecommunications Equipment]".

(3) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved [Completion] date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(6) "Deaf and hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" means a person who is licensed by the Kentucky Licensing Board for Specialists in Hearing Instruments to engage in the practice of fitting hearing instruments.

(10) "KCDHH" is defined by KRS 163.506 and 163.510.

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(11) ~~(10)~~ "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(12) ~~(11)~~ "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(13) ~~(12)~~ "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(14) "Residency" means a resident of Kentucky is an individual who has resided within the Commonwealth of Kentucky as their primary residence, for at least one (1) full calendar year prior to their date of application for a specialized telecommunications equipment.

(15) ~~(13)~~ "Specialized telecommunications equipment (STE)" means adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), TDDs with ~~[amplified ring signal devices,]~~ large visual display ~~[TDDs]~~, artificial larynx and electronic speech aids.

(16) ~~(14)~~ "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(17) ~~(15)~~ "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(18) ~~(16)~~ "TDD Distribution Program" is defined by KRS 163.525(1)(b).

~~(17) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.]~~

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A legal resident of the state of Kentucky as documented by:

1. Possession of a Kentucky driver's license; or

2. Registered to vote in Kentucky; or

3. Kentucky automobile registration; or

4. Filing of Kentucky income tax return for the calendar year preceding the date the application for the specialized telecommunications equipment is submitted; or

5. A member of the Armed Forces stationed in Kentucky on active military orders of not less than one (1) year which shall include spouse and dependents; or

6. Regarding the residency of students enrolled at institutions of higher learning located in the Commonwealth of Kentucky, refer to 13 KAR 2:045.

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, parents or guardians shall apply on behalf of applicants and assume full responsibility for the equipment; and

(c) Deaf, hard of hearing or speech impaired such that the applicant cannot use the telephone for communication without adaptive specialized telecommunications equipment.

(2) ~~[Initial and replacement]~~ Applications shall be:

(a) Made on original forms provided by the KCDHH;

(b) Signed and submitted in person or via mail;

(c) Accompanied by a copy of the telephone bill with the name of the person being billed and the telephone number, a copy of the driver's license or any other document showing proof of legal residence, and any other supporting documentation as may be required by the KCDHH. ~~[documented proof of eligibility as required by the KCDHH.]~~

(3) The KCDHH shall require that applicants provide professional verification of the extent and permanence of their disability. The certification shall be included as part of the application form.

(a) Verification shall be at the applicant's expense.

(b) Certification shall be done by:

1. A licensed physician;

2. A licensed ~~[An]~~ audiologist;

3. A licensed speech-language pathologist; ~~[or]~~

4. A licensed hearing instrument specialist; or

5. Public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(4) Except for individuals who receive assistance from programs designed to provide telephone services to those who would not normally be able to afford it, applicants shall subscribe to or have currently applied for telephone service, which shall include:

(a) Installation of a telephone line in their home at their own expense; and

(b) Payment of monthly telephone bills.

(5) Eligible applicants shall be awarded program participation on a first-come, first-serve~~[d]~~ basis, in accordance with the approved ~~[completion]~~ date, as determined by the dated signature of the TDD Distribution Program coordinator.

(6) KCDHH shall distribute the STE through the Model Procurement Code (KRS Chapter 45A) as ~~[voucher system]~~ established in 735 KAR 1:020.

(7) One (1) specialized telecommunications ~~[TDD and adaptive]~~ equipment shall be distributed to a deaf, hard of hearing or speech-impaired individual for one (1) residential access line only and one (1) additional visual or tactile signaler shall be distributed to a deaf or hard-of-hearing individual only.

Section 3. Application and Certification Procedures ~~[for Eligibility]~~.

(1)(a) "TDD Distribution Program Application and Certification", (June 1996) ~~["Application and Certification to Receive Specialized Telecommunications Equipment," (July 1995);]~~ is incorporated by reference.

(b) It may be inspected~~[, copied]~~ or obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky, 40601, Monday through Friday 8 a.m. to 4:30 p.m. The KCDHH telephone number is 1-800-372-2907 V/TDD or 502-573-2604 V/TDD; the KCDHH fax number is 502-573-3594.

(2) As KCDHH recognizes that the demand for the specialized telecommunications equipment may exceed available funds, so the following statement shall be included on all application forms, which the applicant shall be required to sign: "The TDD Distribution Program ~~[KCDHH]~~ has a limited amount of funds for the program. There is a ~~[the]~~ possibility that applicants ~~[recipients]~~ may be placed on a waiting list ~~[to receive the specialized telecommunications equipment]~~, due to a large number of applications and the exhaustion of these limited funds on an annual basis. The specialized telecommunications equipment shall be distributed on a nondiscriminatory, first-come, first-served basis."

Section 4. Application Process. (1) The KCDHH staff may provide assistance in completing forms when requested by an applicant.

(2) The TDD Distribution Program coordinator shall review all applications in the order the KCDHH office receives them to determine:

(a) All the necessary information is completed on the application; ~~[The application is complete;]~~

(b) All required documentation is ~~[attachments are]~~ included; and

(c) All eligibility requirements are met.

(3) An application~~[, whether initial or replacement,]~~ found to be approved ~~[complete]~~ shall be dated and signed by the TDD Distribution Program coordinator. The approved ~~[completion]~~ date shall determine the first-come, first-serve roster.

(4) Applicants shall be notified in writing whether their ~~[initial or replacement]~~ application, has been accepted or rejected within sixty (60) calendar days of the completion date, unless a letter as described in subsection (5) of this section has been forwarded indicating otherwise.

(5) During the first two (2) years of program implementation when there is an expected flood of applications, applicants shall be advised within sixty (60) days in writing that their applications may take longer than sixty (60) days to process.

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(6) At the end of the second year, the application process shall be reevaluated, and, if feasible, a sixty (60) day response time shall be instated.

(7) If the KCDHH finds that an applicant is ineligible to participate in the program, the applicant shall be given written justification for the determination within sixty (60) days unless a letter as specified in subsection (5) of this section is sent. Any applicant who has been denied participation may reapply if, due to a change in conditions, he meets eligibility requirements as delineated in Section 2 of this administrative regulation.

(8) Training to properly select and use the STE shall be provided to applicants upon request. ~~[When a party wishes to appeal an agency decision, the KCDHH shall comply with the provisions of KRS Chapter 13B.]~~

Section 5. ~~[Initial and replacement]~~ Applications shall be denied when:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, 735 KAR 1:010 and 1:020; ~~[has already been issued a voucher pursuant to 735 KAR 1:020, Section 3, which is still valid toward the purchase of specialized telecommunications equipment under this program;]~~

(2) The applicant has received STE from the TDD Distribution Program within the preceding four (4) years;

(3) The applicant is an active client of the Department of Vocational Rehabilitation and receives a STE as part of an IWRP (individual written rehabilitation plan);

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH's TDD Distribution Program, or violated other provisions of the administrative regulations governing the TDD Distribution Program;

(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;

(6) The applicant is found negligent in a police report of a stolen device, such as doors to the house or car left unlocked or unattended;

(7) The applicant has lost or sold the STE; or

(8) In the case of replacing the [replacement] equipment after four (4) years have passed, and [if] the original STE is found to be technologically up to date and functional by the KCDHH.

Section 6. Replacing the Specialized Telecommunications Equipment. ~~[Replacement Equipment.]~~ (1) A recipient may apply to replace the original specialized telecommunications equipment [for replacement equipment] if:

(a) The specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, floods or other acts of God;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the TDD Distribution Program and is deemed more appropriate to the recipient's disability than a device previously received [purchased by the recipient] through the TDD Distribution Program [a voucher issued by the KCDHH]; or

(d) It has been four (4) years since the applicant last received specialized telecommunications equipment.

(2) Specialized telecommunications equipment to replace existing specialized telecommunications equipment [Replacement equipment] shall be issued to applicants:

(a) Who can demonstrate eligibility; and

(b) Who comply with the provisions of the administrative regulations governing the TDD Distribution Program: 735 KAR 1:010 and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE [replacement

equipment] to first-time recipients during times of fiscal constraint.

(4) If a [the] replacement [equipment] is requested because the specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, or floods, then:

(a) The recipient shall first send the damaged equipment to the KCDHH ~~[vendor]~~.

(b) The recipient may apply for a loaner STE under the provisions of the loan agreement as established in 735 KAR 1:020, Section 7.

(c) KCDHH shall send the damaged STE to the vendor for verification of unrepairable damage.

(d) If the vendor certifies to the KCDHH that the equipment provided to the recipient is unrepairable due to natural disaster, a replacement ~~[unit]~~ shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this administrative regulation; and

3. The first-come, first-served provision.

(5) If the recipient obtains certification from a physician, audiologist, hearing instrument specialist, or speech-language pathologist stating that the recipient would benefit from another device available through the KCDHH TDD Distribution Program due to a change in disability status or a new device becoming available, then a replacement [equipment] shall be issued to the applicant. As an alternative, public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If a [the] replacement [equipment] is requested due to the STE being stolen, then the recipient shall:

(a) Notify local police within thirty (30) days of the theft; and

(b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

(7) If a [the] replacement [equipment] is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall then determine whether or not the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the [replacement] application process to replace the equipment as delineated in 735 KAR 1:010 and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement [STE] shall be denied and the original STE shall be returned to the recipient.

Section 7. Loan Equipment. (1) When recipients' STE is under repair or maintenance, the KCDHH TDD Distribution Program shall provide, at no cost, "loaner" STE upon receiving a completed Loan Agreement Form from the recipient.

(2)(a) "Loan Agreement Form" (July 1995) is herein incorporated by reference.

(b) It may be inspected ~~[copied]~~ or obtained from the KCDHH, 632 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. - 4:30 p.m. The KCDHH phone number is (502) 573-2604 V/TDD or 800-372-2907 V/TDD; the KCDHH fax number is 502-573-3594.

Section 8. Fraud. If a recipient obtained specialized telecommunications equipment under false premises or through misrepresentation of facts on the "TDD Distribution Program Application and Certification" (June 1996) ~~[KCDHH application]~~, the KCDHH may demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH TDD Distribution Program.

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Section 9. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law in KRS 61.878.

D. COLE ZULAUF, Chair

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation (735 KAR 1:010) shall be held on September 24, 1996 in the offices of the Kentucky Commission on the Deaf and Hard of Hearing at 632 Versailles Road Frankfort Kentucky. The public hearing will be from 9 a.m. to 11 a.m. Individuals interesting in being heard at this hearing shall notify this agency in writing by September 17, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this hearing is received by this 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 regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the proposed administrative regulations. Send written notice of intent to be heard at the public hearing or written comments on the proposed regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so the promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/TTY.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: All applicants for specialized telecommunications equipment to be distributed under the Telecommunications Device for the Deaf Distribution Program will be affected by this program. It is not possible to state a specific number of applicants because such a program with a targeted audience of deaf, hard of hearing, and speech impaired Kentucky residents has never before been implemented. However, the first year of the program resulted in 894 applications. Also, unquantifiable factors such as the outreach program, word-of-mouth advertising, and formal advertising will directly impact the number of applicants.

(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 and to the extent available from the public comments received: There will be no costs affecting the cost of living and employment in the geographical area in which the administrative regulation is implemented except that deaf, hard of hearing, and speech impaired recipients under the program will save money in that they will not have to purchase specialized telecommunications equipment in order to access and use residential phone lines.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There will be no effect on the cost of doing business in the geographical area in which the administrative regulation is implemented. There is a potential for business conducted by phone to increase as deaf, hard of hearing, and speech impaired recipients gain previously denied access to the telecommunications system. Some manufacturers and distributors of the specialized telecommunications equipment may directly benefit from the advent of this distribution program, if they contract with the KCDHH.

(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 of applicants

is monitored in that applications are not deemed complete until all criteria and requisite paperwork has been submitted to the TDD Distribution Program Coordinator. Vendors with whom the KCDHH contracts will be reimbursed by the KCDHH only upon the recipient's receipt of specialized telecommunications equipment.

2. Second and subsequent years: The compliance, reporting, and paperwork for the second and subsequent years is the same as for the first year following implementation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indirect costs to the KCDHH from July 1994 to July 1995 were staff time, phone use, copying, printing, and computer supplies such as printer cartridges and paper. Costs after implementation in July 1995 are minimal and primarily include administrative oversight of the program because all direct costs will be covered by the revenues generated by the telephone surcharge tax.

2. Continuing costs or savings: Continued indirect costs to the KCDHH will be 5% of the executive director's time to supervise the implementation and administration of this program. Two additional full-time positions will be necessary to implement the provisions of the program; however, these two positions will be funded by the telephone surcharge tax. No savings to the promulgating administrative body are foreseen; however, it is expected that, as the program becomes fully operational and meets the immediate need of the initial flood of applicants, the administrative costs will decrease.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs are known at this time; however it is anticipated that if the number of qualified applicants exceeds the number of specialized telecommunications equipment available for distribution, the KCDHH will ask that the \$200,000 cap be raised.

(b) Reporting and paperwork requirements: The promulgating administrative body will make an annual report to the General Assembly regarding the TDD Distribution Program. Additional paperwork will be required in terms of the application form, processing the applications, and for the contracted vendors to receive reimbursement. A system designed to track recipients and the distributed specialized telecommunications equipment required only minimal additional paperwork as it is primarily a computerized database.

(4) Assessment of the anticipated effect on state and local revenue: The Public Service Commission (PSC) has determined that the funding mechanism for the TDD Distribution Program will be a one cent surcharge tax on access lines of the local exchange carriers. The PSC will deposit \$200,000 annually into the KCDHH's TDD Distribution Program account via the State General Depository Account for the administrative and distribution costs of the program.

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: The source of revenue is a one cent surcharge tax on all access lines of the local exchange carriers.

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

(a) Geographic area in which administrative regulation will be implemented: No public comments were received regarding the economic impact of the revised administrative regulations; however, one public comment was received with the original filing which indicated that they telephone companies will benefit from the TDD Distribution Program in the following ways: (1) increased customer base; (2) increased toll revenue; and (3) improved ability to assess consumer need.

(b) Kentucky: Please see the response to 6(a).

(7) Assessment of alternative methods: Reasons why alternatives were rejected: In the course of researching TDD Distribution Programs in other states, the KCDHH considered the following alternatives:

(a) Purchasing the specialized telecommunications equipment in bulk and distributing it from one central location; and

(b) Establishing allocation categories for (1) those with financial hardship and (2) children to prioritize the distribution of the specialized telecommunications equipment; and

(c) having the KCDHH retain ownership of all of the distributed specialized telecommunications equipment.

All of these alternatives were rejected because they are not cost effective for the KCDHH as the administering agency.

(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 effect on the environmental welfare in Kentucky; the public health of deaf, hard of hearing, and speech-impaired recipients will be enhanced because the barriers preventing them from using telecommunications will be removed.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: There would be no detrimental effect on the environmental welfare; the public health of deaf, hard of hearing, and speech impaired individuals would remain in a state of semi-isolation.

(c) If detrimental effect would result, explain detrimental effect: There would be no additional 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 government policy which may be in conflict, overlapping or duplication with these proposed administrative regulations.

(10) Any additional information or comments: The promulgating agency has no additional information or comments.

(11) TIERING: Is tiering applied? Yes. Tiering was applied in times of 'fiscal constraint' which is defined as when 75% of program funds have been disbursed or encumbered. Preference in times of fiscal constraint is given to those deaf, hard of hearing, and speech impaired individuals who have not previously received specialized telecommunications equipment.

EDUCATION, ARTS, AND HUMANITIES CABINET **Commission on the Deaf and Hard of Hearing** **(Amendment)**

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, 163.510

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications equipment ~~[devices]~~ to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the processing system for vendors, security, and the maintenance and repair of the STE.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(2) "Application" means the KCDHH TDD Distribution Program application which is entitled "TDD Distribution Program Application and Certification". ~~["Application and Certification to Receive Specialized Telecommunications Equipment"]~~

(3) "Audiologist" means a person who is licensed by the Kentucky

Board of Licensure for Speech-Language to engage in the practice of audiology.

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) ~~"Approved [Completion] date"~~ means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(6) "Deaf and hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" means a person who is licensed by the Kentucky Licensing Board for Specialists in Hearing Instruments to engage in the practice of fitting hearing instruments.

(10) "KCDHH" is defined by KRS 163.506 and 163.510.

(11) ~~[(40)]~~ "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(12) ~~[(41)]~~ "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(13) ~~[(42)]~~ "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(14) "Residency" means a resident of Kentucky is an individual who has resided within the Commonwealth of Kentucky as their primary residence, for at least one (1) full calendar year prior to their date of application for a specialized telecommunications equipment.

(15) ~~[(43)]~~ "Specialized telecommunications equipment (STE)" means adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), TDDs with [amplified ring signal devices], large visual display [TDDs], artificial larynx and electronic speech aids.

(16) ~~[(44)]~~ "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(17) ~~[(45)]~~ "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(18) ~~[(46)]~~ "TDD Distribution Program" is defined by KRS 163.525(1)(b).

~~[(17)] "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.]~~

Section 2. Processing System ~~[Including Vendor Participation]~~. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with the provisions of the Model Procurement Code (KRS Chapter 45A) and shall be applied uniformly to applicants and vendors.

(3) The KCDHH TDD Distribution Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Vendor and Recipient Participation (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code (KRS Chapter 45A), as established in the contract between the vendor and KCDHH, and shall send the:

(a) STE directly to the recipients' Kentucky residence; and

(b) KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE when sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy

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of the delivery receipt, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall be belong to the recipient, as evidenced by the recipient's copy of the delivery receipt.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment. However, the recipient shall contact the KCDHH and comply with the repair and maintenance procedures established in Section 5 of this administrative regulation in order to have repairs made to the STE and to receive loaner STE.

(b) Recipients shall assume all responsibilities for:

1. Paying their monthly telephone bills;
2. Purchasing or leasing a telephone;
3. Purchasing batteries and paper for the TDD; and
4. Paying other general costs and supplies associated with the functions and use of the STE.

(c) Recipients shall be responsible for the loss of STE received or borrowed under the auspices of the KCDHH TDD Distribution Program.

~~[Section 3- Voucher System. (1) The KCDHH shall issue vouchers to recipients who shall be responsible for using the voucher to purchase the STE directly from the vendor.~~

~~(2)(a) The voucher (July 1995) is herein incorporated by reference.~~

~~(b) It may be inspected, copied, and obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. - 4:30 p.m.~~

~~(3) The recipient shall:~~

~~(a) Order the specialized telecommunications equipment from a contracted vendor within sixty (60) days of the voucher date of issuance; and~~

~~(b) Send a copy of the receipt for the device to the KCDHH when the specialized telecommunications equipment has been received.~~

~~(4) The vendor shall be responsible for complying with the terms of the voucher, as established in the contract between the vendor and the KCDHH, and shall send the:~~

~~(a) STE directly to the recipients' Kentucky residence; and~~

~~(b) KCDHH:~~

~~1. An itemized invoice; and~~

~~2. A copy of the voucher in order to receive payment for the STE.~~

~~(5) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.~~

~~(6) The vendors, in exchange for the vouchers and an itemized invoice, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.~~

~~(7) Ownership rights and responsibilities for the TDD shall belong to the recipient, as evidenced by the recipient's copy of the voucher.~~

~~(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment. However, the recipient shall contact the KCDHH and comply with the repair and maintenance procedures established in Section 5 of this administrative regulation in order to have repairs made to the STE and to receive loaner STE.~~

~~(b) Recipients shall assume all responsibilities for:~~

1. Paying their monthly phone bills;
2. Purchasing or leasing a telephone;
3. Purchasing batteries and paper for the printer; and
4. Paying other general costs and supplies associated with the functions and use of the STE.

~~(c) Recipients shall be responsible for the loss of STE received or borrowed under the auspices of the KCDHH TDD Distribution Program.]~~

Section 4. Security. (1) Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally authorized recipient.

(2) The recipient shall notify the KCDHH within ten (10) [five (5)] working days if the equipment is lost[~~stolen~~] or damaged. If stolen, the recipient shall:

(a) Notify local police within thirty (30) days of the theft;

(b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Section 5. Equipment Loan Program/Maintenance and Repair Procedures. (1) The KCDHH shall maintain a stock of at least twenty (20) "loaner" units to be used by recipients when their STE has been sent to the manufacturer for repair or maintenance.

(2) The loan program shall only be available to recipients of the TDD Distribution Program. The loan period shall extend until the recipient's STE is returned in working condition.

(3) To participate in the loan program, the recipient shall:

(a) Sign the "Loan Agreement Form," as incorporated in 735 KAR 1:010;

(b) Submit the Loan Agreement Form and the malfunctioning STE to the KCDHH TDD Distribution Program [offices].

(4) The KCDHH shall issue a loaner STE to the recipient.

(5) The KCDHH shall assume responsibility for shipping the STE to the contracted repair agent.

(6) When the repaired STE is received by the KCDHH, the KCDHH shall:

(a) Notify the recipient that their STE is repaired; and

(b) Request the return of the loaner STE.

(7) The recipient shall return the loaner STE to the KCDHH, either by insured, certified mail (with return receipt requested) or in person. When the recipient has returned the STE in good working condition, then the KCDHH shall send the repaired STE to the recipient.

(8) If the recipient does not return the loaner equipment then the KCDHH shall retain the original, repaired STE in exchange.

(9) The KCDHH reserves the right to repossess the loan equipment at any time if:

(a) There is a change in the recipient's eligibility status;

(b) Repeated negligent or willful damage is done to the equipment; or

(c) There are other violations of the administrative regulations governing the TDD Distribution Program.

(10) Loaner equipment shall be marked with nonremovable identification by the company supplying the equipment.

(11) In the event equipment is lost or stolen, the recipient shall immediately notify the KCDHH, who shall notify manufacturers, distributors and repairmen of the serial numbers of the missing equipment so that it can be identified and returned to the KCDHH. Any person who attempts to sell or knowingly purchase stolen equipment shall be prosecuted to the full extent of the law.

(12) The recipient shall be responsible for the replacement or repair of the loaner STE should the STE be damaged, lost, or stolen while in their possession, in accordance with the provisions of 735 KAR 1:010, unless the police report or vendor certifies that the theft or damage was not due to negligence or willful damage done on the part of the recipient.

(13) If the recipient moves:

(a) To a different address within the Commonwealth of Kentucky, the KCDHH shall be notified immediately of the address change; or

(b) Out of state, the equipment shall be returned to KCDHH.

D. COLE ZULAUF, Chair

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 14, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation (735 KAR 1:010) shall be held on September 24, 1996 in the offices of the Kentucky Commission on the Deaf and Hard of Hearing at 632 Versailles Road Frankfort Kentucky. The public hearing will be from 9 a.m. to 11 a.m. Individuals interesting in being heard at this hearing shall notify this agency in writing by September 17, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this hearing is received by this 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 regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the proposed administrative regulations. Send written notice of intent to be heard at the public hearing or written comments on the proposed regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so the promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/TTY.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: All applicants for specialized telecommunications equipment to be distributed under the Telecommunications Device for the Deaf Distribution Program will be affected by this program. It is not possible to state a specific number of applicants because such a program with a targeted audience of deaf, hard of hearing, and speech impaired Kentucky residents has never before been implemented. However, the first year of the program resulted in 894 applications. Also, unquantifiable factors such as the outreach program, word-of-mouth advertising, and formal advertising will directly impact the number of applicants.

(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 and to the extent available from the public comments received: There will be no costs affecting the cost of living and employment in the geographical area in which the administrative regulation is implemented except that deaf, hard of hearing, and speech impaired recipients under the program will save money in that they will not have to purchase specialized telecommunications equipment in order to access and use residential phone lines.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There will be no effect on the cost of doing business in the geographical area in which the administrative regulation is implemented. There is a potential for business conducted by phone to increase as deaf, hard of hearing, and speech impaired recipients gain previously denied access to the telecommunications system. Some manufacturers and distributors of the specialized telecommunications equipment may directly benefit from the advent of this distribution program, if they contract with the KCDHH.

(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 of applicants is monitored in that applications are not deemed complete until all criteria and requisite paperwork has been submitted to the TDD Distribution Program Coordinator. Vendors with whom the KCDHH contracts will be reimbursed by the KCDHH only upon the recipient's

receipt of specialized telecommunications equipment.

2. Second and subsequent years: The compliance, reporting, and paperwork for the second and subsequent years is the same as for the first year following implementation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indirect costs to the KCDHH from July 1994 to July 1995 were staff time, phone use, copying, printing, and computer supplies such as printer cartridges and paper. Costs after implementation in July 1995 are minimal and primarily include administrative oversight of the program because all direct costs will be covered by the revenues generated by the telephone surcharge tax.

2. Continuing costs or savings: Continued indirect costs to the KCDHH will be 5% of the Executive Director's time to supervise the implementation and administration of this program. Two additional full-time positions will be necessary to implement the provisions of the program; however, these two positions will be funded by the telephone surcharge tax. No savings to the promulgating administrative body are foreseen; however, it is expected that, as the program becomes fully operational and meets the immediate need of the initial flood of applicants, the administrative costs will decrease.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs are known at this time; however it is anticipated that if the number of qualified applicants exceeds the number of specialized telecommunications equipment available for distribution, the KCDHH will ask that the \$200,000 cap be raised.

(b) Reporting and paperwork requirements: The promulgating administrative body will make an annual report to the General Assembly regarding the TDD Distribution Program. Additional paperwork will be required in terms of the application form, processing the applications, and for the contracted vendors to receive reimbursement. A system designed to track recipients and the distributed specialized telecommunications equipment required only minimal additional paperwork as it is primarily a computerized database.

(4) Assessment of the anticipated effect on state and local revenue: The Public Service Commission (PSC) has determined that the funding mechanism for the TDD Distribution Program will be a one cent surcharge tax on access lines of the local exchange carriers. The PSC will deposit \$200,000 annually into the KCDHH's TDD Distribution Program account via the State General Depository Account for the administrative and distribution costs of the program.

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: The source of revenue is a one cent surcharge tax on all access lines of the local exchange carriers.

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

(a) Geographic area in which administrative regulation will be implemented: No public comments were received regarding the economic impact of the revised administrative regulations; however, one public comment was received with the original filing which indicated that they telephone companies will benefit from the TDD Distribution Program in the following ways: (1) increased customer base; (2) increased toll revenue; and (3) improved ability to assess consumer need.

(b) Kentucky: Please see the response to 6(a).

(7) Assessment of alternative methods: Reasons why alternatives were rejected: In the course of researching TDD Distribution Programs in other states, the KCDHH considered the following alternatives:

(a) Purchasing the specialized telecommunications equipment in bulk and distributing it from one central location; and

(b) Establishing allocation categories for (1) those with financial hardship and (2) children to prioritize the distribution of the special-

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ized telecommunications equipment; and

(c) having the KCDHH retain ownership of all of the distributed specialized telecommunications equipment.

All of these alternatives were rejected because they are not cost effective for the KCDHH as the administering agency.

(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 effect on the environmental welfare in Kentucky; the public health of deaf, hard of hearing, and speech-impaired recipients will be enhanced because the barriers preventing them from using telecommunications will be removed.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: There would be no detrimental effect on the environmental welfare; the public health of deaf, hard of hearing, and speech impaired individuals would remain in a state of semi-isolation.

(c) If detrimental effect would result, explain detrimental effect: There would be no additional 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 government policy which may be in conflict, overlapping or duplication with these proposed administrative regulations.

(10) Any additional information or comments: The promulgating agency has no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was applied in times of 'fiscal constraint' which is defined as when 75% of program funds have been disbursed or encumbered. Preference in times of fiscal constraint is given to those deaf, hard of hearing, and speech impaired individuals who have not previously received specialized telecommunications equipment.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:012. Resolution of medical fee disputes.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: 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 administrative 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.

Section 1. Procedure. (1) Disputes regarding payment, nonpayment, reasonableness, necessity, or work-relatedness of any medical expense, treatment, procedure, statement, or service which has been rendered or will be rendered under KRS Chapter 342 will be resolved by an administrative law judge following the filing of a Form 112 (Medical Fee Dispute).

(2) The Form 112 shall be accompanied by the following items: copies of all disputed bills, supporting affidavit(s) setting forth facts sufficient to show that the movant is entitled to the relief sought, any necessary supporting expert testimony, and any final decision from utilization review or medical bill audit with supporting medical opinion. A single Form 112 may encompass statements, services, and

treatment previously rendered as well as future statements, services, and treatment of the same nature or for the same condition, if specifically stated.

(3) Any employee, provider of medical services, employer or employer's medical payment obligor may file a Form 112 to seek adjudication of a dispute involving medical expenses.

(4) If no application for adjustment of claim concerning the injury or disease which is the subject of the dispute has been filed, copies of the Form 112 and attachments sufficient to serve all other parties, including the employee, the employer, the medical payment obligor, and the medical provider, shall be filed with the commissioner, who shall make service on all named parties. Opposing parties may thereafter file responses, accompanied by affidavits setting forth facts sufficient to show that the movant is not entitled to the relief sought, within twenty (20) days after service by the commissioner. Responses shall be served on all parties. This dispute will be assigned to the Frankfort Administrative Law Judge motion docket, where it may be summarily decided upon the pleadings or assigned for further proof time and resolution by an administrative law judge.

(5) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the movant shall file a Form 112 with the commissioner and shall also serve copies on all other parties of record. The movant shall further file a motion to join the medical provider(s) as a party to the claim. This motion shall conform with the requirements of 803 KAR 25:010, Section 4.

(6) Following resolution of a workers' compensation claim by opinion or order of an administrative law judge, including an order approving settlement of a disputed claim, a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112. Unless utilization review has been initiated the motion to reopen and Form 112 must be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25:096. The motion to reopen and Form 112 shall be served on all parties, upon the employee, even if represented by counsel, and upon the medical providers. When appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party. This dispute will be assigned to the Frankfort Administrative Law Judge motion docket, where it may summarily decided upon the pleadings, or be assigned to an administrative law judge for further proof time and final resolution.

(7) If an appeal is pending before the Workers' Compensation Board concerning the injury or disease which is the subject of the dispute, the Form 112 shall be accompanied by a motion for a partial remand to the administrative law judge assigned to the claim, unless entitlement to medical services is dependent upon resolution of issues on appeal. If entitlement to medical services is dependent upon resolution of issues on appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation Board to hold the Form 112 in abeyance pending a final decision on the appeal.

(8) If the contested expense is subject to utilization review, no medical fee dispute shall be filed prior to completion of the utilization review process. The thirty (30) day period for filing a medical fee dispute is tolled by commencement of the utilization review process. Notice of utilization review shall be provided to all affected parties pursuant to 803 KAR 25:096. The employer or its medical payment obligor shall have thirty (30) days following the final utilization review or medical bill audit decision to file a medical fee dispute.

(9) Repeated filing of identical Form 112's concerning the same subject matter are unnecessary once an administrative law judge has ruled on both the past expenses and the necessity of future expenses. When an order from an administrative law judge encompassing future treatment or expenses becomes final, the medical provider shall not tender future statements for services encompassed by the order to the employer or its medical payment obligor.

(10) Any party aggrieved by a decision of the administrative law judge in a medical fee dispute may appeal to the Workers' Compen-

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sation Board by following the procedures set forth in 803 KAR 25:010, Section 13.

Section 2. Burden of Proof. (1) Prior to a final decision or award establishing an employee's right to medical services for a work-related condition under KRS Chapter 342, the burden of proving entitlement to the service and the reasonableness and necessity of the service shall be upon the employee and the provider of medical services, pursuant to KRS 342.735.

(2) Following a final award or order establishing the employee's right to medical services under KRS Chapter 342, upon receipt of a medical statement comporting with 803 KAR 25:096, the burden of proof regarding any lack of work-relatedness, reasonableness, or necessity falls upon the employer or employer's medical payment obligor.

Section 3. Sanctions. (1) If the administrative law judge determines that proceedings have been brought, caused to be brought, prosecuted or defended without reasonable grounds, the entire cost of the proceedings, including attorneys fees, may be assessed upon the offending party pursuant to KRS 342.310. Sanctions shall be assessed, as appropriate, when an employer or a medical payment obligor challenges bills without reasonable medical or factual foundation, or when a medical provider, without reasonable foundation, submits bills for nonwork-related conditions to an employer or its medical payment obligor. Filing a medical fee dispute prior to exhaustion of any required utilization review or medical bill audit procedures will also subject the movant to sanctions pursuant to KRS 342.310.

Section 4. Expedited Medical Fee Disputes. (1) If prior to the filing of a formal application for adjustment of claim a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer may seek an expedited determination by filing a written request (on Form 120EX), together with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A.

(b) An affidavit of a physician which explains why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee. The physician's affidavit shall set forth the diagnosis of the patient, the clinical and diagnostic findings upon which the diagnosis is based, the proposed treatment, and detail why immediate initiation of the proposed treatment is necessary. Where feasible, an estimate of the cost of the proposed treatment shall be presented. The format for a physician's affidavit is set forth in Appendix B.

(c) Any other affidavits or authenticated documents necessary to demonstrate that the movant is entitled to the relief sought.

(2) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on all names parties. Respondents to a Form 120EX may file responses within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner. Responses shall be accompanied by affidavits setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(3) The chief administrative law judge may refer the matter to an ombudsman to attempt to effectuate a resolution of the dispute.

(4) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

Section 5. Forms. (1) Title and edition. Form 112, "Medical Fee

Dispute", August 15, 1996 edition and Form 120EX, July 14, 1994 Edition are hereby incorporated by reference in this administrative regulation.

(2) Public notices.

(a) Forms can be inspected and copied at main and branch offices of the Department of Workers Claims.

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

4. Pikeville - 101 Summit Drive, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday, inclusive for this purpose.

[Section 1. Definition. "Physician" shall have the same meaning as in KRS 342.001(32).

Section 2. Procedure. (1) Any employee, provider of medical services, employer or employer's medical payment obligor may seek adjudication of a dispute regarding the payment or nonpayment of any medical expense by filing a Request to Resolve Medical Fee Dispute (Form 112).

(2) A Request to Resolve Medical Fee Dispute (Form 112) may be filed to resolve questions concerning the payment, nonpayment, reasonableness, necessity or work-relatedness of any medical expense, treatment, procedure, statement or service performed, rendered, or about to be performed or rendered under KRS Chapter 342.

(3) A Form 112, copies of disputed bills and supporting affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought shall be filed with the commissioner, with sufficient copies to serve all other parties, within thirty (30) days of the date of receipt of a statement for services or within thirty (30) days of the time in which the compensability of a medical expense or treatment is known to be in dispute, whichever first occurs. The commissioner shall serve copies on all named parties unless an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, in which event service shall be made by the movant. Opposing parties may file responses within twenty (20) days after notice of the request to resolve medical fee dispute. A response shall be accompanied by affidavits setting forth facts sufficient to show the movant is not entitled to the relief sought, and shall be served on the other parties.

(4) Requests to resolve medical fee disputes shall be assigned as follows:

(a) If an application for adjustment of claim has not been filed concerning the injury or disease which is the subject of the dispute, the commissioner shall assign the request to the Frankfort administrative law judge motion docket and the request shall be processed in the same manner as other motions in claims to which an administrative law judge has not been permanently assigned.

(b) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the request shall be assigned to the same administrative law judge to whom the application for adjustment of claim has been assigned.

(c) If an award or other final decision has been rendered by an administrative law judge concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion to reopen in accordance with KRS 342.125 and other applicable law and shall initially be placed upon the Frankfort administrative law judge motion docket. Service shall be made upon all opposing parties by the movant.

(d) If an appeal is pending before the board concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion for a partial remand to the administrative law judge who ruled on the application for adjustment of claim, unless

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entitlement to medical services under KRS 342.020 is dependent upon resolution of the appeal. If entitlement to medical services is dependent upon resolution of the appeal, the request shall be accompanied by a motion to the board to hold the request in abeyance pending a final decision on the appeal.

Section 3. Scope of Request and Burden of Proof. (1) A single request may encompass statements, services and treatment previously rendered as well as future statements, services and treatment of the same nature, or for the same condition, if noted in the request, in which event the dispute shall be deemed continuing and repeated requests concerning the same subject matter need not be made.

(2) If a final award or decision has not been previously entered establishing the employee's right to medical services under the Act, the burden of proving entitlement shall be upon the employee or provider of medical services, while the burden with respect to unreasonableness and nonnecessity shall fall upon the employer or employer's medical payment obligor.

(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute.

(4) If the administrative law judge determines that such proceedings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.

(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of 803 KAR 25:011.

Section 4. Expedited Medical Fee Disputes. (1) If prior to the filing of a formal application for adjustment of claim a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer may seek an expedited determination by filing a written request (on Form 120EX), together with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A.

(b) An affidavit of a physician which explains why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee. The physician's affidavit shall set forth the diagnosis of the patient, the clinical and diagnostic findings upon which the diagnosis is based, the proposed treatment, and detail why immediate initiation of the proposed treatment is necessary. Where feasible, an estimate of the cost of the proposed treatment shall be presented. The format for a physician's affidavit is set forth in Appendix B.

(c) Any other affidavits or authenticated documents necessary to demonstrate that the movant is entitled to the relief sought.

(2) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on all named parties. Responses to a Form 120EX may file responses within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner. Responses shall be accompanied by affidavits setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(3) The chief administrative law judge may refer the matter to an embudsman to attempt to effectuate a resolution of the dispute.

(4) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within

seven (7) days after expiration of the response time.

APPENDIX A EXPEDITED MEDICAL DISPUTE AFFIDAVIT OF EMPLOYEE

Affiant, (Name), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns treatment for a condition compensable under the Kentucky Workers' Compensation Act. Affiant further states:

1. Date and time of work-related injury or date on which occupational disease was discovered;
2. Brief description of how injury occurred or how occupational disease was acquired;
3. Date and identity of person to whom notice of injury or occupational disease was given;
4. Medical treatment at issue;
5. Attempts, if any, to obtain approval for contested treatment;

Signature:

(Date):

STATE OF:

COUNTY OF:

Subscribed and sworn to before me by (Name) this (day) day of (month), 19-.

Notary Public:

My commission expires:

APPENDIX B EXPEDITED MEDICAL DISPUTE AFFIDAVIT OF PHYSICIAN

Affiant, (Name), a physician whose area of specialization is (specialization), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns a work-related injury or disease.

(1) The following medical care is required: (describe proposed medical care):

(2) The current working diagnosis is as follows:

(3) The proposed treatment is medically necessary because:

(4) The estimated cost of the proposed treatment is:

Affiant further states that failure of (Name of Workers' Compensation Patient) to obtain or undertake this proposed medical care within the next 45 days could lead to serious physical or mental disability or death because:

Signature:

(Date):

W. C. Medical Index No.:

Address:

STATE OF:

COUNTY OF:

Subscribed and sworn to before me by (Name) this (day) day of (month), 19-.

Notary Public:

My commission expires:

Section 5. Forms. (1) Revised Form 112 and Form 120EX are adopted effective October 26, 1992, and are incorporated by reference in this administrative regulation.

(2) Information available:

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(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort Perimeter Park West Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;
 2. Louisville Fourth Floor The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;
 3. Lexington 950 Commerce National Building, Lexington, Kentucky 40507;
 4. Paducah 220B North 8th Street, Paducah, Kentucky 42001;
 5. Pikeville The Justice Building, 3rd Floor, 314 316 Second Street, Pikeville, Kentucky 41501.
- (b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.]

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: August 15, 1996

FILED WITH LRC: August 15, 1996 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, 405 Mero Street, Frankfort, Kentucky 40601, Rooms A, B, C, on Wednesday, September 25, 1996 at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. 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: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, FAX (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: All injured employees in the Commonwealth of Kentucky with disputes regarding the payment of medical expense, medical providers who provide services for work-related injuries, and medical payment obligers.

(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 significant impact on the cost of living and employment is expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No significant impact on the cost of doing business is expected.

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

1. First year: None

2. Continuing costs or savings: 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:

No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers'

Compensation Funding Commission pursuant to KRS 342.122.

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

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

(b) Kentucky: None

(7) Assessment of alternative method; reasons why alternatives were rejected: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations as he considers necessary to carry on the work of the department and the work of the administrative law judges under KRS 342.325 requires that questions arising out of KRS Chapter 342 which are not settled by agreement of the parties, shall be determined by an administrative law judge. KRS 342.735 requires the commissioner to establish regulations to expedite the payment of medical expense benefits. This administrative regulation is deemed to be the most reasonable and efficient in setting forth the requirements necessary for an effective and expeditious medical fee dispute 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: No effect is anticipated.

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

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: No conflict known.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not appropriate.

This proposed regulation applies equally to all employees, medical providers and medical payment obligers in the Commonwealth of Kentucky.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:035. Computation of life expectancies for purposes including apportionment and attorney's fees.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260(2)

NECESSITY, FUNCTION, AND CONFORMITY: [House Bill 928 of the 1994 regular session of Kentucky General Assembly was passed as emergency legislation and went into effect when the Governor signed the bill on April 4, 1994. Possibly through inadvertence, the General Assembly deleted references to U.S. Decennial Life Tables in KRS 342.120(8)(b) and 342.320(1). These tables had been used previously in the computation of attorneys' fees and the apportionment of liability between employers and the Special Fund. A new method of computation was not provided in House Bill 928.] The purpose of this administrative regulation is to give the administrative law judges of the Department of Workers' Claims guidance with respect to the computation of attorneys' fees and the apportionment of benefits between the employers and the Special Fund, pursuant to the commissioner's authority under KRS 342.260(2).

Section 1. Computation of the Apportionment of Benefits Between the Employer and the Special Fund. Whenever an administrative law judge is required to compute the apportionment of benefits between

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the employer and the Special Fund pursuant to KRS 342.120(8), [if another method is not required by the statute,] the portions shall be based on the life expectancies contained in the [overall] male or female mortality tables in Appendix A of this administrative regulation. If a claim is reopened the table in effect on the date of the original opinion, award or order approving the settlement agreement shall continue to be utilized. [the most recent available edition of the U.S. Decennial Life Tables. If the most recent edition of the U.S. Decennial Life Tables includes Kentucky tables, these tables shall be used. If it does not, the national tables shall be used.]

Section 2. Computation of Attorneys' Fees. Whenever an attorney's fee is being computed by an administrative law judge pursuant to KRS 342.320, [and the statute does not require the use of another method,] the award on which the attorney's fee shall be based shall be as actuarially determined on past and future benefits according to the life expectancies contained in the [overall] male or female mortality tables in Appendix A of this administrative regulation. [the most recent available edition of the U.S. Decennial Life Tables. If the most recent edition of the U.S. Decennial Life Tables includes Kentucky tables, these tables shall be used. If it does not, the national tables shall be used.]

Section 3. Other Computations. When calculation of a life expectancy is necessary for any other purpose, including computation of assessments or reserves for self-insured employers, the male or female mortality tables in Appendix A shall be utilized.

APPENDIX A

AVERAGE REMAINING LIFETIME

AGE	MALES		FEMALES	
	YEARS	WEEKS	YEARS	WEEKS
15	57.90	3010.8	64.60	3359.2
16	56.98	2963.0	63.62	3308.2
17	56.06	2915.1	62.64	3257.3
18	55.14	2867.3	61.66	3206.3
19	54.22	2819.4	60.68	3155.4
20	53.30	2771.6	59.70	3104.4
21	52.38	2723.8	58.74	3054.5
22	51.46	2675.9	57.78	3004.6
23	50.54	2628.1	56.82	2954.6
24	49.62	2580.2	55.86	2904.7
25	48.70	2532.4	54.90	2854.8
26	47.78	2484.6	53.94	2804.9
27	46.86	2436.7	52.98	2755.0
28	45.94	2388.9	52.02	2705.0
29	45.02	2341.0	51.06	2655.1
30	44.10	2293.2	50.10	2605.2
31	43.20	2246.4	49.14	2555.3
32	42.30	2199.6	48.18	2505.4
33	41.40	2152.8	47.22	2455.4
34	40.50	2106.0	46.26	2405.5
35	39.60	2059.2	45.30	2355.6
36	38.70	2012.4	44.34	2305.7
37	37.80	1965.6	43.38	2255.8
38	36.90	1918.8	42.42	2205.8
39	36.00	1872.0	41.46	2155.9
40	35.10	1825.2	40.50	2106.0
41	34.22	1779.4	39.56	2057.1
42	33.34	1733.7	38.62	2008.2
43	32.46	1687.9	37.68	1959.4
44	31.58	1642.2	36.74	1910.5
45	30.70	1596.4	35.80	1861.6
46	29.84	1551.7	34.90	1814.8
47	28.98	1507.0	34.00	1768.0

48	28.12	1462.2	33.10	1721.2
49	27.26	1417.5	32.20	1674.4
50	26.40	1372.8	31.30	1627.6
51	25.58	1330.2	30.42	1581.8
52	24.76	1287.5	29.54	1536.1
53	23.94	1244.9	28.66	1490.3
54	23.12	1202.2	27.78	1444.6
55	22.30	1159.6	26.90	1398.8
56	21.56	1121.1	26.06	1355.1
57	20.82	1082.6	25.22	1311.4
58	20.08	1044.2	24.38	1267.8
59	19.34	1005.7	23.54	1224.1
60	18.60	967.2	22.70	1180.4
61	17.92	931.8	21.92	1139.8
62	17.24	896.5	21.14	1099.3
63	16.56	861.1	20.36	1058.7
64	15.88	825.8	19.58	1018.2
65	15.20	790.4	18.80	977.6
66	14.58	758.2	18.08	940.2
67	13.96	725.9	17.36	902.7
68	13.34	693.7	16.64	865.3
69	12.72	661.4	15.92	827.8
70	12.10	629.2	15.20	790.4
71	11.56	601.1	14.54	756.1
72	11.02	573.0	13.88	721.8
73	10.48	545.0	13.22	687.4
74	9.94	516.9	12.56	653.1
75	9.40	488.8	11.90	618.8
76	8.94	464.9	11.32	588.6
77	8.48	441.0	10.74	558.5
78	8.02	417.0	10.16	528.3
79	7.56	393.1	9.58	498.2
80	7.10	369.2	9.00	468.0
81	6.74	350.5	8.52	443.0
82	6.38	331.8	8.04	418.1
83	6.02	313.0	7.56	393.1
84	5.66	294.3	7.08	368.2
85 & over	5.30	275.6	6.60	343.2

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: August 15, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, 405 Mero Street, Frankfort, Kentucky 40601, Rooms A, B, C, on Wednesday, September 25, 1996 at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, FAX (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: Workers' compensation claimants, employers, the Special Fund, and their attorneys. Approximately 10,000 formal applications for adjustment of claims are filed

with the Department of Workers' Claims each year.

(2) Direct or 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.

(b) Cost of doing business in geographical area in which the administrative regulation will be implemented to the extent available from public comments received: No public comments have been received.

(c) Compliance reporting and paperwork requirements for the:

1. First year following implementation. No additional paperwork requirements are imposed upon the entities affected by this administrative regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional cost for printing copies of the amended administrative regulation; not to exceed \$1,000.

2. Continuing costs or savings: Negligible.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No additional requirements to the agency.

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

(5) Source of revenue to be used for implementation and enforcement of this administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented state wide, and also will affect Kentucky workers' compensation claimants who reside outside of Kentucky. No public comments have been received about any anticipated impact, but the amendments to this regulation should help to assure uniformity in the calculations made by the Special Fund and all administrative law judges.

(b) Kentucky: Same as (a), above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: KRS 342.260(2), as amended by the regular session of the 1996 Kentucky General Assembly, requires the commissioner to develop or adopt life expectancy tables for use in making computations for the apportionment of benefits, attorneys fees, and for use in all other situations arising under the Workers' Compensation Act in which the calculation of a life expectancy is necessary or desirable.

(8) Assessment of expected benefits:

(a) Identify effect on public health and environment welfare: No effect.

(b) State whether a detrimental effect would result if not implemented: No effect.

(c) Explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Yes. The amount of Special Fund liability will depend upon the life expectancy of the claimant as well as the degree and type of injury. Attorneys' fees will be tiered based upon the amount of the award, which in total disability cases will be based in part on the life expectancy of the claimant. The calculation of reserves for self-insurers, likewise, will be tiered in accordance with the number of claims and the life expectancies of the claimants involved.

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:096. Selection of physicians and treatment plans.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner of the Department of Workers Claims to promulgate such administrative regulations as he considers necessary to carry on the work of the department under KRS Chapter 342. KRS 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. The function of 803 KAR 25:096 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.

Section 1. Definitions. (1) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond ninety (90) days.

(b) Medical treatment that in fact continues for a period of more than ninety (90) days.

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(2) "Physician" shall have the same meaning as in KRS 342.0011(32).

(3) "Designated physician" means the physician selected by the employee for treatment under KRS 342.020. The designated physician shall have sole authority to make referrals, as reasonably necessary, to specialists and appropriate treatment facilities. Except for emergency treatment, only treatment by or on referral from the designated physician shall be compensable.

(4) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency, and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results, and may be amended, supplemented or changed as conditions warrant.

(5) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to a serious physical or mental disability or death, or medical services which are immediately necessary to alleviate severe pain.

(6) "Statement for services" for the purposes of KRS 342.020(1), means a completed Form HCFA 1500 or, in the case of a hospital, a completed Form UB-92, or successors to such forms prescribed by the Commissioner of Insurance, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other supporting documentation for the billed medical treatment, procedure, or hospitalization. For pharmaceutical bills, a statement for services means a bill containing at least the following information: identity of prescribed medication, number of units prescribed, date of prescription, and name of prescribing physician.

Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation Designation and Medical Release Card (Form 113). Within ten (10) days following receipt of notice of a work injury or occupational disease causing lost work time or necessitating medical treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed, postage prepaid envelope for returning the Form 113. Failure by the medical payment obligor to

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timely mail the form waives any objection to treatment by other than a designated physician prior to receipt by the employee of the form.

Section 3. Employee Selection of Physician. (1) Except for emergency care, all treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the medical payment obligor of the identity of the designated physician by tendering the completed Form 113, including a written acceptance by the designated physician, within ten (10) days after treatment is commenced by that physician.

(2) Upon receipt of a Form 113 designating a treating physician, the medical payment obligor shall tender a card to the employee, which shall be presented to medical providers each time that medical services are sought in connection with the work-related injury or occupational disease. The card shall serve as notice to the medical providers of the identity of the designated physician, who has sole authority to make referrals to treatment facilities or to specialists. The card shall bear the legend "First Designated Physician-Workers' Compensation" and shall further contain the following information: name and telephone number of the first designated physician; name, Social Security number, date of birth, and date of work injury or occupational disease and last exposure of the employee; and name and telephone number of the medical payment obligor. The reverse side of the first designated physician card shall contain a notice that all treatment must be performed by or on referral from the first designated physician and shall further contain space for identification and notification of change of designated physician.

Section 4. Change of Designated Physician. (1) Following initial selection of a designated physician, the employee may change designated physicians once without authorization of the employer or its medical payment obligor. Referral by a designated physician to a specialist shall not constitute a change of designated physician unless the latter physician is specifically selected by the employee as the second designated physician.

(2) Following a decision to change the designated physician, the employee shall complete the back of the first designated physician card and return the card with the name of the second designated physician to the medical payment obligor, which shall issue a second card. The card shall bear the legend "Second Designated Physician-Workers' Compensation" and shall further contain the information required on the first designated physician card. The reverse side of the card shall contain a notice that all treatment must be performed by or on referral from the second designated physician and shall further contain a notice that any further change of designated physician will require the written consent of the employer or the administrative law judge.

(3) Once an employee's two (2) choices of designated physician have been exhausted, he may not, except as required by medical emergency, make additional selections of physicians without the medical payment obligor's written consent or the consent of an administrative law judge. Such consent shall not be unreasonably withheld.

(4) If the employer provides medical services through a managed health care system, it may establish alternate methods for provider selection within the managed health care plan.

Section 5. Treatment Plan. (1) A treatment plan shall be prepared when any of the following occur:

(a) Long-term medical care is required as a result of a work-related injury or occupational disease; or

(b) The employee has received treatment with passive modalities, including electronic stimulation, heat/cold packs, massage, ultrasound, diathermy, whirlpool, or similar procedures for a period exceeding sixty (60) days. The treatment plan shall detail the need for such passive treatment, the benefits, if any, derived from such treatment,

the risks attendant with termination of the treatment, and the projected period of future treatment; or

(c) An elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program is recommended. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(2) The designated physician shall provide a copy of the treatment plan to the medical payment obligor seven (7) days in advance of an elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program. In all other instances when a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days following a request by the medical payment obligor. All amendments, supplements, or changes to a treatment plan shall also be furnished within fifteen (15) days following a request.

(3) Preparation of a treatment plan is a necessary part of the care to be rendered and is an integral part of the fee authorized in the medical fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan or progress reports, except for the reasonable cost of photocopying and mailing such records.

Section 6. Tender of Statement for Services. As required by KRS 342.020(1), the provider of medical services shall submit a statement for services within forty-five (45) days of the date treatment is initiated and every forty-five (45) days thereafter, as long as services are rendered. Failure to submit statements for services within forty-five (45) days, without reasonable grounds therefor, shall result in a finding that the bills are not compensable.

Section 7. Written Denial of Statement for Services Prior to Resolution of Claim. Prior to resolution of a workers' compensation claim by opinion or order of an administrative law judge, the medical payment obligor shall notify the medical provider and employee of its denial of a specific statement for services, or payment for all future services from the same provider, in writing within forty-five (45) days following receipt of a completed statement for services. Copies of the written denial shall be mailed to the employee, employer, and medical service provider(s). The written denial shall include a statement of the reasons for denial and a brief synopsis of available utilization review or medical bill audit procedures with relevant telephone contact numbers. The written denial should be made only for good faith reasons. Upon receipt of a written denial from a medical payment obligor, a medical provider may tender a statement for services to other potential payment sources or to the patient.

Section 8. Payment or Challenge to Statement for Services Following Resolution of Claim. (1) Following resolution of a claim by an opinion or order of an administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement for services as defined in Section 1(6) of this administrative regulation.

(2) The thirty (30) day period provided in KRS 342.020(1) shall be tolled by occurrence of any of the following:

(a) During any period in which the medical provider has submitted an incomplete statement for services, including a statement which lacks relevant treatment notes or a hospital admission and discharge summary. The payment obligor shall promptly notify the medical provider of any deficient statement and shall request specific documentation. The medical payment obligor shall tender payment or file a medical fee dispute within thirty (30) days following receipt of the required documentation; or

(b) During such period as a medical provider fails to respond to a reasonable information request from the employer or its medical

payment obligor pursuant to KRS 324.020(4); or

(c) During such period as the employee's designated physician fails to provide a treatment plan when required by this administrative regulation; or

(d) During the pendency of the utilization review required by 803 KAR 25:190. The thirty (30) day period for filing a medical fee dispute shall commence on the date of rendition of the final decision from the utilization review or medical bill audit. Any medical fee dispute filed thereafter shall include a copy of the final utilization review or medical bill audit decision and all supporting medical opinions.

(3) No obligation for payment or challenge arises when a statement for services clearly indicates that the services were not performed for a work-related condition.

Section 9. Payment Pursuant to Fee Schedules. If the statement for services contains charges in excess of those provided in an applicable fee schedule adopted by the commissioner, the medical payment obligor shall make payment in the scheduled amount and shall serve the written notice of denial provided in 803 KAR 25:190 setting forth the reason for refusal to pay a greater amount. Following receipt of a final medical bill audit decision, the medical provider may dispute the amount of payment within thirty (30) days by filing a medical fee dispute in accordance with 803 KAR 25:012.

Section 10. Patient Billing. (1) Nothing in this section shall prevent a medical provider from tendering a statement for services to a patient once it has received a written denial from the medical payment obligor or has received an opinion by an administrative law judge finding that the services were unrelated to any work injury or occupational disease.

(2) The medical provider shall not bill a patient for services which have been found to be unreasonable or unnecessary by an administrative law judge, if the medical provider has been joined as a party to a workers' compensation claim or to a medical fee dispute and has had an opportunity to present any contrary evidence.

Section 11. Request for Payment for Services Provided or Expenses Incurred to Secure Medical Treatment. (1) When an individual who is not a physician or medical provider provides compensable services for the cure or relief of a work injury or occupational disease, including home nursing services, that individual shall submit a fully completed Form 114 to the employer or medical payment obligor within sixty (60) days of the date the service is initiated and every sixty (60) days thereafter, if appropriate, for so long as the services are rendered.

(2) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall also be submitted to the employer or its medical payment obligor within sixty (60) days of incurring of the expense. All requests for payments shall be made upon a Form 114.

(3) Failure to timely submit the Form 114, without reasonable grounds, may result in a finding that the expenses are not compensable.

Section 12. Forms. (1) Title and edition. Form 113, "Notice of Designated Physician", August 15, 1996 edition and Form 114 "Request for Payment for Services or Reimbursement for Compensable Expenses", August 15, 1996 edition are hereby incorporated by reference in this administrative regulation.

(2) Public notice.

(a) Forms are available and can be inspected and copied at main and branch offices of the Department of Workers Claims.

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky

40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

4. Pikeville - 101 Summit Drive, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday, inclusive for this purpose.

~~[KRS 342.260 requires the Workers' Compensation Board to prepare such administrative regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The function of 803 KAR 25:006 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.]~~

Section 1. Definitions. (1) "Long term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond three (3) months.

(b) Medical treatment that in fact continues for a period of more than three (3) months.

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(2) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license.

(3) "Designated physician" means the physician selected by the employee for treatment under KRS 342.020.

(4) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results.

(5) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or mental disability or death, or medical services that are immediately necessary to alleviate severe pain.

Section 2. Kentucky Workers' Compensation Physician Designation and Medical Release Card. (1) As soon as practicable after receiving notice of the occurrence of a work related injury or occupational disease for which the employee has sought or intends to seek medical treatment, the employer or employer's medical payment obligor shall mail to the worker the Kentucky Workers' Compensation Physician Designation and Medical Release Card in the format of Form 113 or similar format approved by the Department of Workers' Claims.

Section 3. Employee Selection of Physician. (1) Except for emergency care, all treatment for a work related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the employer, as soon as practicable, of the selection of a "designated physician". The designated physician may refer the employee to such additional physicians or medical service providers as are reasonably necessary for treatment or evaluation.

(2) A physician accepting the employee's selection of him as "designated physician" shall forward a completed copy of the Kentucky Workers' Compensation Physician Designation and Medical Release Card to the representative of the medical payment obligor.

(3) Following his initial selection of a designated physician, the employee may change designated physicians not more than one (1)

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time without authorization by the employer or its medical payment obligor. Thereafter, the employee may not, except as may be required by medical emergency, make additional selections of physicians without the employer's or medical payment obligor's or an administrative law judge's written consent. Such consent shall not be unreasonably withheld.

(4) This administrative regulation does not prohibit the direct utilization of licensed medical professionals acting within the scope of their authority.

Section 4. Necessity for Treatment Plan. (1) When as a result of a work-related injury or disease an employee has been placed under long-term medical care, the designated physician shall prepare a treatment plan. A treatment plan may be amended, supplemented or changed as conditions warrant.

(2) If the employee has received treatment with passive modalities, which may include electronic stimulation, heat/cold, massage, ultrasound, diathermy, whirlpool or similar modes over a period exceeding sixty (60) days, a treatment plan shall be prepared which details the need for such treatment; the benefits, if any, derived from such treatment; the risks attendant with termination of such treatment; and the time frame in which such treatment is proposed to continue.

(3) A treatment plan shall be prepared and furnished to the employer or its payment obligor seven (7) days in advance of an elective surgical procedure or placement of the employee in a resident work hardening, pain management or medical rehabilitation program. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(4) Except as provided in subsection (3) of this section, whenever a treatment plan is required to be prepared, amended, supplemented or changed pursuant to this administrative regulation, it shall be served by mail upon the employer or its medical payment obligor within fifteen (15) days of request.

(5) Preparation of a treatment plan as required by these administrative regulations is a necessary part of the care to be rendered to the patient and is an integral part of the fee authorized in a medical fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan or progress reports, except a reasonable amount for the photocopying and mailing of such records.

Section 5. Experimental or Questioned Procedures. (1) When the employee has chosen a medical doctor as his designated physician, charges for treatment, diagnostic modalities, or methods which have been determined by the American Medical Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(2) When the employee has chosen a chiropractor as his designated physician or the designated physician has referred the employee to a chiropractor, charges for treatment, diagnostic modalities, or methods which have been determined by the American Chiropractic Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(3) After a Kentucky Workers' Compensation Physician Designation and Medical Release Card has been issued to the employee, the employee shall present the card to medical providers each time medical services are sought in connection with the work-related injury or occupational disease. The card will serve as authorization by the employee to the medical provider to release information as required by KRS 342.020(4).

(4) If the employee elects to change his designated physician, this shall be noted upon the Kentucky Worker's Compensation Physician

Designation and Medical Release Card, and the physician accepting the new designation shall promptly forward a copy of the card reflecting the change to the medical payment obligor.

(5) The medical payment obligor shall have available, during regular business hours, an agent who will answer telephone inquiries from medical providers or the employee concerning the claim.

Section 6. Forms. (1) Form 113 is hereby adopted and incorporated in this administrative regulation by reference.

(2) Information available:

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort—Perimeter Park West Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville—Fourth Floor—The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington—950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah—220B North 8th Street, Paducah, Kentucky 42001; and

5. Pikeville—The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41601.]

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: August 15, 1996

FILED WITH LRC: August 15, 1996 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, 405 Mero Street, Frankfort, Kentucky 40601, Rooms A, B, C, on Wednesday, September 25, 1996 at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. 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: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, FAX (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: This regulation will affect workers' compensation patients and their medical services providers when injuries/diseases cause the patients to be off work for more than 60 days, or the treatment will last for more than 3 months, or when elective surgery is requested. The exact number of cases affected cannot be precisely estimated, but is probably greater than the approximately 10,000 claims per year currently being litigated. Workers' compensation patients who wish to change treating physicians more than once will be affected, and this number is probably included in the 10,000 litigated claims per year.

(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 comments were made regarding the cost of living and employment thereof, no significant impact on the cost of living and employment is expected. This regulation is intended to control medical costs for workers' compensation injuries.

(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 made regarding the cost of doing business.

1. First year: This regulation is anticipated to result in a minimal increase of costs to physicians, chiropractors and others who are required to prepare treatment plans. Another direct cost is the extra time needed by the practitioner's office staff to type and mail the treatment plans and the additional postage required. Savings should result due to medical providers receiving payment more promptly in some cases. It is anticipated that the requirement of a treatment plan will result in savings to medical payment obligors because it will cause the practitioner to give a detailed explanation of the proposed course of treatment of the workers' injury to the medical payment obligor. This will allow the payment obligor to review, with expert assistance, the proposed plan to ensure the treatment is appropriate. Limitation on the patient's change of treating physician more than once without consent will save the payment obligor the time and expense of reviewing multiple or successive proposals for treatment.

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

1. First year: Reporting and paperwork requirements: This amendment will increase practitioner's reporting and paperwork requirements slightly. The practitioners should only need to slightly expand their existing office notes to create treatment plans for submission to the medical payment obligors.

2. Continuing costs or savings: Same

(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: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation applies through the Commonwealth of Kentucky. No public comments have been received concerning its economic impact.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative method; reasons why alternatives were rejected: KRS 342.260 requires the Commissioner of the Department of Workers Claims to promulgate such administrative regulations as he considers necessary to carry on the work of the department under KRS Chapter 342. KRS 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. The function of 803 KAR 25:096 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.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect is anticipated.

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

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: No conflict

known.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not appropriate.

This proposed regulation applies equally to all employees, medical providers, and employers in the Commonwealth of Kentucky.

**LABOR CABINET
Department of Workers' Claims
(Amendment)**

803 KAR 25:190. Utilization review and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. The function of this administrative regulation is to insure that all insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(3) "Preauthorization" means a review by the utilization review program of the medical necessity and appropriateness of medical services prior to the service being rendered.

(4) "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of determining the availability of payment for compensable injuries or diseases. Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 are not subject to utilization review under this administrative regulation.

(5) "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each insurance carrier, individual self-insured employer, group self-insurer, or vendor describing the procedures governing utilization review and medical bills audit activities.

(6) "Vendor" means a person or entity which is not required by this administrative regulation to implement a utilization review or medical bill audit program, but which implements a utilization review and medical bill audit program for purposes of offering those services to insurance carriers, individual self-insured employers or group self-insurers.

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that: utilization reviewers are appropriately qualified; treatment rendered to injured workers is medically necessary and appropriate; and necessary medical services

are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that: statements and payments for medical goods and services and charges for depositions, reports, and photocopies comply with KRS Chapter 342 and applicable administrative regulations; medical bill auditors are appropriately qualified; and statements for medical services are not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval. (1) All insurance carriers, individual self-insured employers, and group self-insurers shall fully implement and thereafter maintain a utilization review and medical bill audit program.

(2) Each insurance carrier, individual self-insured employer and group self-insurer shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve utilization review and medical bill audit plans which comply with the requirements of this administrative regulation and KRS Chapter 342.

(3) Vendors shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. The utilization review and medical bill audit program described in the written plan shall comply with all the requirements of this administrative regulation. Upon approval, the vendor will receive written notice from the commissioner.

(4) Prior to obtaining approval by the commissioner for a utilization review plan, each applicant shall be certified by the Kentucky Cabinet for Human Resources as a private review agent pursuant to KRS 211.461 to 211.466. Medical bill audit plans do not require certification by the Kentucky Cabinet for Human Resources.

(5) Insurance carriers, individual self-insured employers, and group self-insurers which contract with approved vendors for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(6) Plans shall be approved for a period of four (4) years, or until December 31, 2000, whichever is later. At least ninety (90) days prior to December 31, 2000, and every four (4) years thereafter, insurance carriers, individual self-insured employers, group self-insurers and approved vendors shall apply for renewal of the approval. During the term of an approved plan the commissioner must be notified as soon as practicable of any material change in the approved plan or any change in the selection of a vendor.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made.

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured.

(3) A description of the criteria by which claims, medical services and medical bills will be selected for review.

(4) A description of the qualifications of internal and consulting personnel who will conduct utilization review and medical bill audit and the manner in which the personnel are involved in the review process.

(5) A description of the process to assure that treatment plans are obtained for review by qualified medical personnel in all instances where treatment plans are required under 803 KAR 25:096.

(6) A description of the process to assure that a physician is designated by each injured employee as required under 803 KAR 25:096.

(7) A description of the process for rendering and promptly notifying medical providers and employees of initial utilization review decisions.

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program.

(9) An assurance that a database is maintained recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and is subject to audit by the commissioner, or his agent pursuant to KRS 342.035(5)(b).

(10) An assurance that a toll free line is provided for employees and medical providers to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days/week, forty (40) hours/week during normal business hours.

(11) A description of the policies and procedures that will be implemented to protect the confidentiality of patient information.

(12) An assurance that the acute low back pain practice parameter adopted by the commissioner pursuant to 342.035(8)(a) is incorporated in the plan as the standard for evaluating applicable low back claims. Additional medical guidelines which may be adopted by the commissioner pursuant to 342.035(8)(a) shall be incorporated in utilization review plans.

Section 5. Claim Selection Criteria. (1) Unless the claim is denied as noncompensable, claims are subject to utilization review when any of the following occur:

(a) Upon a medical provider's request for preauthorization of any medical treatment or procedure; or

(b) Upon notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan; or

(c) When total medical costs cumulatively exceed \$3000; or

(d) When total lost work days cumulatively exceed thirty (30) days; or

(e) By order of an administrative law judge.

(2) When applicable, utilization review must begin no later than fifteen (15) days following the occurrence of any claims selection criteria. The initial utilization review decision must be rendered within thirty (30) days of the initiation of the utilization review process.

(3) Each medical bill, regardless of the amount of the bill, shall be audited to assure:

(a) Compliance with applicable fee schedules;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020. The thirty (30) day period shall commence on the date of the final utilization review decision.

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. Only licensed physicians, registered nurses, licensed practical nurses, medical records technicians or other personnel, who through training and experience are qualified to issue decisions on medical necessity or appropriateness, shall issue initial utilization review approvals.

(2) Only licensed physicians shall issue initial utilization review denials. Only licensed physicians shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold any license required by the jurisdiction in which they are employed.

(3) Personnel conducting medical bill audit, shall have the education, training or experience necessary for evaluating medical

bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a written notice of denial shall be issued to both the treating physician and the employee in a timely manner, but in no event to exceed thirty (30) days from the initiation of the utilization review process. The notice of denial shall be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL" and shall contain a statement of the medical reasons for denial, the name, state of licensure and medical license number of the reviewer, and an explanation of utilization review reconsideration rights. The reason for denial shall indicate the medical basis for the decision.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process shall be provided within the structure of utilization review whereby initial decisions may be appealed. Any aggrieved party may request reconsideration of the utilization review decision. Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written decision shall be rendered within twenty-one (21) days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION". Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, an aggrieved party may request further review by a board eligible or certified physician in the appropriate specialty or subspecialty. A written decision shall be rendered within ten (10) days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process shall be provided within the structure of medical bill audit whereby initial decisions may be appealed. Any aggrieved party may request reconsideration of the medical bill audit decision. Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written decision shall be rendered within twenty-one (21) days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT - RECONSIDERATION DECISION".

[Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Utilization review and medical bill audit plan" means the written plan submitted to the Commissioner of the Department of Workers' Claims by each insurance carrier, individual self-insured employer and group self-insurer describing the procedures governing utilization review and medical bills audit activities.

(3) "Utilization review" means the system used to manage and assess patient care through case-by-case assessment of the medical necessity and appropriateness of medical care and services for purposes of determining the availability of payment for compensable injuries or diseases. Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 are not subject to utilization review under this administrative regulation.

(4) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with

adopted fee schedules.

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that: utilization reviewers are appropriately qualified; that treatment rendered injured workers is medically necessary and appropriate; and that necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that: statements and payments for medical goods and services and charges for depositions, reports, and photocopies comply with KRS Chapter 342 and applicable administrative regulations; medical bill auditors are appropriately qualified; and, statements for medical services are not disputed without reasonable grounds.

(3) Each insurance carrier, individual self-insured employer, and group self-insurer shall fully implement and thereafter maintain a utilization review and medical bill audit program no later than February 1, 1996.

Section 3. Utilization Review and Medical Bill Audit Plan Requirements. No later than December 1, 1995 each insurance carrier, individual self-insured employer and group self-insurer shall provide to the commissioner a written plan for the implementation of a utilization review and medical bill audit program. The utilization review and medical bill audit plan shall include:

(1) A description of the process, policies and procedures whereby decisions shall be made;

(2) A description of the specific criteria utilized in the decision making process including treatment protocols or standards in any software, database or other resource used in the development of the review processes;

(3) A description of the criteria by which claims, medical services and medical bills will be selected for review;

(4) A description of the qualifications of internal and consulting personnel who will conduct the utilization review, demonstrating education, training, and experience pertinent to evaluating the clinical issues and services under review and the manner in which the personnel are involved in the review process. The plan shall demonstrate that only licensed physicians, registered nurses, licensed practical nurses, medical records technicians or other personnel, who through training and experience are qualified to issue decisions on medical necessity or appropriateness, shall approve utilization review decisions. Only licensed physicians shall issue utilization review denials and only licensed physicians shall supervise utilization review personnel conducting case review. Personnel making utilization review recommendations and decisions shall hold any license required by the jurisdiction in which they are employed;

(5) A description of the qualifications of internal and consulting personnel who will conduct medical bill audits, demonstrating education, training and experience pertinent to evaluating medical bills and statements. Personnel conducting medical bill audits shall hold any license required by the jurisdiction in which they are employed;

(6) A process to assure that treatment plans are obtained for review by qualified medical personnel in all instances where treatment plans are required under 803 KAR 25:096;

(7) A timetable for implementation of a utilization review and medical bill audit program which shall provide for full implementation no later than February 1, 1996;

(8) A system for promptly notifying treating physicians and other providers of utilization review denials. Notices of denials shall contain a statement of the reasons for denial, the name, state of licensure and medical license number of the reviewer, and reconsideration rights. Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information;

(9) A database recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review,

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~~the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and is subject to audit by the commissioner, or his designee pursuant to KRS 342.035(5)(b);~~

~~(10) A provision for the audit of each medical bill, medical report, and deposition fee regardless of the amount of the bill;~~

~~(11) A description of the policies and procedures to assure that the reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days/week, forty (40) hours/week during normal business hours;~~

~~(12) A description of a reconsideration process, within the structure of utilization review and medical bill audit, whereby initial determinations may be appealed. Any medical provider may request reconsideration by the utilization reviewer or medical bill auditor. Reconsideration of the initial utilization review decisions shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A decision shall be rendered within twenty-one (21) days of receipt of a request for reconsideration. If the denial is upheld, upon reconsideration and a board-eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, the provider may request further review by a board-eligible or certified physician in the appropriate specialty or subspecialty; a final decision shall be rendered within ten (10) days of the request for specialty reconsideration. The carrier's obligation to render payment is tolled during the period of reconsideration. The appeal procedure shall provide for timely notice to anyone aggrieved by the initial decision of the right to appeal and shall provide for a written decision upon appeal; and~~

~~(13) A description of the policies and procedures that will be implemented to protect the confidentiality of patient information.]~~

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: August 15, 1996

FILED WITH LRC: August 15, 1996 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, 405 Mero Street, Frankfort, Kentucky 40601, Rooms A, B, C, on Wednesday, September 25, 1996 at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. 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: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, FAX (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: This regulation will affect insurance carriers, individual self-insured employers and self-insured groups. At present there are 260 self-insured employers in Kentucky, 18 self-insured groups representing over 10,000 employers and approximately 400 insurance carriers which write workers' compensation insurance. This regulation will amend an existing regulation.

(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 impact on the cost

of living and employment is anticipated.

(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 significant impact on the cost of doing business is expected.

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

1. First year: A slight increase in reporting and paperwork requirements may occur initially. However, it should be offset by the medical cost savings this regulation is intended to create.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs for printing and distributing informational copies of the regulation is not expected to exceed \$200.

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: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky. No public comments were received concerning economic impact.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative method; reasons why alternatives were rejected: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations as he considers necessary to carry on the work of the department. KRS 342.035(5) requires the commissioner to promulgate regulations governing medical utilization review and medical bill audit by insurance carriers, self-insured employers and group self-insurers. This administrative regulation is deemed to be the most reasonable and efficient in setting forth the requirements necessary for effective utilization review and medical bill audit.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect is anticipated.

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

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication:

(a) Necessity of proposed regulation if in conflict: No effect known.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not appropriate. This proposed regulation applies equally to all employers, self-insured employers, group self-insured funds, and insurance carriers in the Commonwealth of Kentucky.

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PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 11:010. Equipment and supplies.

RELATES TO: KRS 244.500

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.500 expressly prohibits any premiums, gifts or prizes for any purpose in connection with the sale of malt beverages. Under the authority of that general statute, this administrative regulation contains specific items which can be furnished to a retailer by a brewer or distributor, and designates those items which cannot be furnished to a retailer.

Section 1. A brewer or distributor may furnish the following equipment to retail licensees that sell draft malt beverages: tapping accessories; rods; vents; taps; hoses; washers; couplings; vent tongues; check valves, and tap knobs. When tap knobs, or similar devices, bearing brand names are furnished they shall not be used to dispense malt beverages of a different brand from that designated on the knob. No other equipment may be furnished to retail malt beverage licensees.

Section 2. A brewer or distributor may furnish vats, tubs, tanks, or portable dispensing units to special temporary licensees, picnics, bazaars and carnivals. The equipment may bear a trade name, trademark, trade slogan or a facsimile of a product, container or display, associated with a particular brand that is visible to the consumer.

~~[Section 3. A brewer or distributor is prohibited from supplying coil cleaning service to a retailer either directly or indirectly.]~~

LAURA DOUGLAS, Secretary
GREG GINTER, Commissioner

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: August 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, September 26, 1996, at 11 a.m., in the Hearing Room of the Kentucky Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, September 19, 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 the contact person.

CONTACT PERSON: Ms. Cynthia Newton, Secretary to the Board, Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601, phone (502) 573-4850, FAX (502) 573-5672.

REGULATORY IMPACT ANALYSIS

Contact person: Pamela Carroll Farmer

- (1) Type and number of entities affected: All retail beer distributors and malt beverage retail licensees.
- (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.

(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.

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

1. First year following implementation: Minimal paperwork.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: No new employees or forms needed.

(a) Direct and indirect costs or savings: None

(b) Reporting and paperwork requirements: None

1. First year: No costs to promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No implementation or enforcement needed.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation will be applied equally to all entities statewide.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Epidemiology (Amendment)

902 KAR 2:090. Tuberculosis detection, prevention, and control [testing].

RELATES TO: KRS 158.037, 211.180, 214.034, 215.520, 1996 Ky. Acts ch. 33

STATUTORY AUTHORITY: KRS 194.050, 211.090, 215.520, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.180

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mandates the Cabinet for Health Services [~~Human Resources~~] to implement a statewide program for the detection, prevention, and control of communicable diseases. KRS 214.034 requires the establishment of tuberculosis testing schedules for children by the Cabinet for Health Services [~~Human Resources~~]. KRS 215.520 requires the cabinet to promulgate administrative regulations to carry out the provisions of 1996 Ky. Acts ch. 33. This administrative regulation describes the procedure for drug susceptibility testing of antituberculosis drugs, the procedure by which timely hospitalization for persons with active tuberculosis shall be obtained, and measures to be taken to prevent spread of tuberculosis. KRS 158.037 requires the establishment of administrative [~~reporting~~] regulations for reporting tuberculin skin test results in children attending all public or private elementary or secondary schools by the Cabinet for Health Services [~~Human Resources~~]. This administrative regulation mandates tuberculin testing for all first time school enrollees in private and public schools in Kentucky and describes the methods for reporting tuberculin skin test results on children to local health departments.

Section 1. Definitions. (1) "Child" means an individual under the age of eighteen (18) years.

(2) "Tuberculin skin test" means the intradermal [~~intracutaneous~~] injection of five (5) tuberculin units of Purified Protein Derivative (PPD) by the Mantoux technique or multiple puncture, but preferably the former.

(3) "First-time enrollee" means a child entering private or public school (primary school, entry level through 12th grades) in the Commonwealth, the child never having attended school in the Commonwealth previously.

(4) The definition of "active tuberculosis" is governed by KRS 215.511.

(5) The definition of "isolates" is governed by KRS 215.511.

(6) "Exception patient" means a patient with tuberculosis identified by the local health department as being in exceptional or infrequent circumstances. Exceptional or infrequent circumstances are those which require:

(a) Short-term hospitalization for invasive diagnostic procedures, respiratory isolation, management of drug-resistant disease, other rare clinical circumstances which, in the judgement of a physician of the Cabinet for Health Services require hospitalization; or

(b) Security measures to counter recalcitrant behavior.

Section 2. (1) A reaction to a tuberculin skin test shall be interpreted using the criteria currently recommended by the American Thoracic Society and the Centers for Disease Control and Prevention.

(2) When the skin test of any child indicates that treatment is needed, the child shall be treated in accordance with the recommendations of the American Thoracic Society and the Centers for Disease Control and Prevention.

Section 3. A first-time enrollee in public or private school in the Commonwealth shall be tested for tuberculosis by tuberculin skin test within eighteen (18) months prior to entering the public or private school. A child who has not been tested prior to entering the public or private schools may be permitted to attend class for a period of time not to exceed thirty (30) days, as approved in writing by the director [~~health officer~~] of the local health department having jurisdiction. Further attendance shall be conditioned upon presentation of proof of having been tested for tuberculosis in accordance with Section 3 of this administrative regulation.

Section 4. [~~3-~~] (1) A first-time enrollee in a public or private school shall present a valid certificate approved by the Cabinet for Health Services [~~Human Resources~~] and signed by the attending physician, advanced registered nurse practitioner, or by the director [~~health officer~~] of the local health department having jurisdiction or his designee, containing the date of the most recent tuberculin skin test,

the type of skin test given (Mantoux, multiple puncture or other), and the millimeters of induration at forty-eight (48) to seventy-two (72) hours posttesting. The test shall have been read by a licensed or certified health professional. The certificate shall become a permanent part of the child's school health record.

(2) If tuberculin skin testing is medically contraindicated according to the written statement of a [~~n attending~~] physician [~~or of the health officer of the local health department having jurisdiction~~], the child shall receive a chest x-ray. The only exception to this requirement is a child who can present documentation of a completed course of the currently recommended American Thoracic Society and the Centers for Disease Control and Prevention [~~isoniazid~~] prophylaxis or multiple drug treatment for previously diagnosed tuberculosis infection or disease.

Section 5. [~~4-~~] A public or private school shall, within sixty (60) days of the beginning of each school year, forward to the local health department having jurisdiction in the area a report containing:

(1) The type of skin test and [~~the~~] millimeters of induration for all first-time enrollees who had any induration at forty-eight (48) to seventy-two (72) hours indicated on their tuberculin skin testing certificate and all first-time enrollees who were excepted in accordance with Section 3(2) of this administrative regulation; and [~~A list showing:~~]

(a) The child's name;

(b) Grade; and

[~~the type of tuberculin skin test performed; and~~]

(2) The number of first-time enrollees by school grade; and of those, the number tested.

Section 6. [~~6-~~] If the prevalence of significant tuberculin reactors among first-time enrollees at a [~~any~~] school exceeds or equals five-tenths (0.5) of one (1) percent, additional testing may be required by the director [~~health officer~~] of the local health department having jurisdiction or the Cabinet for Health Services [~~Human Resources~~]. Results of the testing shall be provided the local health department having jurisdiction. Additional control measures may then be required at the [~~sound~~] discretion of the director [~~health officer~~] of the local health department having jurisdiction or the Cabinet for Health Services [~~Human Resources~~] in order to protect the public health.

Section 7. Drug susceptibility testing to determine the efficacy of prescribed drug therapy for all persons with active tuberculosis shall be performed as follows:

(1) Drug susceptibility testing of initial isolates from clinical specimens obtained from any patient with active tuberculosis shall be performed by a licensed clinical laboratory or the state public health laboratory.

(2) Repeat drug susceptibility testing of a specimen ordered by a physician from a patient who, after three (3) months of treatment, continues to produce specimens which are culture positive for tuberculosis shall be performed by a licensed clinical laboratory or the state public health laboratory on the latest isolate obtained from the patient by the physician.

Section 8. The exception patient shall be assured of timely hospitalization so that no delay shall occur in diagnosis, treatment, or respiratory isolation, when required. The hospitalization shall be facilitated through a local health department director's designee. Private practitioners may refer an exception patient to the local health department in the county in which the exception patient resides.

Section 9. (1) An exception patient who is hospitalized shall be interviewed by the local health department director's designee within seventy-two (72) hours to determine existing health care insurance coverage (third-party insurer, Medicaid).

(2) The local health department director's designee shall ensure that a hospitalized exception patient without health coverage is

evaluated for Medicaid eligibility by the Cabinet for Families and Children and shall assist the exception patient and the Cabinet for Families and Children in efforts to obtain health coverage.

(3) Reimbursement for tuberculosis inpatient services for an exception patient who is determined to be ineligible for health care insurance coverage shall be made to the provider by the Cabinet for Health Services through the local health department at the Medicaid per diem rate or other rate as approved in advance by the Cabinet for Health Services. Reimbursement for tuberculosis inpatient services for an exception patient shall be contingent on the amount of funds accessible to the Tuberculosis Control Program of the Department for Public Health.

(4) Time-limited payment for the hospitalized exception patient shall be made through a contract or memorandum of understanding between the local health department and the admitting facility.

(a) The local health department shall consult with the Cabinet for Health Services, Tuberculosis Control Program, prior to admission of an exception patient in order to access Cabinet for Health Services funds.

(b) If an emergency or nonbusiness day admission of an exception patient is required, this consultation shall occur within seventy-two (72) hours.

Section 10. (1) A security measure which prevents continued transmission of tuberculosis by the exception patient shall be applied incrementally, progressing from remaining at home which is the least restrictive measure, to a more restrictive measure which may be admission to a suitable halfway house, hospital-based respiratory isolation, with guard if necessary, or an adequately ventilated correctional unit.

(2) The local health department director's designee shall arrange adequate security measures to prevent continued transmission of tuberculosis in a setting commensurate with the degree of risk posed by the exception patient.

(3) Time-limited payment for security of an exception patient who is hospitalized or who enters a receiving facility, such as a halfway house or correctional unit, shall be made through a contract or memorandum of understanding between the local health department and the receiving facility.

(a) The local health department shall consult with the Cabinet for Health Services prior to acquisition of security services or placement in a receiving facility in order to access Cabinet for Health Services funds.

(b) If an emergency or nonbusiness day admission or placement is required, this consultation shall occur within seventy two (72) hours.

Section 11. The following material is incorporated by reference in this administrative regulation:

(1) The Joint Statement of the American Thoracic Society and the Centers for Disease Control and Prevention, "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children, 1994", adopted March 1993, and published by the American Lung Association.

(2) Material incorporated by reference may be reviewed or obtained at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky, 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 31, 1996

FILED WITH LRC: August 13, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1996, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1996, five working 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. 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: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky, 40621, (502) 564-7900, Fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger, MD/Joyce Bothe

(1) Type and number of entities affected: This administrative regulation affects all physicians who treat persons with active tuberculosis and all local health departments which have the responsibility for prevention and control of tuberculosis.

(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 hearing was requested as a result of the Notice of Intent being published and no public comments were received by the administrative body.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no public comments were received by the administrative body.

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

1. First year following implementation: Physicians will be required to order drug susceptibility testing.

2. Second and subsequent years: See (c)1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: There will be no increase in direct or indirect cost to the promulgating body. The savings will be seen in the effect of preventing the spread of tuberculosis among the population.

2. Continuing cost or savings: See (a)1.

3. Additional factors increasing or decreasing costs: See (a)1.

(b) Reporting and paperwork requirements: No increase to the cabinet.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues. However, it will clarify the responsibility of local health departments ability to prevent the spread of tuberculosis which will save health dollars which would be used for treatment of the disease.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and General Fund dollars remain available for the prevention and control of tuberculosis.

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

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no public comments were received by the administrative body.

(b) Kentucky: see (6)a.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 215 requires the cabinet to establish

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tuberculosis control measures 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: The prevention of new cases of tuberculosis and the spread of tuberculosis by persons who already have active disease will have a major impact on the public health of persons in all geographic areas of the Commonwealth.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See (8)a.

(c) If detrimental effect would result, explain detrimental effect: See (8)a.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict is known.

(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: Although no written request for a Notice of Intent hearing or written comments were received by the CHS, Office of General Counsel, the draft of the proposed administrative regulation was sent to a sample of agencies, organizations, groups and individuals who are affected by the regulation. This proposed amendment has benefited from this input.

(11) TIERING: Is tiering applied? No. Tiering was not applied because all entities are regulated in the same manner.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will effect the Tuberculosis Control Program of the local health department.

3. State the aspect or service of local government to which this administrative regulation relates. See 2. above.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation clarifies the local health departments ability to take steps necessary to prevent the spread of tuberculosis to the population.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, AUGUST 15, 1996

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(New Administrative Regulation)

200 KAR 5:025. Memoranda of agreement and memoranda of understanding by state agencies.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035, 45A.045(2), 45A.050(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Finance and Administration Cabinet needs to supervise state agencies acting under its delegated authority from MOAs and MOUs. The benefits expected from this administrative regulation are two (2)-fold: to allow the Finance and Administration Cabinet to monitor their delegation of authority to an agency and to enable the Finance and Administration Cabinet to monitor an agency's use of MOAs and MOUs. This administrative regulation will be implemented by requiring a state agency to report annually on all MOAs and MOUs used by that agency and to follow guidelines for use of MOAs and MOUs.

Section 1. Memorandum of agreement (MOA) shall be defined as an agreement for services rendered to a state agency as defined in KRS 45A.690(3), and shall include program administration contracts, but shall not apply to purchases of commodities and supplies.

Section 2. By January 1, 1997, all state agencies with active MOAs shall provide the Finance and Administration Cabinet, Department for Administration with a report on each MOA. The report shall be submitted annually thereafter to the department by September 1 of each year, beginning September, 1997, and shall set out the following information: the name of the party with whom the agency entered the MOA; the type of service to be rendered under the MOA; the cost of the MOA to the agency to date; the projected total cost of the MOA to the agency; and the date the last payment was made under the MOA. The report shall contain information as of the first working day of each month and shall be submitted to the department by the fifth working day of each month. The report shall be in an electronic format approved by the department prior to its use by the agency.

Section 3. Memorandum of understanding (MOU) shall be defined as a contract or agreement used whenever there is a joint project or undertaking by any state agency and another entity or entities, either government or private. The terms of a MOU shall set out the rights, duties and responsibilities of each entity in relation to the project or undertaking and the other entities. The term "joint entity or undertaking" shall include capital construction projects. The MOU shall specify the monetary liability of each entity and shall provide for the return of a specific dollar amount of state funds in the event that the project or undertaking is not begun, or other specific prerequisites are not completed by dates certain.

Section 4. By January 1, 1997, all state agencies with active MOUs shall provide the Secretary of the Finance and Administration Cabinet with a report of each active MOU. The report shall be submitted annually thereafter to the secretary by September 1 of each year, beginning September, 1997, and shall set out the following information: the name of the party or parties with whom the agency entered the MOU; the type of service to be rendered under the MOU; the duties and responsibilities of each party under the MOU; any "flag" dates listed in the MOU by which certain action is to be completed and whether these dates have been met; the cost of the

MOU to the agency to date; the projected total cost of the MOU to the agency; and the date the last payment was made under the MOU. The report shall contain information as of the first working day of each month and shall be submitted to the secretary by the fifth working day of each month. The report shall be in an electronic format approved by the department prior to its use by the agency.

Section 5. This administrative regulation shall not discharge an agency's responsibility to obtain all other necessary statutory and regulatory approvals applicable to the MOA or MOU.

Section 6. This administrative regulation shall not apply to memoranda of agreement or memoranda of understanding entered into by the Kentucky Transportation Cabinet pursuant to KRS Chapters 176 and 177.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1996 at 9 a.m. at the Capitol Annex Building, Room 386. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by September 17, 1996, five days prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: Karen Powell, General Counsel, Office of Legal and Legislative Services, Finance and Administration Cabinet, Capitol Annex Building, 702 Capitol Avenue, Room 374, Frankfort, Kentucky, 40601, Telephone: (502) 564-6660, FAX: (502) 564-9875.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell

(1) Type and number of entities affected: This administrative regulation affects state agencies using MOAs and MOUs delegated by the Finance and Administration Cabinet.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is no anticipated cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation poses no anticipated cost on business in the geographical area in which it will be implemented. A public hearing on this regulation has not yet taken place.

(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: The agencies utilizing MOAs and MOUs will need to comply monthly with written reports to the Secretary of Finance and Administration updating the status of

those memoranda for their duration. The reports will provide the information specified in the administrative regulation. The costs for this compliance should be a minimal investment of time.

2. Second and subsequent years: In following years, the compliance costs of this regulation should remain stable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The primary savings from this regulation will be resources preserved due to keener oversight of state government agencies utilizing MOAs and MOUs.

2. Continuing costs or savings: Prolonged agency accountability to the Finance Cabinet could continue to save state funds into the future. However, no public hearings have been held to address the costs and savings potential of this regulation at this time.

3. Additional factors increasing or decreasing costs: No other factors are known at this time.

(b) Reporting and paperwork requirements: The Finance and Administration Cabinet will need to evaluate the agency reports to monitor the delegation of authority under MOAs and MOUs.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budgets of the affected agencies will supply the revenue to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulation.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: At the Notice of Intent hearing, a representative of the Transportation Cabinet suggested that the Transportation Cabinet should only make the required reports to the Finance and Administration Cabinet when an MOA is executed and terminated, rather than a monthly report of all active MOAs. The regulation's intent, however, is to allow the Finance and Administration Cabinet to exercise appropriate oversight of active MOAs throughout their existence, not just at execution and termination. In order to fulfill this intent, agencies must make the required reports monthly. The alternative was 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: No impact is expected.

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

(c) If detrimental effect would result, explain detrimental effect: Inapplicable

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Division of Purchases and the Division of Contracting and Administration, no statutes, administrative regulations, or government policies conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used). Yes. Section 6 of this regulation exempts the Kentucky Transportation Cabinet from the MOA and MOU requirement because the Transportation Cabinet has independent authority to enter into certain MOAs and MOUs pursuant to KRS Chapters 176 and 177.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)

200 KAR 5:302. Delegation of authority.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035, 45A.045(3), 45A.050(5)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is required by KRS 45A.035 where the Secretary of the Finance and Administration Cabinet delegates purchasing authority to any other agency. It will provide uniformity for all delegations of authority by the Finance and Administration Cabinet and help to ensure the competency of the agency receiving the authority over the proposed delegated area. The administrative regulation will also help to ensure that the agency receiving the authority follows all requirements of KRS Chapter 45A. In addition, this administrative regulation will set out the requirements for the Secretary of the Finance and Administration Cabinet to waive the small purchase limitations pursuant to KRS 45A.100. This administrative regulation includes the substance of the administrative regulation to be repealed, 200 KAR 5:301.

Section 1. Delegations of Authority Other than for Small Purchases. A secretary's order may delegate Finance and Administration Cabinet authority pursuant to KRS 45A.045(3).

(1) A government agency requesting a delegation from the Finance and Administration Cabinet under KRS 45A.045(3) shall submit the following in writing to the secretary:

(a) A statement that the agency will comply with all applicable laws, administrative regulations and Finance and Administration Cabinet policies and procedures.

(b) Proof of competency in the proposed delegated area demonstrated by staff experience and training and the resources available to the agency to perform the purchase delegation.

(2) The secretary's order shall specify the authority the agency shall receive, the purpose for which the delegation is given, and the period of time for which the delegation is valid.

(3) Any agency receiving such delegation shall comply with the provisions of KRS Chapter 45A and all other purchasing statutes, administrative regulations, policies and procedures of the Finance and Administration Cabinet.

(4) Each agency receiving a delegation shall certify annually to the secretary that it is in compliance with all purchasing laws, administrative regulations and policies. This certification shall be filed with the secretary on or before January 1, 1997 and thereafter on July 1 of each year, including July 1, 1997.

(5) All standing delegations of purchasing authority by the secretary shall remain in force according to the original terms thereof unless modified, or until rescinded by the secretary.

(6) Delegations of purchasing authority for an agency's individual requirements, or to authorize procurement activities by an agency for preestablished and limited periods of time may be granted as appropriate with regard to the procurement activity or function by the Commissioners of the Departments for Administration and Facilities Management or their designees by letter setting forth with particularity the kind and type of procurement activity or function authorized by the delegation and fixing the limits and restrictions or the exercise of the delegation and its duration. No such delegation of purchasing authority shall be extended or renewed except with the written approval of the Secretary of the Finance and Administration Cabinet.

Section 2. Small Purchase Delegation Exceeding an Agency's Statutory Small Purchase Limit Under KRS 45A.100. The Secretary of the Finance and Administration Cabinet may delegate purchasing authority that exceeds the agency's small purchase limit set out in

KRS 45A.100 by secretary's order. These standing delegations shall set forth with particularity the kind or type of procurement activity or function delegated together with any limitations or restrictions on the exercise of such authority.

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

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

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

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

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

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

(f) Every record of control weakness or noncompliance relating to procurement practices issued to the agency by the Auditor of Public Accounts, internal auditors, or the Finance Divisions of Purchases or Contracting and Administration, for each of the past two (2) fiscal years and the agency's response to the finding. All such records of control weakness or noncompliance shall be addressed in the agency's request and any corrective measure taken shall be to the satisfaction of the Secretary of the Finance and Administration Cabinet.

(g) A list of the agency's procurement personnel, below the level of Branch Manager, to whom the agency will give signature authority for purchases at the requested higher small purchase limits and their professional purchasing certification or training. Such persons shall, within one (1) year after the granting of the delegation or within one (1) year of employment in government in a procurement position, whichever is sooner, have completed a course in purchasing offered by the Finance and Administration Cabinet's Division of Purchases and Division of Contracting and Administration, or the introductory course in purchasing offered by the National Institute of Governmental Purchasing or an equivalent course offered by the National Association of Purchasing Management.

(2) The requesting agency shall utilize each on-line function of the Kentucky Automated Purchasing System that has been offered to the agency by the Divisions of Purchases or Contracting and Administration.

(3) The Divisions of Purchases and Contracting and Administration may perform or request the performance of periodic procurement audits of the agencies to which small purchase delegation above the limits established in KRS 45A.100 has been granted. Such audits shall investigate an agency's compliance with the provisions of KRS Chapter 45A, purchasing administrative regulations and the Finance and Administration Cabinet Manual of Policies and Procedures. If an agency demonstrates deficiencies in procurement expertise or practice, the divisions shall recommend that the secretary revoke or amend any delegations granted under this administrative regulation. Authority shall be extended or renewed except with the written approval of the secretary.

Section 3. 200 KAR 5:301. Delegation of purchasing authority, is hereby repealed.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1996 at 10 a.m. at the Capitol Annex Building, Room 386. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by September 17, 1996, five days prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: Karen Powell, General Counsel, Office of Legal and Legislative Services, Finance and Administration Cabinet, Capitol Annex Building, 702 Capitol Avenue, Room 374, Frankfort, Kentucky, 40601, Telephone: (502) 564-6660, FAX: (502) 564-9875.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell

(1) Type and number of entities affected: This administrative regulation affects agencies delegated purchasing authority by the Secretary of Finance and 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. There is no anticipated cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation poses no anticipated cost on business in the geographical area in which it will be implemented. A public hearing on this regulation has not yet taken place.

(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: For nonsmall purchase delegations made pursuant to KRS 45A.45(3), a government agency requesting a delegation from the Finance and Administration Cabinet shall submit, in writing to the secretary, a detailed analysis of the cost savings and benefit to the requesting agency if the delegation is made, a statement that the agency will comply with all applicable laws, regulations, and Finance and Administration Cabinet policies and procedures, and proof of competency in the proposed delegation area demonstrated by staff experience and training and the resources available to the agency to perform the purchase delegation. Each agency receiving a delegation of authority shall certify annually to the secretary that it is in compliance with all purchasing laws, regulations and policies. This certification shall be filed with the secretary on or before January 1, 1997 and thereafter on July 1 of each year, including July 1, 1997. For delegations exceeding an agency's statutory small purchase limits under KRS 45A.100, an agency is required to request the delegation in writing and include information relating to the total dollars spent during the 2 preceding fiscal years under the agency's existing small purchase authority, the agency's

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organizational structure, internal controls, control weaknesses in the procurement area as documented by an auditing body, and a list of the agency's procurement personnel who will be given procurement authority and their professional certifications or training.

2. Second and subsequent years: In following years, the compliance costs of this regulation for nonsmall purchase delegations under KRS 45A.045(3) should remain stable as agencies comply with the annual certification requirement. The compliance cost should also remain the same for delegation of small purchase authority that exceeds the statutory limit of KRS 45A.100 as agencies utilize this small purchase delegation procedure.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will not affect the costs of the Finance and Administration Cabinet, but will allow it to shift its procurement efforts toward procurement training, monitoring and related proactive functions.

2. Continuing costs or savings: The Finance and Administration Cabinet expects to see a decrease in the cost of procurement for state government as a whole as more emphasis is placed on training, monitoring and related proactive functions. However, no public hearings have been held to address the costs and savings potential of this regulation at this time.

3. Additional factors increasing or decreasing costs: No other factors are known at this time.

(b) Reporting and paperwork requirements: The Finance and Administration Cabinet will need to evaluate the agency reports to monitor the delegations of nonsmall purchase authority to the affected agencies. The cabinet will also need to review the information submitted by agencies requesting a delegation of small purchase authority above that granted by KRS 45A.100.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budgets of the affected agencies will supply the revenue to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulation.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is an alternative to the current previous delegation of purchasing authority, 200 KAR 5:301. This regulation will provide uniformity for all delegations of authority by the Finance and Administration Cabinet and help to ensure the competency of the agency receiving the authority and that such agency follows all requirements of KRS Chapter 45A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

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

(c) If detrimental effect would result, explain detrimental effect: Inapplicable

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Finance and Administration Cabinet, no statutes, administrative regulations, or government policies conflict, overlap, or duplicate this administrative regulation except 200 KAR 5:301, which is repealed by this regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used). No. While there are different types of delegations under this regulation, tiering was not used because all agencies are treated similarly when applying for, and complying with the terms of, a particular delegation.

FINANCE AND ADMINISTRATION CABINET

Department for Administration

Division of Purchases

(New Administrative Regulation)

200 KAR 5:325 Consideration to be given to use of Kentucky-made wood products.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035, 45A.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary because the historic purchasing practices of state agencies do not provide consistent consideration of the use of Kentucky-made wood products.

Section 1. The Finance and Administration Cabinet shall develop a list, by commodity item, of Kentucky manufacturers who produce wood products, including furniture, crafts, gift shop items, construction materials, and other minor office furnishings, such as in/out mail boxes, that are used by government bodies. In developing this list, the cabinet may consult with the Cabinet for Economic Development, the Tourism Cabinet, and the Kentucky Wood Products Competitiveness Corporation. The cabinet may utilize its current "source application" or Vendor Information Program electronic registration system to produce this list, which may be incorporated into the master source lists maintained by the Division of Purchases and the Division of Contracting and Administration.

Section 2. Commonwealth agencies requesting the purchase of wood products shall review specifications for those procurements to:

(1) Assure that specifications do not preclude the use of Kentucky-made wood products without full written justification included in the requisition for such wood products.

(2) Consider the use of generic specifications which describe functional and performance requirements to which responsible Kentucky wood products manufacturers could be responsive.

(3) Assure that "brand name or approved equal" specifications are used only after it has been determined that functional and performance-based specifications cannot reasonably be prepared.

Section 3. The Finance and Administration Cabinet may review the specifications for wood product procurement requests and may permit the Kentucky Wood Products Competitiveness Corporation, and other governmental entities whose interests include providing business opportunities to Kentucky wood products manufacturers, to review the specifications.

Section 4. Every purchasing agency of the Commonwealth shall review the listing developed pursuant to Section 1 of this administrative regulation when requesting bids for wood products. Potential bidders included on this list shall be among those to whom bid invitations are transmitted or to whom bid invitations are made available.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 4 p.m.

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PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1996 at 2 p.m. at the Capitol Annex Building, Room 386. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by September 17, 1996, five days prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: Karen Powell, General Counsel, Office of Legal and Legislative Services, Finance and Administration Cabinet, Capitol Annex Building, 702 Capitol Avenue, Room 374, Frankfort, Kentucky, 40601, Telephone: (502) 564-6660, FAX: (502) 564-9875.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell

(1) Type and number of entities affected: This administrative regulation affects the Finance and Administration Cabinet and the purchasing agencies of the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no anticipated costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no anticipated costs of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

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

1. First year following implementation: There are no anticipated compliance, reporting, or paperwork requirements. There should be no effect upon competition.

2. Second and subsequent years: There are no anticipated compliance, reporting, or paperwork requirements. There should be no effect upon competition.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings.

2. Continuing costs or savings: There are no anticipated costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors are anticipated to affect costs.

(b) Reporting and paperwork requirements: This regulation requires procurement agencies to review their standards regarding wood products and adapt them (if possible) to permit Kentucky manufacturers to effectively compete for the Commonwealth's business. The Finance Cabinet will provide the initial lists that will eventually be adopted into the master source lists of the Division of Purchases.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The revenue source will

come from the existing general fund appropriation.

(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 data is available on the economic impact in the geographical area in which this administrative regulation will be implemented. However, no public hearing has yet been held on the regulation.

(b) Kentucky: Presumably, this regulation will benefit the Commonwealth's wood manufacturing industry by expanding market demand for its wares. However, no public hearing has yet been held on the regulation's economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were presented to achieve this regulation's goal.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

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

(c) If detrimental effect would result, explain detrimental effect: Inapplicable

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Division of Purchases and the Division of Contracting and Administration, no statutes, administrative regulations, or government policies conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used). No. Tiering was not used because this regulation applies equally to all purchasing agencies.

DEPARTMENT OF AGRICULTURE Division of Regulation and Inspection (New Administrative Regulation)

302 KAR 78:020. Use, sale and distribution of tobacco products.

RELATES TO: KRS Chapter 438, SB 137

STATUTORY AUTHORITY: SB 137

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Proof of age shall be by a driver's license or nondriver 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

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PERSON UNDER AGE EIGHTEEN IS PROHIBITED BY KENTUCKY LAW. KRS 438.310(1).

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: August 6, 1996

FILED WITH LRC: August 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, September 23, 1996 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Monday, September 16, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

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:

(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.

(b) Reporting and paperwork requirements: None

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

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

(c) If detrimental effect would result, explain detrimental effect: 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? (Explain why tiering was or was not used) No. Proof of age will require drivers license or non-drivers 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.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of Chief State School Officer

(New Administrative Regulation)

701 KAR 5:051. Repeal of 701 KAR 5:050, Summary hearing procedures.

RELATES TO: KRS 156.132, 156.210

STATUTORY AUTHORITY: KRS 156.070, 156.132

NECESSITY, FUNCTION, AND CONFORMITY: 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 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.

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work 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

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written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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 local public school officials.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Chief State School Officer (New Administrative Regulation)

701 KAR 5:086. Repeal of 701 KAR 5:085, Hearing process for school-based decision making complaints.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY, FUNCTION, AND CONFORMITY: 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.

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
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

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

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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 local public school officials.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of District Support Services (New Administrative Regulation)

702 KAR 3:285. School district Medicaid providers.

RELATES TO: KRS 156.070, 605.115

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 sets forth the Kentucky Board of Education's plenary powers over the management and control of local school districts and, along with KRS 156.160, gives the Kentucky Board of Education the authority to promulgate administrative regulations deemed necessary for the management of the school districts under its control. This administrative regulation is necessary to provide guidance for local school districts that choose to be Medicaid providers.

Section 1. Definitions. (1) "School district Medicaid recipient" means one who has been determined eligible for Medicaid-covered benefits provided by a local school district participating in the Medicaid Program.

(2) "School district Medicaid provider" means a local school district which has entered into an agreement with the Department for

Medicaid Services, Cabinet for Human Resources, to receive Medicaid reimbursement for health-related services provided by the district.

Section 2. School District Medicaid Provider Agreements. (1) Pursuant to KRS 605.115, the Department of Education shall enter into an agreement with the Department for Medicaid Services, Cabinet for Human Resources, to provide reimbursement upon request to local districts for Medicaid covered benefits provided to eligible students.

(2) Local school districts may enter into an agreement with the Department for Medicaid Services, Cabinet for Human Resources, to become eligible to receive Medicaid reimbursement for Medicaid covered services provided to eligible students pursuant to KRS 605.115.

(3) Local school districts which choose to participate shall be required to comply with provider participation criteria set forth in 907 KAR 1:715, 1:034, and 1:035, promulgated by the Department for Medicaid Services, Cabinet for Human Resources.

Section 3. Administrative Guidelines. (1) To receive federal Medicaid reimbursement, local school districts shall provide the state's share of the Medicaid expenditure and shall be required to document and certify the expenditure of state funds for Medicaid reimbursable services provided to Medicaid eligible student recipients. This certification of the availability and expenditure of state funds shall be provided as needed to the Department for Medicaid Services by local school districts for verification of state matching funds entitling the local school district to reimbursement for specific Medicaid reimbursable services provided by the school district. Certification shall include a statement on the Medicaid claim form or a signed statement from the local school district superintendent or finance officer. The Department of Education and the Department for Medicaid Services, Cabinet for Human Resources, may examine any records, files, or documents necessary to verify expenditures for Medicaid covered services for which certification of state matching funds has been made.

(2) Documentation of available or expended state matching dollars shall be provided as required by the Department for Medicaid Services and may include the following:

(a) Records relating to time and attendance of service providers; or

(b) Records of expenditures, including invoices, related to the services provided by or through the local school district.

(3) Federal funds shall not be used by school districts to match Medicaid funds.

(4) Local school districts shall include in the annual audit an accounting of revenues and expenditures relative to serving Medicaid eligible student recipients. The Department of Education shall provide the Cabinet for Human Resources a copy of this annual audit.

(5) The Department for Medicaid Services, Cabinet for Human Resources, the Health Care Financing Administration of Health and Human Services, the Office of Inspector or their designated representatives may audit a local school district to verify compliance with all federal and state Medicaid statutes and administrative regulations relating to local school district receipt of Medicaid reimbursement for approved services.

Section 4. Parent/Guardian Consent. (1) Local school districts shall obtain written parent or guardian consent pursuant to the requirements of the Individuals with Disabilities Education Act (IDEA) Regulations (34 CFR 300) prior to provision of services in an individual education program (IEP).

(2)(a) Parents or guardians shall be given prior written notification on an annual basis that the local school district may be submitting claims for Medicaid reimbursement of health related services provided to students with educational disabilities as required by the student's

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IEP.

(b) The rights of the parent or guardian under IDEA shall not be affected in any way as a result of the local school district's participation in the Medicaid Program.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 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 September 19, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 9321.

REGULATORY IMPACT ANALYSIS

Contact: Tom Willis

(1) Type and number of entities affected: 176 local school districts.

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

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

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

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

1. First year following implementation: Increase in paperwork to bill, certify, and confirm expenditures. In return for claims submitted, districts should receive Medicaid reimbursement which will more than offset any increased costs for paperwork.

2. Second and subsequent years: Increase in paperwork to bill, certify, and confirm expenditures. In return for claims submitted, districts should receive Medicaid reimbursement which will more than offset any increased costs for paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reports to this agency will be required as a result of this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: Local school districts which participate will experience an increase in

federal funds.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required. Regulation will be enforced by Department of Education.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 160.730 requires promulgation of a regulation on this subject.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. The administrative regulation applies equally to all 176 local school districts.

LABOR CABINET

Department of Workers Claims
(New Administrative Regulation)

803 KAR 25.015 Procedure in workers' compensation enforcement hearings.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 13B.170, 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes administrative agencies to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. KRS 342.260 requires the commissioner of the Department of Workers' Claims to prepare administrative regulations necessary to carry on the work of the department and administrative law judges. Although hearings conducted under KRS Chapter 342 for the purposes of determining workers' compensation benefits and the adjustment of claims have been exempted from the application of KRS Chapter 13B pursuant to KRS 13B.020(3)(e)1a, enforcement hearings have not been exempted. The procedures contained in this administrative regulation shall apply to enforcement hearings under KRS Chapter 342.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Commissioner" means the Commissioner of the Department of Workers' Claims appointed pursuant to KRS 342.228.

(3) "Working day" means any day that falls on a Monday through Friday, with the exception of any state or federal holiday, or other days on which the Department of Workers' Claims is officially closed for business.

Section 2. Issuance of Citation and Notice of Contest. Whenever the commissioner initiates enforcement of a civil penalty pursuant to KRS 342.990, the "notice of citation and penalty" shall be delivered to the appropriate party by certified mail, or hand delivery may be made by authorized personnel of the Department of Workers' Claims.

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The party to whom a notice of citation and penalty has been delivered may contest the citation and penalty by filing a written "notice of contest" with the commissioner within fifteen (15) working days of the receipt of the notice of citation and penalty. A notice of contest shall state the grounds of the contest, and whether the fact of a violation or level of the civil penalty, or both, is being contested. If a notice of contest is not timely filed, the citation shall be deemed final and the penalty due for payment.

Section 3. Assignment to Administrative Law Judge; Prehearing Procedure. (1) As soon as practicable upon receipt of a notice of contest, the commissioner shall direct the chief administrative law judge to assign the matter to an administrative law judge for a hearing.

(2) The administrative law judge assigned to an enforcement matter may, but is not required to, conduct a prehearing conference. If a prehearing conference is not held the administrative law judge may issue a prehearing order, based upon information contained in the notice of citation and the written contest, to regulate the conduct of the formal hearing.

(3) The parties shall stipulate to uncontested facts and issues prior to the formal hearing unless a prehearing order directs otherwise. A joint stipulation of uncontested facts and issues shall be filed by the parties with the administrative law judge not later than five (5) working days prior to the scheduled hearing date. Each party shall also file the witness and exhibit list described in KRS 13B.090(3) with the administrative law judge not later than five (5) working days prior to the scheduled hearing date, and shall serve copies upon all other parties.

(4) The administrative law judge to whom an enforcement matter is assigned may issue subpoenas and discovery orders when requested by a party.

(5) The administrative law judge to whom an enforcement matter is assigned shall issue a notice of hearing to the parties as soon as practicable, but not less than twenty (20) days in advance of the hearing date. The notice shall be served on the parties by certified mail or personal service as provided by KRS 13B.050 and shall include the information required by KRS 13B.050. The statement of the issues involved shall be based upon the notice of citation and penalty, notice of contest, and any related pleadings or notices on file at the time the notice of hearing is issued. Additional issues may not be raised at the formal hearing except for good cause shown, as determined by the administrative law judge.

Section 4. Formal Hearing. (1) An administrative law judge shall preside over the conduct of the formal hearing and shall regulate the course of the proceeding in accordance with KRS Chapter 13B and any prehearing order issued by the administrative law judge.

(2) Only attorneys duly licensed in Kentucky may practice before the administrative law judges in enforcement matters, except that any natural person who is a party may represent himself.

(3) The burden of proof in a formal hearing shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence.

(4) Any party may submit proof at the formal hearing through the use of depositions, provided that the other parties received timely notice and had the opportunity to attend.

Section 5. Final Order. (1) The administrative law judge assigned to an enforcement matter shall issue a final order not later than sixty (60) days following the conclusion of the formal hearing, unless otherwise agreed by the parties.

(2) The final order shall include findings of fact, conclusions of law, and an order affirming, dismissing, or modifying the notice of citation and penalty, as appropriate.

(3) The final order of the administrative law judge shall be transmitted to each party or the party's attorney of record in the

manner provided in KRS 13B.050, unless waived by the party.

Section 6. Appeal/Payment of Fine. (1) If a party does not file a petition of appeal pursuant to KRS 342.990 and 13B.140 in the Franklin Circuit Court within thirty (30) days after the order and opinion of the administrative law judge is mailed or delivered by personal service, the order shall be deemed final and any civil penalty assessed in the order shall be due.

(2) Any civil penalty that is not appealed to the Franklin Circuit Court shall be paid by certified check or money order payable to the Kentucky State Treasurer. The fine shall be mailed to the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601 ATTN: Enforcement Docket.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: August 15, 1996

FILED WITH LRC: August 15, 1996 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, 405 Mero Street, Frankfort, Kentucky 40601, Rooms A, B, C, on Wednesday, September 25, 1996 at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, FAX (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: Employers who do not carry workers' compensation insurance, employees who knowingly obtain workers' compensation benefits to which they are not entitled, and others who receive citations for violation of the provisions of KRS Chapter 342. This administrative regulation is expected to apply to approximately 300 citations, resulting in approximately 60 formal hearings, each year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received concerning this proposed administrative regulation during the "Notice of Intent" stage.

(b) Cost of doing business in geographical area in which the administrative regulation will be implemented to the extent available from public comments received: No public comments have been received concerning this proposed administrative regulation. Enforcement of the provisions of the Workers' Compensation Act requiring employers to carry this insurance results in the noncomplying employers purchasing policies of workers' compensation insurance if they wish to remain in business; in the event that an employee is injured, however, such employers will experience savings as the result of not having to pay income and medical benefits to employees out-of-pocket.

(c) Compliance reporting and paperwork requirements for the:

1. First year following implementation. The purpose of the administrative regulation is to permit administrative law judges of the Department of Workers' Claims who hear enforcement matters to

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follow a uniform procedure in compliance with KRS Chapter 13B. These hearings are currently being held under similar procedures, and paperwork requirements overall will not change.

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: Costs for printing and distributing informational copies of the regulation to parties are estimated to be not more than \$1,000.

2. Continuing costs or savings: Minimal after the first year.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of this administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122. Pursuant to KRS 342.990 and 342.760, fines are paid into the Kentucky Workers' Compensation Funding Commission, also. The general fund is not involved.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky. No public comments have been received concerning its economic impact.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected. KRS Chapter 13B requires agencies to follow a standardized procedure in hearings that are not exempt. The workers' compensation claims or benefits hearings conducted by administrative law judges under KRS Chapter 342 were exempted from the procedures of KRS Chapter 13B, but the enforcement hearings were not. For that reason, a separate administrative regulation is required concerning the procedure to be followed in enforcement hearings.

(8) Assessment of expected benefits:

(a) Effect on public health and environment: No effect.

(b) Detrimental effect on environment and public health if not implemented. No effect.

(c) Explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping or duplication: This proposed administrative regulation attempts to integrate and harmonize the relevant provisions of KRS Chapters 13B and 342.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize proposed administrative regulation with conflicting provisions: Not applicable.

(10) Additional information or comments: None

(11) Tiering: Is tiering applied? No. Each party receiving a "Notice of Citation and Penalty" for alleged violations of the Workers' Compensation Act receives the same level of due process procedures and protection.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Alcoholic Beverage Control
(New Administrative Regulation)

804 KAR 13:010. Tobacco enforcement and administration.

RELATES TO: EO 96-619

STATUTORY AUTHORITY: EO 96-619

NECESSITY, FUNCTION, AND CONFORMITY: SB137, 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 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, notification of the employees of a seller of tobacco products of the requirements of SB 137, administrative proceedings in the enforcement of SB 137, and the collection of statistics relating to the illegal sale to minors of tobacco products and enforcement of SB 137.

Section 1. Definition. "Department" means the Department of Alcoholic Beverage Control.

Section 2. Administration. The department shall be the administrative agency for hearing violations of KRS 438.305 to 438.340.

Section 3. Enforcement. (1) The department shall record and investigate complaints relating to violations of KRS 438.305 to 438.340.

(2) The department shall enforce the provisions of KRS 438.305 to 438.340 by random inspection conducted by duly qualified enforcement officers and agents of the department.

(3) The department may employ underage buyers to participate in enforcement activities. The participation of the underage buyers shall be contingent upon a written consent and release from his or her parents or legal guardian, and upon the completion of enforcement training to be conducted by the department.

(4) The department shall conduct annually random base line sampling to determine the existing level of tobacco sales to minors on or before June 30 of each fiscal year. A copy of the annual survey shall be submitted to the Department of Agriculture.

(5) The result of the annual survey may be inspected, copied or obtained at the office of the Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, excepting state holidays.

Section 4. Procedures. (1) A person found to be violation of KRS 438.305 to 438.340 may be cited by the department. Any administrative citation shall conform to the requirements of KRS Chapter 13B.

(2) A person receiving an administrative citation pursuant to KRS 438.305 to 438.340 may request an administrative hearing, to be conducted by the department, to contest the allegation in the citation. The department may, in its discretion, employ one (1) or more hearing officers to conduct the administrative hearings. All administrative hearings shall be governed by KRS Chapter 13B.

(3) A fine levied pursuant to an administrative citation shall be prepayable within thirty (30) days of issuance of the citation. A person not wishing to contest the allegations in the citation may resolve the charge by mailing a check or money order in the amount set forth in the citation, payable to the Kentucky State Treasurer, to the hearing agency name and address set forth in the citation.

(4) Disposition of juvenile records. The department shall preserve the confidentiality of all juvenile records. Juvenile records shall be maintained in a separate filing system, under lock and key, with access limited to the parties and their legal counsel. Juvenile records shall be destroyed one (1) year after the case is conducted, with all avenues of appeal exhausted. The department shall maintain statistical summaries of case information, including date of buy, geographical location of buy, name and address of retail seller, date of purchase, date of birth and gender of underage buyer, and disposition of case. Statistical summaries relating to underage buyers shall not identify the underage buyer by name.

(5) Evidence seized in the course of administrative violations of KRS 438.305 to 438.340 shall be maintained by the department in a secured evidentiary storage facility. The department may destroy evidence related to a case thirty-one (31) days after the case is concluded, with all avenues of appeal exhausted.

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Section 5. Appeal. A person aggrieved by the final ruling of the department may appeal such ruling to the Franklin Circuit Court, Frankfort, Kentucky 40601 within thirty (30) days of the rendition of such ruling.

LAURA DOUGLAS, Secretary
GREG GINTER, Commissioner

APPROVED BY AGENCY: June 24, 1996

FILED WITH LRC: August 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, September 26, 1996, at 1 p.m., in the Hearing Room of the Kentucky Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, September 19, 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: Ms. Cynthia Newton, Secretary to the Board, Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Pamela Carroll Farmer

(1) Type and number of entities affected: Approximately 5,000.

(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.

(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.

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

1. First year following implementation: Maintain separate file for each retail establishment subject to compliance check and for enforcement action, compile and maintain annual baseline random statewide retailer sample, create and maintain records of unlawful retail sales statewide, compile, maintain and submit reports consistent with federal regulations.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: Anticipate new employees in both office and enforcement officers.

(a) Direct and indirect costs or savings:

1. First year: Additional personnel costs, salaries, training, furniture, office equipment, enforcement vehicles, salaries, training, travel (enforcement), additional office space and equipment.

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: Unknown

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Transfer of funds from Department of Agriculture and the ABC retaining 1/2 of all fines collected pursuant to the enforcement of SB 137.

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

from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No existing regulations in effect.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Reduction of sales of tobacco products to minors.

(b) State whether a detrimental effect on enforcement and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without the enforcement of SB 137, a detrimental effect is anticipated on the health and safety of Kentucky's minors.

(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: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation will be applied equally to all entities statewide.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals (New Administrative Regulation)

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

RELATES TO: KRS 351.020, 352.201

STATUTORY AUTHORITY: KRS 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.201 requires each underground coal mine to formulate and follow an approved roof control plan. The minimum standards of roof support which are required by the department as a part of its roof control plan approval process are not currently set out in statute or administrative regulation. This proposed administrative regulation establishes those minimum standards for roof support and the roof control plan approval process.

Section 1. Definitions. The definitions established in KRS 351.010 and 352.010 shall apply to this administrative regulation, in addition to those set out below:

(1) "Roof control plan" means the plan and its revisions which has been adopted by the licensee for support of the mine roof and approved by the commissioner or his authorized representative pursuant to KRS 352.201(1).

(2) "Automated temporary roof support" or "ATRS" means a mechanical device used to temporarily support the roof while roof bolts are being installed.

(3) "Automated temporary roof support system" means the devices and mechanisms - including the ATRS - used, and methods followed by which ATRS is activated and set to support the roof.

(4) "Mining height" means the distance between the bottom of the coal seam and the bottom of permanent mechanical roof support, and specifically does not include or apply to the brushing of top or bottom for construction work and to coal left unmined for purposes of providing additional roof support.

(5) "Pillar recovery" means any reduction in pillar size during retreat mining.

Section 2. Mining Methods. (1) The method of mining shall not expose any person to hazards caused by excessive widths of rooms, crosscuts and entries, or faulty pillar recovery methods. Pillar

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dimensions shall be compatible with effective control of the roof, face, ribs and coal or rock bursts.

(2) A sightline or other method of directional control shall be used to maintain the projected direction of mining in entries, rooms, crosscuts and pillar splits.

(3) A sidecut shall be started only from an area that is supported in accordance with the roof control plan.

(4) A working face shall not be mined through into an unsupported area of active workings, except when the unsupported area is inaccessible.

(5) Additional roof support shall be installed where:

(a) The width of the opening specified in the roof control plan is exceeded by more than twelve (12) inches; and

(b) The distance over which the excessive width exists is more than five (5) feet.

Section 3. Roof Bolting. The following material is incorporated by reference: American Society for Testing and Materials (ASTM), Designation: F 432-95, "Standard Specification for Roof and Rock Bolts and Accessories, 1995 Edition." Copies of the material incorporated by reference may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, (610) 832-9500; it is also available for public inspection at the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky, Monday through Friday, from 8 a.m. until 4:30 p.m.

(1) For roof bolts and accessories addressed in ASTM, F 432-95, the licensee shall:

(a) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM; and

(b) Make this certification available to an authorized representative of the commissioner.

(2) Roof bolts and accessories not addressed in the material incorporated by reference may be used, provided that the use of those roof bolts and accessories is approved by the commissioner or his authorized representative based on:

(a) Demonstrations which show that the materials have successfully supported the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(b) Tests which show the materials to be effective for supporting the roof in an area of the affected mine which has strata, opening dimensions and roof stresses similar to those in the area where the roof bolts are to be used; during the test process, access to the test area shall be limited to persons necessary to conduct the test.

(3) A bearing plate shall be firmly installed with each roof bolt.

(4) Bearing plates used directly against the mine roof shall be at least six (6) inches square or the equivalent, except that where the mine roof is firm and not susceptible to sloughing, bearing plates five (5) inches square or the equivalent may be used.

(5) Bearing plates used with wood or metal materials shall be at least four (4) inches square or the equivalent.

(6) Wooden materials that are used between a bearing plate and the mine roof in areas which will be used for three (3) years or more shall be treated to minimize deterioration.

(7) When washers are used with roof bolts, the washers shall conform to the shape of the roof bolt head and bearing plate.

(8) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used.

(9) When separate finishing bits are used, they shall be distinguishable from other bits.

Section 4. Tensioned Roof Bolts. (1) Roof bolts that provide support by creating a beam of laminated strata shall be at least thirty (30) inches long. Roof bolts that provide support by suspending the roof from overlying stronger strata shall be long enough to anchor at

least twelve (12) inches into the stronger strata.

(2) Test holes, spaced at intervals specified in the roof control plan, shall be drilled to a depth of at least twelve (12) inches above the anchorage horizon of the bolts being used. When a test hole indicates that bolts would not anchor in competent strata, corrective action shall be immediately taken.

(3) The installed torque or tension ranges for roof bolts as specified in the roof control plan shall maintain the integrity of the support system and shall exceed neither the yield point of the roof bolt nor anchorage capacity of the strata.

(4) In each roof bolting cycle, the actual torque or tension of the first tensioned roof bolt installed with each drill head shall be measured immediately after it is installed. Thereafter, for each drill head used, at least one (1) roof bolt out of every four (4) installed shall be measured for actual torque or tension. If the torque or tension of any of the roof bolts measured is not within the range specified in the roof control plan, corrective action shall be taken.

(5) In working places from which coal is produced during any portion of a twenty-four (24) hour period, the actual torque or tension on at least one (1) out of every ten (10) previously installed, mechanically anchored, tensioned roof bolts shall be measured from the outby corner of the last open crosscut to the face in each advancing section. Corrective action shall be taken if the majority of the bolts measured:

(a) Do not maintain at least seventy (70) percent of the minimum torque or tension specified in the roof control plan, fifty (50) percent if the roof bolt plates bear against wood; or

(b) Have exceeded the maximum specified torque or tension by fifty (50) percent.

(6) The licensee or a person designated by him shall certify by signature and date that measurements required by subsection (5) of this section have been made. This certification shall be maintained for at least one (1) year and shall be made available to an authorized representative of the commissioner and representatives of the miners.

(7) Tensioned roof bolts installed in the roof support pattern shall not be used to anchor trailing cables or used for any other purpose that could affect the tension of the bolt. The hanging of trailing cables, line brattice, telephone lines, or other similar devices which do not place sudden loads on the bolts is permitted.

(8) Angle compensating devices shall be used when tensioned roof bolts are installed at angles greater than five (5) degrees from the perpendicular to the bearing plate.

(9) The first nontensioned grouted roof bolt installed during each roof bolting cycle shall be tested during or immediately after the first row of bolts has been installed. If the bolt tested does not withstand at least 150 foot-pounds of torque without rotating in the hole, corrective action shall be taken.

Section 5. Installation of Roof Support Using Mining Machines with Integral Roof Bolters. When roof bolts are installed by a continuous mining machine with integral roof bolting equipment:

(1) The distance between roof bolts shall not exceed ten (10) feet crosswise;

(2) Roof bolts to be installed nine (9) feet or more apart shall be installed with a wooden crossbar at least three (3) inches thick and eight (8) inches wide, or material which provides equivalent support; and

(3) Roof bolts to be installed more than eight (8) feet but less than nine (9) feet apart shall be installed with a wooden plank at least two (2) inches thick and eight (8) inches wide, or material which provides equivalent support.

Section 6. Conventional Roof Support. (1) When conventional roof support materials are used as the only means of support:

(a) The width of any opening shall not exceed twenty (20) feet;

(b) The spacing of roadway roof support shall not exceed five (5) feet;

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(c) Supports shall be installed to within five (5) feet of the uncut face;

(d) When supports nearest the face must be removed to facilitate the operation of face equipment, equivalent temporary support shall be installed prior to removing the supports;

(e) Straight roadways shall not exceed sixteen (16) feet wide where full overhead support is used and fourteen (14) feet wide where only posts are used;

(f) Curved roadways shall not exceed sixteen (16) feet wide; and

(g) The roof at the entrance of all openings along travelways which are no longer needed for storing supplies or for travel of equipment shall be supported by extending the line of support across the opening.

(2) Conventional roof support materials shall meet the following specifications:

(a) The minimum diameter of cross-sectional area of wooden posts shall be as follows:

Post Length (in inches)	Diameter of round post (in inches)	Cross-sectional area of split post (in square inches)
60 or less	4	13
Over 60 to 84	5	20
Over 84 to 108	6	28
Over 108 to 132	7	39
Over 132 to 156	8	50
Over 156 to 180	9	64
Over 180 to 204	10	79
Over 204 to 228	11	95
Over 228	12	113

(b) Wooden materials used for support shall have the following dimensions:

1. Cap blocks and footings shall have flat sides and be at least two (2) inches thick, four (4) inches wide and twelve (12) inches long;

2. Crossbars shall have a minimum cross-sectional area of twenty-four (24) square inches and be at least three (3) inches thick;

3. Planks shall be at least six (6) inches wide and one (1) inch thick.

(c) Cribbing materials shall have at least two (2) parallel flat sides.

(3) A cluster of two (2) or more posts that provide equivalent strength may be used to meet the requirements of subsection (2)(a) of this section, except that no post shall have a diameter less than four (4) inches or have a cross-sectional area less than thirteen (13) square inches.

(4) Materials other than wood used for support shall have support strength at least equivalent to wooden material meeting the applicable provisions of this section.

(5) Posts and jacks shall be tightly installed on solid footing.

(6) When posts are installed under roof susceptible to sloughing, a cap block, plank, crossbar or materials that are equally effective shall be placed between the post and the roof.

(7) Blocks used for lagging between the roof and crossbars shall be spaced to distribute the load.

(8) Jacks used for roof support shall be used with at least thirty-six (36) square inches of roof-bearing surface.

Section 7. Pillar Recovery. (1) Full and partial pillar recovery shall not be conducted on the same pillar line, except where physical conditions such as unstable floor or roof, falls of roof, oil and gas well barriers or surface subsidence require that pillars be left in place.

(2) Before mining is begun in a pillar split or lift:

(a) At least two (2) rows of breaker posts or equivalent support shall be installed as close to the initial intended breakline as practicable and across each opening leading into an area where full or partial pillar extraction has been completed; and

(b) A row of roadside-radius (turn) posts or equivalent support shall be installed leading into the split or lift.

(3) Before mining is started on a final stump, at least two (2) rows of posts or equivalent support shall be installed on not more than four (4) foot centers on each side of the roadway; only one (1) open roadway, which shall not exceed sixteen (16) feet wide, shall lead from solid pillars to the final stump of a pillar. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet.

(4) During open-end pillar extraction, at least two (2) rows of breaker posts or equivalent support shall be installed on not more than four (4) foot centers. These supports shall be installed between the lift to be started and the area where pillars have been extracted and shall be maintained to within seven (7) feet of the face, and the width of the roadway shall not exceed sixteen (16) feet. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet.

Section 8. Installation and Use of Automated Temporary Roof Support Systems. This section establishes the requirements for and criteria of automated temporary roof support in underground coal mines in which both the coal bed thickness and the mining height exceed thirty (30) inches.

(1) All roof bolting machines and continuous mining machines with integral roof drills used in a working place in a coal mine shall be provided with an approved automated temporary roof support system unless other methods of temporarily supporting the roof have been approved by the commissioner.

(2) Automated temporary roof support systems and all other methods of temporarily supporting the roof shall be approved on an individual mine basis by the commissioner and shall become part of the roof control plan required by KRS 352.201(1).

(3) The commissioner may grant a waiver of the requirement for the use of an automated temporary roof support system if it has been demonstrated by the licensee and determined during an investigation by an authorized representative of the commissioner that the use of such a system would create a condition which would cause a greater hazard to persons working in by the area where permanent supports have been installed than the method presently being employed or proposed by the licensee for temporarily supporting the roof; or where the technology of an automated temporary roof support system does not exist to allow compliance with the requirements established in subsection (5) of this section. The commissioner may also grant a waiver if the configuration of the surface of the roof or other conditions make the use of an ATRS system ineffective or impractical, or where the geology or condition of the roof is such that the licensee's present roof control plan provides adequate safety to the miner. In granting a waiver as to the use of the automated roof temporary roof support system, the commissioner may approve the use of temporary jacks and posts in lieu of the ATRS.

(4) In the event of a mechanical breakdown in the ATRS system, the licensee shall provide for comparable temporary roof support and immediately notify the commissioner or his authorized representative of the temporary roof support in use and the provisions being made to repair or replace the ATRS. The commissioner or his authorized representative may approve the procedure, subject to reasonable conditions.

(5) All machines using, or used as, an automated temporary roof support system shall comply with the following minimum requirements unless a waiver has been granted or another method of temporarily supporting the roof has been approved by the commissioner, pursuant to subsection (2) of this section:

(a) The necessary controls to position the machine and place the ATRS against the roof shall be operated from under permanently supported roof, unless the design of the system provides adequate protection of the miner while setting such supports;

(b) The ATRS shall be placed firmly against the roof before any

work is performed in by permanent roof supports and shall remain against the roof while work is being done, unless the configuration of the surface of the roof is such as to prevent the ATRS from being placed uniformly against that roof;

(c) All hydraulic jacks affecting the support capacity of an ATRS shall have check valves or equivalent protection, to prevent support failure in the event of a sudden loss of hydraulic pressure;

(d) An ATRS used in conjunction with single bolt installation shall elastically support, at a minimum, a deadweight load of 11,250 pounds for each five (5) feet by five (5) feet square area of the roof to be supported;

(e) An ATRS consisting of pads and/or crossbars used in single or multiple rows shall elastically support, at a minimum, a deadweight load in pounds of $450 \times ((L+5) \times (W+5))$, where L is the length of the support structure from tip to tip and W is the width taken at the center line of a support structure to the center line of another support structure;

(f) The actual capacity of the ATRS to support elastically a deadweight load shall be certified by a registered professional engineer;

(g) The distance that the ATRS may be set in by the last row of permanent supports shall be dependent on the row spacing requirements of the permanent roof supports and shall be authorized in the approved roof control plan; and

(h) No person shall work or travel in by the ATRS.

Section 9. Manual Installation of Temporary Support. (1) When manually installing temporary support, only persons engaged in installing the support shall proceed beyond permanent support.

(2) When manually installing temporary supports, the first temporary support shall be set no more than five (5) feet from a permanent roof support and the rib. All temporary supports shall be set so that the person installing the supports remains between the temporary support being set and two (2) other supports which shall be no more than five (5) feet from the support being installed. Each temporary support shall be completely installed prior to installing the next temporary support.

(3) All temporary supports shall be placed on no more than five (5) foot centers.

(4) Once temporary supports have been installed, work or travel beyond permanent roof support shall be done between temporary supports and the nearest permanent support or between other temporary supports.

Section 10. Warning Devices. Except during the installation of roof supports, the end of permanent roof support shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel beyond permanent support.

Section 11. Roof Testing and Scaling. (1) A visual examination of the roof, face and ribs shall be made immediately before any work is started in an area and thereafter as conditions warrant.

(2) Where the mining height permits and the visual examination does not disclose a hazardous condition, sound and vibration roof tests, or other equivalent tests, shall be made where supports are to be installed. When sound and vibration tests are made, they shall be conducted:

(a) After the automated temporary roof support system is set against the roof and before other support is installed; or

(b) Prior to manually installing a roof support.

(3) Sound and vibration roof tests, or other equivalent tests, shall begin under supported roof and progress no further than the location where the next support is to be installed.

(4) When a hazardous roof, face, or rib condition is detected, the condition shall be corrected before there is any other work or travel in the affected area. If the affected area is left unattended, each entrance to the area shall be posted with a readily visible warning, or

a physical barrier shall be installed to impede travel into the area. A bar for taking down loose material shall be available in the working place or on all face equipment, except haulage equipment. Bars provided for taking down loose material shall be of a length and design that will allow the removal of loose material from a position that will not expose the person performing this work to injury from falling material.

Section 12. Rehabilitation of Areas with Unsupported Roof. (1) Before rehabilitating each area where a roof fall has occurred or the roof has been removed by mining machines or by blasting:

(a) The licensee shall establish the clean-up and support procedures to be followed;

(b) All persons assigned to perform rehabilitation work shall be instructed in the clean-up and support procedures; and

(c) Ineffective, damaged or missing roof support at the edge of the area to be rehabilitated shall be replaced or other equivalent support installed.

(2) All persons who perform rehabilitation work shall be experienced in this work or they shall be supervised by a person experienced in rehabilitation work who is designated by the licensee.

(3) Where work is not being performed to rehabilitate an area in active workings where a roof fall has occurred or the roof has been removed by mining machines or by blasting, each entrance to the area shall be supported by at least one (1) row of posts on not more than five (5) foot centers, or equally effective support.

Section 13. Supplemental Support Materials, Equipment and Tools. (1) A supply of supplemental roof support materials and the tools and equipment necessary to install the materials shall be available at a readily accessible location on each working section or within four (4) crosscuts of each working section.

(2) The quantity of support materials, tools, and equipment made available in accordance with this section shall be sufficient to support the roof if adverse roof conditions are encountered, or in the event of a roof fall.

Section 14. Longwall Mining Systems. For each longwall mining section, the roof control plan shall specify:

(1) The methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall; and

(2) The procedures that shall be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

Section 15. Roof Control Plan. (1) When revisions are proposed to the roof control plan required by KRS 352.201, only the revised pages shall be submitted unless otherwise specified by the commissioner or his authorized representative.

(2) The licensee shall be notified in writing of the approval or denial of a proposed roof control plan or proposed revision.

(3) When approval of a proposed plan or revision is denied, the deficiencies of the plan or revision and recommended changes shall be specified and the licensee shall be afforded an opportunity to discuss the deficiencies and changes with the commissioner or his authorized representative.

(4) Before new support materials, devices or systems other than roof bolts and accessories are used as the only means of roof support, the commissioner or his authorized representative may require that the effectiveness of those new support materials, devices, or systems be demonstrated by experimental installations.

(5) No proposed roof control plan or revision to a roof control plan shall be implemented before it is approved.

(6) Before implementing an approved revision to a roof control plan, all persons who are affected by the revision shall be instructed in its provisions.

(7) The approved roof control plan and any revisions shall be

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available to the miners and representative of miners at the mine.

Section 16. Roof Control Plan Information. The following information shall be included in each roof control plan:

- (1) The name and address of the licensee;
- (2) The name, address, mine identification number and location of the mine;
- (3) The name and title of the company official responsible for the plan;
- (4) A typical columnar section of the mine strata which shall:
 - (a) Show the name and the thickness of the coalbed to be mined and any persistent partings;
 - (b) Identify the type and show the thickness of each stratum up to and including the main roof above the coalbed and for distance of at least ten (10) feet below the coalbed; and
 - (c) Indicate the maximum cover over the area to be mined.
- (5) A description and drawings of the sequence of installation and spacing of supports for each method of mining used;
- (6) When an automated temporary roof support system is used, the maximum distance that an automated temporary roof support system is to be set beyond the last row of permanent support;
- (7) When tunnel liners or arches are to be used for roof support, specifications and installation procedures for the liners or arches;
- (8) Drawings indicating the planned width of openings, size of pillars, method of pillar recovery, and the sequence of mining pillars;
- (9) A list of all support materials required to be used in the roof, face and rib control system, including, if roof bolts are to be installed:
 - (a) The length, diameter, grade and type of anchorage unit to be used;
 - (b) The drill hole size to be used; and
 - (c) The installed torque or tension range for tensioned roof bolts.
- (10) When mechanically anchored tensioned roof bolts are used, the intervals at which test holes shall be drilled;
- (11) A description of the method of protecting persons:
 - (a) From falling material at drift openings; and
 - (b) When mining approaches within 150 feet of an outcrop.
- (12) Each drawing submitted with a roof control plan shall contain a legend explaining all symbols used and shall specify the scale of the drawing, which shall not be less than five (5) feet to the inch or more than twenty (20) feet to the inch;
- (13) All roof control plan information, including drawings, shall be submitted on eight and one half (8.5) by eleven (11) inch paper, or paper folded to this size; and
- (14) Any other information required by the commissioner.

Section 17. Roof Control Plan Approval Criteria. This section sets forth the criteria that shall be considered on a mine-by-mine basis in the formulation and approval of roof control plans and revisions.

- (1) Roof bolts shall be installed on centers not exceeding five (5) feet lengthwise and crosswise, except as approved by the commissioner or his authorized representative.
- (2) When tensioned roof bolts are used as a means of roof support, the torque or tension range shall be capable of supporting roof bolt loads of at least fifty (50) percent of either the yield point of the bolt or anchorage capacity of the strata, whichever is less.
- (3) Any opening that is more than twenty (20) feet wide shall be supported by a combination of roof bolts and conventional supports.
- (4) In any opening more than twenty (20) feet wide:
 - (a) Posts shall be installed to limit each roadway to sixteen (16) feet wide, where straight, and eighteen (18) feet wide, where curved; and
 - (b) A row of posts shall be set for each five (5) feet of space between the roadway posts and the ribs.
- (5) Openings shall not be more than thirty (30) feet wide.
- (6) If installing roof support using mining machines with integral roof bolters:
 - (a) Before an intersection or pillar split is started, roof bolts shall

be installed on at least five (5) foot centers where the work is performed;

- (b) Where the roof is supported by only two (2) roof bolts crosswise, openings shall not be more than sixteen (16) feet wide.
- (7) Pillar recovery.
 - (a) During development, any dimension of a pillar shall be at least twenty (20) feet;
 - (b) Pillar splits and lifts shall not be more than twenty (20) feet wide;
 - (c) Breaker posts shall be installed on not more than four (4) foot centers;
 - (d) Roadside-radius (turn) posts, or equivalent support, shall be installed on not more than four (4) foot centers leading into each pillar split or lift;
 - (e) Before full pillar recovery is started in areas where roof bolts are used as the only means of roof support and openings are more than sixteen (16) feet wide, at least one (1) row of posts shall be installed to limit the roadway width to sixteen (16) feet. These posts shall be:
 1. Extended from the entrance to the split through the intersection outby the pillar in which the split or lift is being made; and
 2. Spaced on not more than five (5) foot centers.
 - (8) Openings that create an intersection shall be permanently supported or at least one row of temporary supports shall be installed on not more than five (5) foot centers across the opening before any other work or travel is permitted in the intersection.
 - (9) In working sections where the mining height is below thirty (30) inches, an automated temporary roof support system shall be used to the extent practicable during the installation of roof bolts with roof bolting machines and continuous-mining machines with integral roof bolters.
 - (10) In mines with longwall mining systems:
 - (a) Systematic supplemental support shall be installed throughout:
 1. The tailgate entry of the first longwall panel prior to any mining; and
 2. In the proposed tailgate entry of each subsequent panel in advance of the frontal abutment stresses of the panel being mined.
 - (b) When a ground failure prevents travel out of the section through the tailgate side of the longwall section, the roof control plan shall address:
 1. Notification of miners that the travelway is blocked;
 2. Reinstruction of miners regarding escapeways and escape procedures in the event of an emergency;
 3. Reinstruction of miners on the availability and use of self-contained self-rescue devices;
 4. Monitoring and evaluation of the air entering the longwall section;
 5. Location and effectiveness of the two (2) way communication systems; and
 6. A means of transportation from the section to the main line.
 - (c) The plan provisions addressed by paragraph (b) of this subsection shall remain in effect until a travelway is reestablished on the tailgate side of a longwall section.
 - (11) Additional measures in plans may be required by the commissioner or his authorized representative. Roof control plans that do not conform to the applicable criteria set out in this section may be approved by the commissioner or his authorized representative, if those plans provide effective control of the roof, face, and ribs.

Section 18. Evaluation and Revision of Roof Control Plan. (1) Revisions of the roof control plan shall be proposed by the licensee:

- (a) When conditions indicate that the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts; or
 - (b) When accident and injury experience at the mine indicates the plan is inadequate; the accident and injury experience at each mine shall be reviewed at least every six (6) months.
- (2) Each unplanned roof fall, rib fall, and coal or rock burst that

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occurs in the active workings shall be plotted on a mine map if it:

- (a) Is above the anchorage zone where roof bolts are used;
- (b) Impairs ventilation;
- (c) Impedes passage of persons;
- (d) Causes miners to be withdrawn from the area affected; or
- (e) Disrupts regular mining activities for more than one (1) hour.

(3) The mine map on which roof falls are plotted shall be available at the mine site for inspection by authorized representatives of the commissioner and representatives of miners at the mine.

(4) The roof control plan for each mine shall be reviewed every six (6) months by an authorized representative of the commissioner. This review shall take into consideration any falls of the roof, face and ribs and the adequacy of the support systems used at the time.

Section 19. Upon the effective date of this administrative regulation, 805 KAR 5:020 shall be repealed.

This is to certify that the Mining Board approved this administrative regulation on July 26, 1996, prior to its filing by the Department of Mines and Minerals with the Legislative Research Commission, as required by KRS 351.105(11).

John L. Franklin, Chairman
Mining Board

LAURA M. DOUGLAS, Secretary
JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: August 12, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, September 30, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 23, 1996, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing will be canceled. 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 regulation to the contact person.

CONTACT PERSON: Eugene D. Attkisson, Legal Counsel, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, Phone: (606) 246-2026, Fax: (606) 246-2038.

REGULATORY IMPACT ANALYSIS

Contact Person: Eugene D. Attkisson

(1) Type and number of entities affected: This proposed administrative regulation will apply to all of the underground coal mines in the Commonwealth licensed by this agency. There were 484 underground coal mine licenses issued in 1995; this number is projected to remain relatively constant for 1996.

(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. Although no comments were received following the publication of the Notice of Intent to Promulgate an Administrative Regulation, this agency anticipates no direct or indirect costs or savings on the cost of living and employment in the Commonwealth as a result of implementing this proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Establishing minimum require-

ments for roof support and clarifying the roof control plan approval process will save each underground coal mine time in developing its plan, which could result in a cost savings.

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

1. First year following implementation: Establishing and clarifying the roof support requirements by administrative regulation will minimize the quantity of information an underground coal mine operator must currently address in the roof control plan. Also, the proposed administrative regulation requires that roof control plans be reviewed every six (6) months, and when revisions to a roof control plan are proposed, only the revised pages need to be submitted unless otherwise specified by the commissioner or his authorized representative. Clarifying the compliance requirements and reducing the reporting and paperwork requirements could result in a cost savings to the underground coal operators in the Commonwealth.

2. Second and subsequent years: The cost savings benefits realized in the first year will continue.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The continuity and efficiency of the department's roof control plan approval process will be improved, resulting in greater productivity of the roof control specialist staff.

2. Continuing costs or savings: The cost savings benefits realized in the first year will continue.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Setting out the minimum requirements for roof support in the proposed administrative regulation will minimize the quantity of information an underground coal mine must address in its roof control plan. This change will allow the department to better utilize the time and expertise of its roof control specialists by focusing on the prevailing geological conditions and the mining system to be used at the specific mine, rather than reviewing often repetitive roof control plans. Also, the proposed administrative regulation requires that roof control plans be reviewed every six (6) months, and when revisions to a roof control plan are proposed, only the revised pages need to be submitted unless otherwise specified by the commissioner or his authorized representative.

(4) Assessment of anticipated effect on state and local revenues: The proposed administrative regulation has no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department's roof control plan approval process will continue to be the responsibility of the current staff of roof control specialists, whose positions are funded with General Fund dollars. Implementing and enforcing the proposed administrative regulation will require no additional funding.

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

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

(b) Kentucky: No comments were received following the publication of the Notice of Intent to Promulgate an Administrative Regulation; however, the proposed administrative regulation will have no economic impact on the Commonwealth of Kentucky.

(7) Assessment of alternative methods; reason why alternatives were rejected: The alternative to the enactment of this proposed administrative regulation would be to continue to enforce the minimum standards of roof support which are currently required by the department as part of its roof control plan approval process, but which are not set out in current statute or administrative regulation. This administrative regulation is proposed in order to establish the minimum requirements for roof support and the department's roof control plan approval process and make it readily available to the coal

mining industry.

(8) Assessment of expected benefits: The proposed administrative regulation will enhance voluntary compliance by clarifying the minimum standards of roof support which are required by the department as a part of its roof control plan approval process. Increased compliance with the roof support requirements will ultimately enhance the safety of underground coal miners.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Ensuring a safer working environment for underground coal miners will decrease the potential for serious and fatal roof-related mining accidents.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is a potential detrimental effect on the safety of underground coal miners if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: The potential for serious and fatal roof-related mining accidents is increased if the proposed administrative regulation is not implemented.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no identified statute, administrative regulation or government policy which is in conflict with, overlaps, or duplicates the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: The proposed administrative regulation is not in conflict.

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

(10) Any additional information or comments: Representatives of the underground coal mining industry have expressed support for this proposed administrative regulation; however, no comments were received following the publication of the Notice of Intent to Promulgate an Administrative Regulation.

(11) TIERING: Is tiering applied? Yes. This proposed administrative regulation establishes the minimum standards for roof support and the roof control plan approval process. Tiering is applied because each underground coal mine is required to formulate and follow an approved roof control plan which is suitable to the prevailing geological conditions and the mining system to be used at the specific mine.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services
(New Administrative Regulation)

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

RELATES TO: KRS 199.640-199.670, 605.090, 610.110

STATUTORY AUTHORITY: KRS 194.050, 199.641, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: 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 96-862, effective July 2, 1996, 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 Inter-Agency 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 Inter-Agency 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 pre-arranged 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 July, 1996;

(b) DSS-886, Private Child Care Client Inter-Agency 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, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

VIOLA MILLER, Acting Commissioner

VIOLA MILLER, Secretary

APPROVED BY AGENCY: August 6, 1996

FILED WITH LRC: August 13, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation will be held on September 23, 1996, at 9 a.m. in the Health Services Auditorium, Cabinet for human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify this agency in writing by September 16, 1996. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to; William K. Moore, Jr., Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky, 40621, (502) 564-7900, Fax (502) 564-7573.

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 was filed but a public hearing was not scheduled as no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 was filed but a public hearing was not scheduled as no public comments were received.

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

1. First year following implementation: 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 affect on state and local revenues. In the long run, implementation of this regulation should assist in controlling the growth in the cost of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation of this administrative regulation. 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 was filed but a public hearing was not scheduled as no public comments were received.

(b) Kentucky: A Notice of Intent was filed but a public hearing was not scheduled as no public comments were received.

(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 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.

CABINET FOR HEALTH SERVICES
Department for Mental Health
and Mental Retardation Services
(New Administrative Regulation)

908 KAR 1:360. Licensing procedures and standards for agencies operating alcohol and other drug abuse treatment and education programs.

RELATES TO: KRS 222.231

STATUTORY AUTHORITY: KRS 194.050, 222.231, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050 and 222.231 mandate the Cabinet for Health Services to regulate an agency operating alcohol and other drug abuse programs. Executive Order 96-862, effective 07/02/96, reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation provides licensure requirements which establish minimum standards for detoxification, residential treatment, family residential treatment, transitional living, outpatient treatment, intensive outpatient treatment and education programs.

Section 1. Definitions. (1) "Agency" means as defined in KRS 222.005(2).

(2) "Alcohol and other drug abuse" means as defined in KRS 222.005(12).

(3) "Cabinet" means the Office of Inspector General, Division of Licensing and Regulation, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(4) "Case management" means activities which bring services, agencies, resources, or people together within a planned framework of action toward the achievement of a client's established goals.

(5) "Certified counselor" means a certified chemical dependency counselor who is recognized by the Kentucky Certification Board of Chemical Dependency Professionals, Inc. or a certified alcohol and drug counselor who is recognized by the Kentucky Board of Certification of Alcohol and Drug Counselors in accordance with 1996 Ky. Acts ch. 96.

(6) "Client" means an individual who receives education or treatment services in a licensed agency.

(7) "Client record" means a file containing documentation of client services and other client data.

(8) "Clinical services" means diagnostic and treatment activities received by a client in a program of a licensed agency.

(9) "Clinical services supervisor or CSS" means an individual responsible for monitoring and directing diagnostic and treatment services and providing consultation and instruction to a clinician, a case manager, and auxiliary direct care staff to ensure they are engaged in sound clinical practice.

(10) "Clinician" means an individual who has assigned client cases and is responsible for conducting clinical assessments and developing and implementing treatment plans.

(11) "Counseling" means a relationship where a clinical staff person helps a client mobilize resources to resolve problems and modify attitudes and behavior.

(12) "Detoxification" means a supervised nonmedical withdrawal from an alcohol or other drug induced intoxication and an assessment of the client's need for further care resulting in referrals to appropriate resources.

(13) "Diagnostic summary" means a written analysis of client assessment information for the purpose of identifying patterns of behavior and prioritization of problem areas to be addressed in treatment.

(14) "Division" means the Division of Substance Abuse, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(15) "Driving under the influence or DUI" means as defined in 908 KAR 1:310.

(16) "Drug free work place" means a set of policies established by an employer to create a work environment where the unlawful manufacture, distribution, possession, or use of a controlled substance is strictly prohibited.

(17) "Dual relationship" means an activity of a direct care staff person with a client, be it sexual, financial, or other which is adverse or exploitative to the client.

(18) "Education services supervisor" means an individual responsible for monitoring and directing educational services and providing consultation and instruction to an instructor and an instructor assistant to ensure they are engaged in sound educational practices.

(19) "Facility" means every distinct building or part thereof that houses a treatment or education program operated by an agency.

(20) "Family residential treatment" means an organized intensive set of therapeutic activities provided in an environment where the client resides twenty-four (24) hours a day with his or her children.

(21) "Governing body" means two (2) or more individuals, who have ultimate authority to determine an agency's policies and control its activities.

(22) "Intake" means the administrative and initial assessment procedures completed at the time of a client's admission to a program.

(23) "Intensive outpatient treatment" means a structured comprehensive program of therapeutic activities, consisting of three (3) phases of treatment, delivered in a nonresidential setting, where a client is assisted in recovery from alcohol and other drug abuse and the intensity of services decreases in accordance with a client's progress.

(24) "Legal entity" means a unit other than a natural person with a separate and distinct independent existence, having lawful standing in the Commonwealth of Kentucky to function legally, to sue or be sued and make decisions through agents, by means of a partnership agreement, articles of incorporation, legislative act, or executive order.

(25) "Lesson plan" means a written sequential set of instructional activities organized to meet an identified learning objective.

(26) "Narcotic maintenance" means a treatment procedure using an approved controlled substance over a period of time to relieve withdrawal symptoms, reduce craving, and permit normal functioning so that in combination with rehabilitation services, a client can develop a productive life style.

(27) "Outpatient treatment" means a set of therapeutic activities assisting a client in recovery from alcohol and other drug abuse provided in a nonresidential setting and may be on a scheduled and unscheduled basis.

(28) "Program" means as defined in KRS 222.005(10).

(29) "Quality improvement" means a planned, systematic, agency wide system for designing, measuring, assessing, and improving performance to ensure excellence in the provision of client care.

(30) "Recovery" means rehabilitation from alcohol and other drug abuse.

(31) "Relapse prevention plan" means a written assessment of potential triggers which may cause a client to return to the use of alcohol and other drugs and the identification of therapeutic activities and strategies focused on eliminating the potential triggers.

(32) "Residential treatment" means a set of organized intensive therapeutic activities, provided in a twenty-four (24) hour setting, which assists a client in recovering from alcohol and other drug abuse.

(33) "Screened" means the preliminary process by which a client's needs are identified to determine if the client is eligible for admission to a particular program or is in need of a particular service.

(34) "Self-help program" means activities provided in a self-directed peer group setting, for the person recovering from alcohol and other drug abuse or the effects of another person's alcohol and

other drug abuse, where support and direction in achieving or maintaining an alcohol and drug free life style or in learning to cope with problems related to another person's alcohol and other drug abuse is provided.

(35) "Service" means a therapeutic activity provided by a program for the benefit of a client to meet the client's needs as it relates to the use of alcohol or other drugs.

(36) "Staff development file" means a central administrative record for a staff person which contains documentation of all training and supervision.

(37) "Standing order" means a written instruction or prescribed procedure ordered by a physician, in force permanently, or until specifically changed or canceled, which gives program staff the authority to perform certain acts or to monitor the self-administration of over-the-counter medication by a client.

(38) "State narcotic authority" means the Director of the Division of Substance Abuse, or his designee, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(39) "Transitional living" means a therapeutic group setting, where a client resides twenty-four (24) hours a day, and makes social and vocational adjustments prior to returning to family or independent living in the community.

(40) "Treatment" means as defined in KRS 222.005(13).

(41) "Weekly summary note" means an entry made by a clinician or case manager in the client record, regarding a client's progress in treatment, which includes a list of all program activities the client participated in during the previous seven (7) days and an analysis of the client's progress toward meeting the objectives of the treatment plan during the previous seven (7) days.

(42) "Withdrawal" means the physiological readjustment of the body after an individual stops using alcohol or other drugs.

Section 2. Licensing Requirements.(1) An agency shall not operate a program without obtaining a license from the cabinet for a facility unless exempted under KRS 222.003(1) and 222.231(1).

(2) The agency shall submit to the cabinet at the time of application for licensure documentation showing the agency is a legal entity.

(3) Where more than one (1) agency operates a program at the same location, each agency shall maintain a separate organizational identity by:

(a) Conspicuously posting a sign in a public area showing the agency name;

(b) Utilizing a separate agency logo or letterhead on written materials;

(c) Maintaining client records in a separate and secure cabinet;

(d) Conducting separate education and outpatient treatment groups; and

(e) Clearly identifying the agency name in all oral communications including the agency's telephone greeting.

(4) An agency operating a program without obtaining from the cabinet a license for a facility shall be subject to the penalties as stated in KRS 222.990(2).

(5) The license shall be conspicuously posted in a public area of a facility and shall specify which programs are approved for operation and the year the license was issued or renewed.

(6) An agency shall not practice fraud in:

(a) Obtaining a license; and

(b) Delivering services.

(7) An agency shall fully cooperate in the submission of data for the Uniform Facility Data Set of the Drug and Alcohol Services Information System by completing annually the required forms sent to them by the U.S. Department of Health and Human Services, Public Health Service, Substance Abuse and Mental Health Services Administration and returning them to the University of Kentucky, Center on Drug and Alcohol Research.

(8) The cabinet shall publish annually and make available to the

public upon request, a list of licensed agencies, identifying each facility and type of program operated at each location. The cabinet may issue revisions and corrections to this list as changes occur.

Section 3. Application for a License. (1) An application for licensure or renewal shall be obtained from and submitted to the cabinet and shall include:

- (a) The agency name and mailing address;
- (b) Facility address;
- (c) Type of programs to be operated at the facility;
- (d) Hours of operation; and
- (e) Square footage of the facility.

(2) An application for licensure shall be accompanied by a fee of \$155 for each facility. The license for each facility shall remain in effect for one (1) year from the date of issue and may be renewed annually unless previously suspended or revoked.

(3) An application for licensure renewal shall be accompanied by a fee of eighty (80) dollars for each facility.

(4) An application for licensure or licensure renewal shall be processed according to the following:

(a) The cabinet shall request an inspection from the State Fire Marshall and prior to issuing a license shall receive a written report stating the facility is in compliance with building, fire, safety, and health standards specified by state and local laws and regulations.

(b) The cabinet shall conduct an announced on-site inspection of the facility;

(c) The agency shall provide a representative of the cabinet access to the facility and to documents needed to complete the inspection during normal business hours;

(d) The agency shall provide to the cabinet at the time of inspection written documentation showing professional liability insurance coverage in the minimum amount of \$100,000 per occurrence;

(e) The cabinet shall within thirty (30) calendar days from the date of an inspection notify the agency in writing of the violation of a licensure standard identified during the inspection; and

(f) The agency shall submit to the cabinet a written plan of correction within twenty (20) calendar days from receipt of the notice of violation, specifying the corrective action to be taken and the date when each violation shall be corrected.

(5) The cabinet shall issue a license to the legal entity named in the application within twenty (20) calendar days of:

(a) Completing a licensure inspection where no deficiencies were identified; or

(b) Receiving an acceptable plan of correction from the applicant agency.

(6) The license shall not be transferable.

(7) The license shall be the property of the cabinet and shall be returned to the cabinet when action taken to suspend or revoke the license becomes final and effective.

(8) An agency shall receive additional copies of the license upon payment to the cabinet for the cost of reproduction.

(9) Changes in agency status.

(a) Name change.

1. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. The cabinet shall automatically issue a new license for the remainder of the licensure period.

3. The agency shall submit a processing fee of twenty-five (25) dollars to the cabinet.

(b) Change of location.

1. The agency shall not deliver services at a new location until an application for licensure accompanied by a fee of eighty (80) dollars is approved by the cabinet.

2. The cabinet shall approve the application and reissue the license for the remainder of the licensure period when the cabinet receives a written report from the State Fire Marshall stating the new

facility is in compliance with building, fire, safety, and health standards specified by state and local laws and regulations.

(c) Change of ownership.

1. The new owner of the agency shall submit to the cabinet an application for licensure accompanied by a fee of \$155 for each facility within ten (10) calendar days of the effective date of change.

2. The cabinet shall process the application in accordance with this section.

(d) Discontinuing a program.

1. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of discontinuance.

2. The agency shall, with the written consent of the client, refer the client to the licensed agency of his choice providing services appropriate to his needs.

3. The agency shall submit to the cabinet the name and address of each agency receiving a client referral and the number of clients referred to each agency.

4. The agency shall not submit client identifying information to the cabinet.

5. The agency shall store a client record in accordance with 908 KAR 1:320 or 1:330.

Section 4. Complaints. (1) A suspected violation of a licensure standard shall be reported to the cabinet.

(2) The complainant and information related to a suspected violation shall be kept confidential and shall not be disclosed publicly during an investigation. Once the investigation is complete, disclosure of the information shall be subject to the provisions in KRS 61.870 - 61.884.

(3) A complaint received by the cabinet shall be processed according to the following:

(a) The cabinet may conduct an unannounced on-site inspection in accordance with Section 3(4)(c), (e), and (f) of this administrative regulation to determine if a violation of a licensure standard has occurred; and

(b) The cabinet may conduct an audit of financial records in accordance with generally accepted government auditing standards when the complaint relates to financial misconduct.

Section 5. Penalties. (1) Denial or suspension of a license.

(a) Plan of correction. When an agency fails to submit an acceptable plan of correction within twenty (20) calendar days from the date of a notice of violation, the cabinet shall notify the agency, in accordance with Section 6 of this administrative regulation, that the license shall be denied or suspended thirty (30) calendar days after the date of the notice of denial or suspension unless:

1. The agency submits an acceptable plan of correction to the cabinet;

2. The agency requests a hearing in accordance with Section 6 of this administrative regulation; or

3. The agency notifies the cabinet in writing that the application for licensure is withdrawn.

(b) Denial of an application for licensure. When an application for licensure is denied, the legal entity named in the application may reapply for a license in accordance with Section 3 of this administrative regulation after a period of:

1. Three (3) years from the date of denial; or

2. Thirty (30) days from the date the application for licensure was withdrawn by the agency.

(c) Suspension of a license. When a license is suspended, the cabinet shall notify the agency of the following:

1. The period of suspension, which shall not exceed six (6) months;

2. The agency shall be closed and all clients shall be referred to another agency in accordance with Section 3(9)(d)2-5 of this administrative regulation; and

3. The license shall be reinstated, at anytime during the period of

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suspension, when the agency submits to the cabinet an acceptable plan of correction.

(d) Immediate suspension of a license. The cabinet shall immediately suspend a license in the case of:

1. Immediate danger affecting the health and safety of the client population or the community; or

2. Consistent failure by the agency to comply with the standards in this administrative regulation.

(2) Revocation of a license.

(a) If an agency fails to submit to the cabinet an acceptable plan of correction before the end of a period of suspension, the cabinet shall notify the agency, in accordance with Section 6 of this administrative regulation, that the license is revoked; and

(b) The legal entity named in the application may reapply for a license in accordance with Section 3 of this administrative regulation after a period of three (3) years from the date of revocation.

Section 6. Appeals. (1) If the cabinet takes action to deny, suspend, or revoke an agency license, the cabinet shall notify the agency in writing stating the reasons for the adverse actions and the agency's right to appeal in accordance with KRS 222.231(6).

(2) If the agency believes an action by the cabinet is unfair, without reason, or unwarranted, the agency may appeal the action in writing to the Secretary, Cabinet for Health Services, Fourth Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) calendar days after receipt of the notice of action from the cabinet.

(3) Upon receipt of the appeal, the secretary, or his designee, shall notify the agency in writing within fifteen (15) calendar days of the time and place of the hearing. The secretary, or his designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(4) The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(5) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of the negative action. The decision of the hearing officer shall be final. The agency shall be notified in writing by the secretary, or his designee, of the decision of the hearing officer.

(6) If an agency, whose license has been suspended pursuant to Section 5(1)(d)1 of this administrative regulation, requests a hearing, the cabinet shall conduct the hearing within five (5) working days of receipt of the request from the agency. The hearing may be continued at the request of the agency.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension create an immediate danger to the client population or the community as a whole.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, the agency shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the hearing that one (1) or more of the grounds for suspension create an immediate danger to the client population or the community as a whole, the license of the agency shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

(7) If suspension of the license is upheld, the secretary, or his designee, shall notify the agency in writing and specify the date by which the agency shall close.

(8) An agency that continues to operate after the closing date established by the secretary, or his designee, shall be subject to legal action by the cabinet as provided by law.

Section 7. Physical Plant. (1) An agency shall ensure that a facility is in compliance with building, fire, safety, and health standards specified by state and local laws and regulations.

(2) An agency shall ensure that a facility is in compliance with the Americans with Disabilities Act, 42 USC 12101 et seq.

(3) A facility shall be kept clean, in good repair and free of rodent and insect infestation according to written housekeeping, sanitation, and maintenance procedures.

(4) Outpatient setting. In addition to the standards specified in subsections (1), (2), and (3) of this section, a treatment or education program conducted in an outpatient setting shall provide twenty (20) square feet of space per client.

(5) Twenty-four (24) hour setting. In addition to the standards specified in subsections (1), (2), and (3) of this section, a treatment program conducted at a facility which provides twenty-four (24) hour care shall meet the following additional requirements:

(a) There shall be 120 square feet of space per client;

(b) There shall be at least one (1) toilet, one (1) sink, and one (1) shower or tub per eight (8) clients;

(c) There shall be a bed with clean bedding which includes sheets, pillowcase, blanket, and a pillow for each client;

(d) There shall be space for a client to store personal belongings including a receptacle where personal property may be stored and locked; and

(e) There shall be areas provided for the following activities:

1. Sleeping;

2. Dining;

3. Bathing and toileting;

4. Lounge;

5. Laundry;

6. Visiting;

7. Recreation;

8. Private consultation; and

9. Telephone.

Section 8. Governing Body. (1) There shall be a governing body with overall authority and responsibility for operating the agency.

(2) The governing body shall:

(a) Maintain written documentation verifying that the agency is a legal entity in the Commonwealth of Kentucky;

(b) Develop a mission statement outlining the agency's purpose;

(c) Appoint an executive director who shall be principally responsible for day-to-day operations;

(d) Develop an administrative structure and establish lines of authority for all programs which shall be documented on an organizational chart;

(e) Develop written policies and procedures governing the administrative and program functions of the agency which shall:

1. Be reviewed by the governing body every two (2) years; and

2. Be revised as necessary, which shall include incorporating relevant findings of the agency's quality improvement system;

(f) Ensure that an employee reviews and signs a copy of the written policies and procedures at the time of employment and as revisions are made;

(g) Oversee a system of financial management and accountability;

(h) Develop a conflict of interest policy to determine how a governing body member shall participate in decisions which may be influenced by the member's outside business interests;

(i) Obtain professional liability insurance in the minimum amount of \$100,000 per occurrence;

(j) Complete annual training on alcohol and other drug abuse; and

(k) Meet as a whole at least annually and keep a written record documenting all actions taken by the governing body during the meeting.

Section 9. Staffing Requirements. (1) Treatment program.

(a) Clinical services supervisor.

1. The agency shall employ a CSS who:

a. Is a certified counselor;

b. Has two (2) years documented work experience, postcerti-

fication, in the treatment of alcohol and drug abuse; and

c. Has a bachelor's degree or greater from an accredited college or university.

2. The CSS shall successfully complete a division approved training in alcohol and other drug abuse clinical services supervision either within one (1) year of the effective date of this administrative regulation or prior to or within six (6) months of employment with the agency, whichever is longer.

3. The agency shall maintain documentation in the staff development file verifying the CSS has successfully completed the training in clinical services supervision.

4. A CSS shall provide clinical supervision to the:

- a. Clinician;
- b. Case manager; and
- c. Auxiliary direct care staff.

5. A CSS shall not supervise a:

- a. Spouse;
- b. Spousal partner;
- c. Child;
- d. Stepchild;
- e. Sibling;
- f. Parent;
- g. Grandparent;
- h. Grandchild;
- i. Aunt;
- j. Uncle;
- k. Niece;
- l. Nephew; or
- m. In-law.

6. The agency shall identify the CSS on an organizational chart.

(b) Clinician. A clinician working under the supervision of a CSS shall be one (1) of the following:

1. A CSS who meets the requirements in paragraph (a)1 of this subsection;

2. A certified counselor; or

3. An alcohol and other drug abuse counselor who is working toward certification.

(c) Case manager.

1. A case manager shall have a bachelors degree or greater from an accredited college or university.

2. The case manager shall successfully complete a division approved training in alcohol and other drug abuse case management either within one (1) year of the effective date of this administrative regulation or prior to or within six (6) months of employment with the agency, whichever is longer.

3. The agency shall maintain documentation in the staff development file verifying the case manager has successfully completed the training in case management.

(d) Auxiliary direct care staff. Auxiliary direct care staff shall include any individual other than a clinician or case manager who assists in the implementation of a treatment plan and may include a student intern or volunteer.

(2) Education program.

(a) Education services supervisor.

1. The agency shall employ an education services supervisor who:

a. Has two (2) years of clinical or instructional work experience in the field of alcohol and other drug abuse or two (2) years of instructional work experience in the field of education; and

b. Has a bachelors degree or greater from an accredited college or university.

2. An education services supervisor shall supervise the instructor and instructor assistant.

3. The agency shall identify the education services supervisor on an organizational chart.

(b) Instructor. An instructor shall have:

1. A bachelors degree or greater from an accredited college or

university;

2. An associate degree from an accredited college or university and either two (2) years of clinical or instructional work experience in the field of alcohol and other drug abuse or two (2) years of instructional work experience in the field of education; or

3. A high school diploma or general education development equivalency certificate from a state board of education, and either four (4) years of clinical or instructional work experience in the field of alcohol and other drug abuse or four (4) years of instructional work experience in the field of education.

(c) Instructor assistant. The instructor assistant shall include any individual who assists in delivering an educational curriculum and may include a student intern and volunteer.

Section 10. Staff Training Requirements. (1) The agency shall ensure staff receive training which enables them to carry out their expected job duties, either through agency sponsored in-service training or through outside sources.

(2) The clinical services supervisor, clinician, case manager, auxiliary direct care staff, education services supervisor, instructor, and instructor assistant shall meet their professional continuing education requirements, or complete twenty (20) clock hours of training annually, whichever is greater.

(3) Completion of training shall be documented in the staff development file and shall identify:

(a) Name and topic of the training;

(b) Clock hours or continuing education units earned; and

(c) Dates attended.

Section 11. Staff Supervision Requirements. (1) Clinical services.

(a) The CSS shall develop and update annually a written individual plan of supervision for the clinician and case manager which includes:

1. Name of the supervisor and staff person;

2. Staff person's clinical strengths and weaknesses;

3. Goals and objectives to increase clinical competency;

4. Methods for achieving the goals and objectives; and

5. Length and frequency of the supervisory sessions in accordance with paragraphs(e) and (f) of this subsection.

(b) The CSS and clinician or case manager shall sign a dated agreement stating:

1. The CSS shall be responsible for determining, based on the staff person's level of skill, the size and complexity of the caseload and the type of therapeutic interventions to be used;

2. The staff person shall be responsible for informing the CSS of problems with the caseload and any need for additional supervision; and

3. No relationship as defined in Section 9(1)(a)5 of this administrative regulation exists between them.

(c) The CSS shall provide a copy of the plan of supervision and the agreement to the clinician or case manager and retain the originals in the staff development file.

(d) The CSS shall maintain in the staff development file a record of supervisory sessions for the clinician and case manager which includes:

a. Date;

b. Length of the session; and

c. Content of the supervision.

(e) The CSS shall supervise the clinician according to the following:

1. An individual meeting the requirements of a CSS in Section 9(1)(a)1 of this administrative regulation, who is not acting in the capacity of a CSS, shall be provided one (1) hour of face-to-face individual or group supervision quarterly;

2. A certified counselor shall be provided two (2) hours of face-to-face supervision monthly, with at least one (1) hour being individual supervision;

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3. An alcohol and other drug abuse counselor who is working toward certification shall be provided:

a. Four (4) hours of face-to-face supervision monthly, with at least two (2) hours being individual supervision;

b. Supervisory sessions to review client cases and cosign clinical assessments and treatment plans; and

c. One (1) hour of direct observation of clinical work through audiotaping, videotaping, one (1) way mirror, or as a cotherapist.

(f) The CSS shall supervise the case manager according to the following:

1. One (1) hour of face-to-face individual or group supervision shall be provided monthly to:

a. Review case management assessments, service plans, and progress notes; and

b. Cosign case management assessments and service plans.

2. A presentation on community resources shall be provided quarterly.

(g) The CSS shall supervise auxiliary direct care staff by:

1. Providing daily supervision; and

2. Maintaining in the staff development file a quarterly record of all supervision.

(2) Educational services.

(a) The education services supervisor shall supervise an instructor by:

1. Ensuring that the instructor delivers instructional materials in accordance with an educational curriculum;

2. Directly observing an instructor's delivery of the educational curriculum at least two (2) times a year; and

3. Providing one (1) hour of face-to-face individual or group supervision quarterly to discuss:

a. Classroom interventions;

b. Content of the curriculum; and

c. Methods of instruction.

(b) The education services supervisor shall maintain in the staff development file of the instructor a record of supervisory sessions which includes:

1. Date;

2. Length of the session; and

3. Content of the supervision.

(c) The education services supervisor shall supervise an instructor assistant by:

1. Providing daily supervision; and

2. Maintaining in the staff development file a quarterly record of all supervision.

Section 12. Personnel and Employment Practices. (1) The agency shall employ sufficient staff to achieve the objectives of the agency.

(2) The agency shall develop written policies and procedures regarding:

(a) Protections to prevent discrimination against an employee or prospective employee on the basis of:

1. Gender;

2. Age;

3. Race;

4. Ethnicity;

5. Sexual orientation;

6. Religious affiliation; and

7. Disability in accordance with the Americans with Disabilities Act, 42 USC 12101, et seq.;

(b) Recruitment, selection, promotion, discipline, and termination of staff;

(c) Job specifications for positions which shall identify:

1. Qualifications;

2. Duties;

3. Reporting supervisor;

4. Positions supervised;

5. Work schedule; and

6. Salary range;

(d) Employee benefits;

(e) Training and staff development opportunities;

(f) Job safety and work related injuries;

(g) Employee grievances;

(h) Rules of conduct;

(i) Employee compensation plan;

(j) Equal employment opportunities and affirmative action;

(k) Maintenance of a drug free work place including actions to be taken when an employee is convicted of the unlawful manufacture, distribution, possession, or use of any controlled substance while on the grounds of the agency or when performing agency business;

(l) Annual job evaluations including a system for the objective evaluation of an employee's performance in relation to specified job duties;

(m) Ethical standards to ensure acceptable employee conduct in the delivery of client services;

(n) Conflicts of interest resulting from a dual relationship between a client and a direct care staff person;

(o) Confidentiality of personnel records;

(p) Employee access to his personnel record; and

(q) Storage and retention of personnel records.

(3) The agency shall conduct a criminal background investigation on the owner, administrator, prospective employee or volunteer and shall not allow an individual to work in the agency who has been convicted within five (5) years from the date of application for employment, for the illegal manufacture, possession, distribution, or illicit use of a controlled substance.

(4) An agency shall not employ any individual who has been convicted of a felony within five (5) years from the date of application for employment.

(5) No owner, administrator, employee or volunteer shall be retained by an agency if the individual is convicted of a felony while employed.

(6) When an agency receives information that a staff person violated his profession's code of ethics, the agency shall:

(a) Report the suspected violation to the individual's professional licensure or certification board; and

(b) Terminate the individual from the agency upon receipt of information confirming that the individual's professional license or certification has been revoked.

(7) The agency shall maintain a personnel record for the employee which contains:

(a) Employment application;

(b) Job specifications;

(c) Two (2) written references;

(d) Documentation of education, work experience, professional licensure, certification, and registration;

(e) Wage and salary levels, including salary adjustments;

(f) Job performance evaluations;

(g) Commendations;

(h) Disciplinary actions; and

(i) Employee incident reports.

(8) The agency shall maintain an individual staff development file for staff, and training and supervision shall be documented in the file.

Section 13. Client Records. (1) Treatment program records.

(a) A separate written or electronic record shall be maintained for a client and shall be:

1. Accessible to direct care staff;

2. Legible with entries in ink or type;

3. Retained for five (5) years from the last date of service for an adult client age eighteen (18) and over;

4. Retained until age twenty-one (21) for a client who received services under age eighteen (18), or for five (5) years from the last date of service, whichever is longer;

5. Stored in a locked cabinet and accessible only to authorized

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personnel; and

6. Kept confidential in accordance with 908 KAR 1:320 or 1:330.

(b) The client record shall include:

1. Application for admission containing:

- a. Name;
- b. Mailing address;
- c. Age;
- d. Telephone number;
- e. Emergency contact information;
- f. Responsible party; and
- g. Source of referral;

2. Progress notes containing either:

a. An entry made following the delivery of an individual counseling session or other professional service which includes:

- (i) A description of the service provided;
- (ii) A description of the client's symptoms, behavior, and reaction to the services; and
- (iii) An assessment of the client's progress on meeting the goals and objectives specified in the treatment plan; or

b. An entry made weekly following the delivery of multiple services which includes:

- (i) A description of the services received by the client during a week;
- (ii) A description of the client's symptoms, behavior, and reaction to the services; and
- (iii) An assessment of the client's progress on meeting the goals and objectives specified in the treatment plan;

3. Discharge summary completed within fourteen (14) days of discharge containing:

- a. Presenting problem;
 - b. Clinical needs identified during treatment;
 - c. Response to treatment;
 - d. Assessment of remaining clinical needs; and
 - e. After-care plan;
4. Client rights statement signed by the client;
5. Consent to treatment form signed by the client;
6. Authorizations for release of information in accordance with 908 KAR 1:320 or 1:330;
7. Psychosocial assessment;
8. Health status questionnaire;
9. Supplemental client assessments and evaluations;
10. Treatment plan signed by the client;
11. Case management plan signed by the client;
12. Documentation of referrals;
13. Documentation of arrangements made for the client with special needs;
14. A report from an outside agency or person;
15. Documentation of the self-administration of prescription and over-the-counter medication;
16. Documentation of case reviews; and
17. Fee agreement signed by the client.

(c) Documents in the client record completed by staff shall contain a staff signature, credentials, and date of completion.

(d) A record destroyed after the required period of retention shall be destroyed according to the following:

1. A written record shall be burned or shredded; and
2. An electronic record shall be destroyed according to the following:
 - a. An agency computer security administrator shall approve the destruction of electronic data to ensure the information has been deleted and is unrecoverable;
 - b. Information shall be deleted from magnetic media by complete degaussing, electronic overwriting, or physical destruction by shredding; and
 - c. Magnetic media which has been through a deletion process, with the exception of physical destruction by shredding, shall be tested periodically to validate the continued effectiveness of the

deletion.

(2) Education program records.

(a) A separate written or electronic record of each educational event shall be maintained in a central agency file and shall be:

1. Accessible to education program staff;
2. Legible with entries in ink or type;
3. Retained for five (5) years from the date of the educational event;

4. Kept confidential and stored in a locked cabinet accessible only to authorized personnel; and

5. Destroyed in accordance with subsection (1)(d) of this section.

(b) An educational event record shall include:

1. Client roster;
2. Title of the curriculum;
3. Topic of the session;
4. Date, time, and length of session;
5. Instructor; and
6. Location of the educational event.

(c) A signed client rights statement for each client participating in an educational event shall be retained in a central agency file.

Section 14. Quality Improvement. The agency shall have a quality improvement system which includes:

(1) An individual responsible for management of the system;

(2) A written plan specifying:

- (a) The range of services provided in a program;
- (b) Indicators for measuring the quality of care in a program;
- (c) A threshold level for each indicator to alert the agency of a problem with client care;
- (d) A schedule and procedure for collecting, organizing, and analyzing data to determine when a threshold level is reached;
- (e) A process for evaluating a problem with client care when a threshold level is reached;
- (f) A procedure for taking corrective action when a problem or an opportunity to improve care is identified; and
- (g) A procedure for determining the effectiveness of an action taken to correct a problem or improve client care; and

(3) Written procedures for:

- (a) Responding to an incident or accident which presents a direct or immediate threat to the health, safety, or security of a client or staff member;
- (b) Documenting an incident or accident in a central agency incident file; and
- (c) Reporting an incident or accident to the manager of the quality improvement system, and to outside agencies according to the following:

1. An agency shall report to the cabinet within twenty-four (24) hours:

- a. An accident or injury requiring extensive medical care, hospitalization, or which results in death; and
- b. An incident involving fire damage, natural disasters, and threats to security; and

2. An agency shall report pursuant to the applicable statute:

- a. An incident of child abuse or neglect in accordance with KRS 620.030;
- b. An incident of adult abuse or neglect in accordance with KRS 209.030; and
- c. A case of active tuberculosis in accordance with KRS 215.590.

Section 15. Infection Control. The agency shall have an infection control system which includes:

(1) An individual responsible for:

- (a) Collection and analysis of infection data;
- (b) Implementation of corrective actions; and
- (c) Maintenance of records;

(2) Procedures for reporting, evaluating, and maintaining a record of an incident of infection in a client or staff person;

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- (3) Procedures for documenting corrective actions;
- (4) Orientation for new staff and annual in-service training in:
 - (a) Importance of infection control;
 - (b) Personal hygiene; and
 - (c) Staff responsibility regarding infection control; and
- (5) Procedures for reporting a case of active tuberculosis in accordance with Section 14 of this administrative regulation.

Section 16. Disaster Procedures. (1) The agency shall develop an emergency plan for responding to a disaster including fire and severe weather.

(2) The emergency plan shall be conspicuously posted in a public area of a facility.

(3) A copy of the emergency plan shall be provided to each staff person.

(4) The agency shall provide training for staff on how to:

- (a) Report a fire;
- (b) Extinguish a small fire; and
- (c) Evacuate a building.

(5) The agency shall conduct fire drills in accordance with 815 KAR 10:050.

(6) The agency shall report an incident involving fire damage, natural disasters, and threats to security in accordance with Section 14 of this administrative regulations.

Section 17. Client Rights. (1) The agency shall not unlawfully discriminate in determining eligibility for admission to a treatment or education program.

(2) The agency shall conspicuously post in a public area of a facility a notice of client rights, which shall include the address and telephone number of the agency's ombudsperson and the address and telephone number of the cabinet's ombudsperson.

(3) Treatment program.

(a) A treatment program shall meet the standards in subsections (1) and (2) of this section.

(b) Admission.

1. An adult shall sign an informed consent to receive treatment.

2. A juvenile, or the parent or guardian of a juvenile, shall sign an informed consent for the juvenile to receive treatment in accordance with KRS 222.441.

(c) Intake. The client shall sign a client rights statement which shall specify that the client has the right to:

1. An orientation regarding the program's philosophy, purpose, and methods of treatment;

2. Give informed consent to receive treatment, except that a parent or guardian may provide informed consent for a juvenile;

3. Have input into their treatment plan and be informed of the content;

4. Receive individualized treatment;

5. Request a written statement of charges for services;

6. Be informed of the procedures for the payment and collection of fees;

7. Be informed of the rules of client conduct including the infractions that may result in disciplinary action or discharge;

8. File a grievance and be informed of the procedure for filing a grievance;

9. Give informed consent prior to participating in a research project;

10. Be treated with consideration, respect, and personal dignity;

11. Privacy while receiving treatment;

12. Review his record in accordance with agency policy; and

13. Receive one (1) free copy of his client record in accordance with KRS 422.317.

(d) Residential program.

1. A residential program shall also specify on the client rights statement that the client has the right to:

a. Vote in political elections;

b. Privacy for personal health and hygiene needs;

c. Retain a physician to examine them;

d. Consult privately with an attorney;

e. Receive visitors; and

f. Send and receive communications by mail and telephone, in accordance with KRS 222.271(2).

2. If exercising civil rights or if the right to receive or send communications is contraindicated by the client's physical or mental condition, the agency shall inform the client at admission of how his rights will be restricted and document in the client record the reasons for restricting the right.

(4) Education program.

(a) An education program shall meet the standards in subsections (1) and (2) of this section.

(b) At enrollment the client shall sign a statement specifying that the client has the right to:

1. File a grievance and be informed of the procedure for filing a grievance;

2. Be informed of the rules of client conduct including the infractions that may result in disciplinary action or discharge;

3. Give informed consent prior to participating in a research project; and

4. Be treated with consideration, respect, and personal dignity.

Section 18. Client Grievances. (1) The agency shall have a client grievance procedure which includes:

(a) An ombudsperson;

(b) A process for filing a client grievance;

(c) An appeals process with time frames for filing and responding to a grievance; and

(d) Protection for a client from interference, coercion, discrimination, or reprisal.

(2) The agency shall conspicuously post in a public area of a facility a notice informing clients of:

(a) The right to file a grievance;

(b) The process for filing a grievance; and

(c) The address and telephone number of the agency ombudsperson and the address and telephone number of the cabinet's ombudsperson.

(3) The agency ombudsperson shall document a grievance in the client record and in a central agency client grievance file.

(4) The agency ombudsperson shall refer a grievance regarding an allegation of abuse or neglect to the appropriate authority in accordance with:

(a) KRS 209.030 regarding the abuse or neglect of an adult; and

(b) KRS 620.030 regarding the abuse or neglect of a child.

Section 19. Client Fees. (1) The agency shall have a procedure for setting and collecting client fees.

(2) The agency shall post a fee schedule in accordance with KRS 216.2943.

Section 20. Client Labor. When a client performs work in a program, other than personal care or housekeeping tasks, which are part of therapeutic activities, the work shall be voluntary and consistent with the treatment plan.

Section 21. Medical Emergencies. (1) The agency shall have a procedure for responding to a medical emergency which includes:

(a) Written agreements with outside medical resources for responding to a physical or mental health emergency; and

(b) Notifying the emergency contact person on the client's admission application in the event of a medical emergency.

(2) The agency shall provide training to direct care staff in:

(a) Crisis intervention;

(b) Cardiopulmonary resuscitation in accordance with 902 KAR 13:050, Section 7; and

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(c) Standard first aid conducted by an instructor certified by the American Red Cross.

(3) The agency shall report an accident or injury requiring extensive medical care, hospitalization, or which results in death in accordance with Section 14 of this administrative regulation.

Section 22. Accommodations for Visual, Speech and Hearing Disabilities. (1) The client with a visual, speech, or hearing disability, shall receive auxiliary aids and services, which make communication accessible, in accordance with the Americans with Disabilities Act, 42 USC 12101 et seq.

(2) The auxiliary aids and services shall be provided directly by the agency or through written agreements with qualified outside providers.

Section 23. Adolescent Requirements. (1) Services and educational materials shall be age appropriate.

(2) With the written consent of the adolescent, the family shall be involved in the adolescent's treatment, and documentation of all attempts to involve the family shall be included in the client record.

Section 24. DUI Requirements. A service provided to a client convicted of DUI shall be provided in accordance with 908 KAR 1:310.

Section 25. Program Services. When a service listed in this section is required in a treatment program governed under this administrative regulation, the agency shall ensure the service is delivered in accordance with the standards in this section.

(1) Assessment.

(a) An agency operating a detoxification program shall be exempt from the standards in this subsection and shall ensure that an assessment is conducted in accordance with Section 24 of this administrative regulation.

(b) An agency providing a service to an individual convicted of DUI shall ensure that an assessment is conducted in accordance with 908 KAR 1:310.

(c) An agency operating a residential treatment, residential transitional treatment, outpatient treatment, or intensive outpatient treatment program shall ensure that an assessment is conducted in accordance with paragraphs (d) - (g) of this subsection.

(d) The client shall receive a psychosocial which shall be updated annually and include a description of:

1. Presenting problem;
2. History of alcohol and other drug use including previous treatment;
3. Home environment;
4. Childhood history;
5. Criminal justice history;
6. Military service;
7. Employment history;
8. Family relationships including marital history;
9. Social and peer group relationships;
10. Religious background and practices;
11. Educational and vocational history;
12. History of mental health problems including treatment;
13. History of mental retardation or developmental disabilities;
14. Emotional, physical, and sexual abuse history;
15. Ethnic and cultural background; and
16. Leisure and recreational activities.

(e) The client shall receive an evaluation of his current mental condition to include the identification of specific abnormalities in:

1. Behavior;
2. Affect;
3. Thought;
4. Memory;
5. Orientation; and

6. Contact with reality.

(f) A physical health status questionnaire, developed in consultation with a physician, shall be completed on the client and include:

1. Review of body systems;
2. Surgery and treatment history;
3. Current medical condition;
4. Assessment of pregnancy status;
5. Prescription and over-the-counter medications; and
6. Allergic reactions to medications.

(g) Information from written reports regarding previous treatment and other evaluations and assessments shall be considered in the assessment process.

(h) A diagnostic summary which shall include an analysis of all assessment information and a referral to the appropriate level of care shall be completed on the client.

(2) Treatment planning.

(a) A treatment plan shall be developed for the client based on the findings of the assessment and revised as new information is received.

(b) The treatment plan shall include:

1. Diagnosis as listed in the current Diagnostic and Statistical Manual, which is the desk reference for determining physical and mental conditions based on a set of signs and symptoms;
2. Functional strengths and limitations;
3. Identification and ranking of client problems;
4. Goals and measurable objectives with expected dates of achievement;
5. Type and frequency of services needed to meet the client's goals and objectives;
6. Referrals within or outside the agency;
7. Methods for involving the client's family or significant others;
8. Staff person primarily responsible for coordinating the client's care;
9. Criteria for termination of services;
10. An explanation of why a clinical need is not to be treated; and
11. Date for treatment plan review.

(c) The treatment plan shall be signed by the client or documentation shall be included in the client record to explain the therapeutic reason why the client did not sign the treatment plan.

(3) After-care planning.

(a) An after-care plan shall be developed for the client based on the client's needs at discharge.

(b) The after-care plan shall include:

1. Client activities which support recovery from alcohol and other drug abuse; and
 2. Referrals for continuing care.
- (4) Alcohol and other drug abuse counseling and education.
- (a) Counseling.
1. The client shall receive individual, group, or family counseling.
 2. There shall be a maximum of fifteen (15) clients in a group.
 3. The counseling shall include:
 - a. A focus on problems related to alcohol and other drug abuse;
 - b. Examination of attitudes and feelings;
 - c. Consideration of alternative solutions; and
 - d. Assistance with decision making.
- (b) Education.

1. The client shall receive information on alcohol and other drug abuse consistent with his treatment plan.

2. Information on the effects of alcohol and other drug abuse shall be made available to the client's family or significant others.

3. Information shall be delivered through:

- a. Staff presentations;
- b. Videos and audiotapes; or
- c. Written materials.

(5) Daily living skills. The client shall receive training on:

- (a) Budgeting;
- (b) Meal planning and shopping;

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- (c) Personal hygiene;
- (d) Housekeeping; and
- (e) Using public transportation.
- (6) Recreation and leisure.

(a) The client shall receive a variety of organized recreational activities directed by staff, which are consistent with his treatment plan.

(b) All activities, including the staff person directing the activity, shall be posted on a schedule.

(c) The client shall have one (1) hour of unstructured leisure time daily.

(7) Case management.

(a) A case management plan shall be developed for the client needing assistance obtaining and coordinating community resources and shall include:

1. Assessment of the client's need for services;
2. Identification of community resources; and
3. Strategies for obtaining services.

(b) The client shall be assigned a case manager who shall be responsible for:

1. Assisting the client in obtaining social services and other community resources;
2. Monitoring the client's progress; and
3. Advocating on behalf of the client to obtain services or to promote the development of services.

(c) The case management plan shall be signed by the client.

(8) Primary, secondary, and special education.

(a) Primary, secondary, and special education services shall meet the standards in state and local laws and regulations.

(b) Services shall be provided directly by the agency or through a written agreement with a school district.

(9) Physical health.

(a) The client shall be screened at admission to:

1. Determine the need for physical health services; and
2. Identify conditions that may affect the client's participation in the treatment.

(b) Physical health services shall be provided directly by the agency or through written agreements with outside providers and shall include:

1. Tuberculosis skin testing;
2. Voluntary human immunodeficiency virus testing and counseling;
3. Prenatal care; and
4. Physical examination and other primary care services.

(10) Mental health, mental retardation, and developmental disability.

(a) The client shall be screened at admission to:

1. Determine the need for mental health, mental retardation, and developmental disability services; and
2. Identify conditions which may affect the client's participation in services.

(b) Mental health, mental retardation, and developmental disability services shall be provided directly by the agency or through written agreements with outside providers and shall include:

1. Psychiatric evaluation;
2. Psychological assessment; and
3. Developmental evaluation.

(11) Medication.

(a) Prescription and over-the-counter medication brought with the client shall be recorded in the client record upon admission to a treatment program.

(b) The treatment program shall obtain written consent from the client, to verify with a physician that prescription and over-the-counter medications are not contraindicated with the treatment plan, and a copy of the verification shall be retained in the client record.

(c) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to the client.

(d) Client self-administration of over-the-counter medication shall be in accordance with a written standing order from a physician and a copy of the standing order shall be retained in the client record.

(e) A policy on client self-administration of prescription and over-the-counter medication shall be developed and include:

1. Medication shall only be available to the client at the time it is scheduled to be taken according to the prescription or standing order; and

2. Self-administration of prescription and over-the-counter medication shall be documented in the client record and include:

- a. Name of the medication;
- b. Date and time of self-administration;
- c. Dosage and amount of medication; and
- d. Name of the staff person who monitored the self-administration of the medication.

(12) Food services.

(a) The agency shall ensure that food service is provided in accordance with 902 KAR 45:005.

(b) Meals shall be planned in consultation with a registered dietician to ensure that nutritional food is served.

(c) A client with special dietary requirements shall be provided meals to meet his needs and the special dietary requirements shall be documented in the client record.

(13) Narcotic maintenance. Narcotic maintenance services shall be provided in accordance with 908 KAR 1:340.

Section 26. Program Descriptions. An agency shall have written policies and procedures for residential treatment, family residential treatment, transitional living, outpatient treatment, intensive outpatient treatment, and education programs which include:

- (1) Philosophy, mission statement, goals and objectives;
- (2) Client populations to be served including:
 - (a) Age groups;
 - (b) Method for determining the needs of the clients; and
 - (c) Services to be provided;
- (3) Staffing patterns outlined on an organizational chart showing job positions, titles, and lines of authority;
- (4) Admission and readmission criteria;
- (5) Intake procedures;
- (6) Discharge and transfer criteria and procedures;
- (7) Procedures for making referrals within or outside the agency including a list of agencies having a written referral agreement with the agency;
- (8) Rules of client conduct including the consequences for the use of alcohol and other drugs; and
- (9) Methods for delivering services to the client with special needs.

Section 27. Detoxification Program. (1) Assessment.

(a) The agency shall develop an initial assessment in consultation with a physician.

(b) At admission the client shall receive an initial assessment to determine:

1. Physical condition including the client's state of intoxication or withdrawal;
2. Need for emergency medical care;
3. Appropriateness for admission; and
4. Current mental condition to include the identification of specific abnormalities in:
 - a. Behavior;
 - b. Affect;
 - c. Thought;
 - d. Memory;
 - e. Orientation; and
 - f. Contact with reality.

(c) Within twenty-four (24) hours of admission, the following shall be obtained:

1. Client identifying information;
2. Emergency contact person;
3. Presenting problem;
4. History of alcohol and other drug use and problems related to abuse;
5. History of previous treatment for alcohol and other drug abuse;
6. History and previous treatment for physical problems including delirium tremens, seizures, heart disease, liver disease, and infectious disease;
7. History and previous treatment for mental health problems, mental retardation, and developmental disabilities;
8. Assessment of pregnancy status based on client self-report or a pregnancy test; and
9. Signed consent to treatment.

(d) The reason for not obtaining the information in paragraph (b) of this subsection, within twenty-four (24) hours, shall be documented in the client record.

(2) Treatment plan. A treatment plan shall be developed for the client in accordance with Section 25(2) of this administrative regulation.

(3) Vital signs.

(a) The pulse, temperature, and blood pressure of the client shall be monitored three (3) times daily in accordance with an agency protocol, developed in consultation with a physician.

(b) Vital signs shall be documented in the client record.

(4) Medical services. The client shall receive medical services in accordance with Section 25(9) and (10) of this administrative regulation.

(5) Client medication. Self-administration of client medication shall be conducted in accordance with Section 25(11) of this administrative regulation.

(6) Counseling and education.

(a) The client shall receive daily counseling and education in accordance with Section 25(4) of this administrative regulation.

(b) The primary focus of counseling and education shall be to motivate the client to continue in treatment after detoxification.

(c) The client shall participate in counseling and education as soon as they are physically and mentally capable.

(7) Discharge.

(a) A discharge plan shall be developed with the client to include referrals to:

1. An appropriate level of care for alcohol and other drug abuse treatment;
2. Self-help programs; and
3. Community services needed by the client to include housing, medical, and social services;

(b) The program shall contact the referral agencies to schedule appointments for the client before discharge; and

(c) The discharge plan shall be documented in the client record.

(8) Staffing. The program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and shall include:

(a) Program manager;

(b) At least two (2) staff per shift with one (1) trained in emergency procedures; and

(c) Sufficient staff to meet the needs of the clients twenty-four (24) hours a day.

1. The number of staff shall be based on the number of clients, the need for assistance by clients, and the type of services delivered.

2. If it is determined that client needs are not being met, the cabinet shall notify the agency in writing of the need to add additional staff.

3. The agency shall add additional staff as necessary to meet client needs.

(9) Staff training.

(a) Staff shall receive training in accordance with Section 10 of this administrative regulation.

(b) Within three (3) months of employment with the agency, staff

shall receive training in:

1. Emergency procedures in accordance with Section 21 of this administrative regulation; and

2. Monitoring the vital signs of pulse, temperature, and blood pressure.

(c) Within one (1) year of employment with the agency, staff shall receive training in:

1. The recognition of:

a. Problems associated with alcohol and other drug use;

b. Symptoms requiring referral for emergency care;

c. Client's degree of intoxication; and

d. Stages of withdrawal and the physical and mental complications that may occur at each stage;

2. Techniques for motivating the client to continue in treatment after detoxification;

3. Local and state resources including the procedures for making client referrals; and

4. Effects of alcohol and other drug use on a pregnant woman and her fetus, special detoxification needs during pregnancy, and recognition of when to refer the client for medical detoxification.

(10) Food services.

(a) Meals shall be provided in accordance with Section 25(12) of this administrative regulation.

(b) The client shall receive three (3) meals daily with no more than a fifteen (15) hour span between the evening meal and breakfast.

Section 28. Residential Treatment Program. (1) Client services.

(a) Each client shall receive the following services:

1. An assessment in accordance with Section 25(1) of this administrative regulation;

2. Treatment planning in accordance with Section 25(2) of this administrative regulation;

3. Alcohol and other drug abuse counseling and education in accordance with Section 25(4) of this administrative regulation;

4. Development of a relapse prevention plan;

5. Recreational and leisure activities in accordance with Section 25(6) of this administrative regulation;

6. After-care planning in accordance with Section 25(3) of this administrative regulation;

7. Orientation to self-help groups; and

8. Food services in accordance with Section 25(12) of this administrative regulation.

(b) The client with needs in the following areas shall receive:

1. Physical health, mental health, mental retardation, and developmental disability services in accordance with Section 25(9) and (10) of this administrative regulation;

2. Emergency medical services in accordance with Section 21 of this administrative regulation; and

3. Self-administered medication in accordance with Section 25(11) of this administrative regulation.

(2) Structured weekly activities.

(a) The client shall receive forty (40) hours weekly of structured activities which include:

1. Alcohol and other drug abuse education;

2. Individual, group, or family counseling;

3. Self-help meetings; and

4. Recreation.

(b) Ten (10) of the forty (40) hours of structured weekly activities shall be counseling services.

(3) Treatment plan.

(a) A treatment plan shall be developed for the client within four (4) calendar days of admission.

(b) A staff person primarily responsible for implementing the treatment plan shall be assigned within four (4) calendar days of admission.

(c) Case conferences to review the treatment plan and a client's

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progress shall be conducted every two (2) weeks.

(4) Staffing. The program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and shall include:

(a) Program manager;

(b) At least two (2) staff per shift with one (1) trained in emergency procedures; and

(c) Sufficient staff to meet the needs of the clients twenty-four (24) hours a day.

1. The number of staff shall be based on the number of clients, the need for assistance by clients, and the type of services delivered.

2. If it is determined that client needs are not being met, the cabinet shall notify the agency in writing of the need to add additional staff.

3. The agency shall add additional staff as necessary to meet client needs.

(5) Meeting space. The program shall provide an area where the client may meet with self-help groups and other outside service providers.

(6) Food services.

(a) Meals shall be provided in accordance with Section 25(12) of this administrative regulation.

(b) The client shall receive three (3) meals daily with no more than a fifteen (15) hour span between the evening meal and breakfast.

Section 29. Family Residential Treatment Program. (1) Residential treatment standards. A family residential treatment program shall meet the standards for a residential treatment program in Section 28 of this administrative regulation.

(2) Policies on children.

(a) The agency shall have written policies on:

1. Maximum number of children who shall reside in the facility at one time;

2. Ages of the children who may reside in the facility;

3. Maximum number of children who may reside with the client in the facility; and

4. Client's responsibilities for his or her children to include:

a. The client shall have primary responsibility for his or her children who reside in the facility; and

b. The client shall make prior arrangements for the care of his or her children in the event the client leaves the facility without his or her children, with or without staff approval;

(b) The client shall sign a statement agreeing to the policies in paragraph(a)4a and b of this subsection.

(c) The agency shall contact the Cabinet for Families and Children, if the individual designated by the client as responsible for the care of his or her children in the client's absence, is not located.

(3) Client services.

(a) The client shall receive:

1. Training on parenting; and

2. Case management in accordance with Section 25(7) of this administrative regulation.

(b) The client with needs in the following areas shall receive:

1. Training on daily living skills in accordance with Section 25(5) of this administrative regulation;

2. Preparation for a general education development equivalency certificate or other adult education; or

3. Vocational rehabilitation.

(4) Children services.

(a) Children shall receive:

1. Assessment of needs;

2. Service plan based on identified needs;

3. Education about the effects on the family and children when a parent or significant other abuses alcohol and other drugs;

4. Recreation and leisure activities in accordance with Section 25(6)(a) and (b) of this administrative regulation; and

5. Case management in accordance with Section 25(7) of this

administrative regulation.

(b) Children needing child care or education shall receive:

1. Licensed child care; and

2. Primary, secondary, and special education in accordance with Section 25(8) of this administrative regulation.

(5) Staffing. In addition to the staff requirements in Section 28 of this administrative regulation, the program shall have:

(a) Children and family services coordinator;

(b) Recreational therapist; and

(c) Case manager.

(6) Records.

(a) The agency shall maintain a separate record for the client and for each child residing with a client in the facility.

(b) The statement signed by the client agreeing to the policies on children in subsection (2)(a)4a and b of this section shall be included in the client record.

Section 30. Transitional Living Program. (1) Client services.

(a) The client shall receive the following services:

1. An assessment meeting the standards in Section 25(1) of this administrative regulation either:

a. Completed by program staff; or

b. Obtained from a referring program;

2. Treatment planning in accordance with Section 25(2) of this administrative regulation;

3. Alcohol and other drug abuse counseling and education in accordance with Section 25(4) of this administrative regulation;

4. Development of a relapse prevention plan;

5. Recreational and leisure activities in accordance with Section 25(6) of this administrative regulation;

6. After-care planning in accordance with Section 25(3) of this administrative regulation;

7. Orientation to self-help groups;

8. Food services in accordance with Section 25(12) of this administrative regulation; and

9. Case management in accordance with Section 25(7) of this administrative regulation.

(b) The client with needs in the following areas shall receive:

1. Training on daily living skills in accordance with Section 25(5) of this administrative regulation;

2. Physical health, mental health, mental retardation, and developmental disability services in accordance with Section 25(9) and (10) of this administrative regulation;

3. Preparation for a general education development equivalency certificate or other adult education;

4. Vocational rehabilitation;

5. Emergency medical services in accordance with Section 21 of this administrative regulation; and

6. Self-administered medication in accordance with Section 25(11) of this administrative regulation.

(2) Treatment plan.

(a) A treatment plan shall be developed for the client within four (4) calendar days of admission.

(b) A staff person primarily responsible for implementing the treatment plan shall be assigned within four (4) calendar days of admission.

(c) Case conferences to review the treatment plan and the client's progress shall be conducted monthly.

(3) Records. Client progress notes shall document that the client is:

(a) Employed;

(b) Pursuing employment;

(c) Participating in vocational education or rehabilitation; or

(d) Receiving disability benefits.

(4) Staffing. The program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and shall include:

(a) Program manager;

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(b) Relief manager responsible for managing the program in the absence of the program manager; and

(c) Sufficient staff to meet the needs of the clients twenty-four (24) hours a day.

1. The number of staff shall be based on the number of clients, the need for assistance by clients, and the type of services delivered.

2. If it is determined that client needs are not being met, the cabinet shall notify the agency in writing of the need to add additional staff.

3. The agency shall add additional staff as necessary to meet client needs.

(5) Meeting space. The program shall provide an area where the client may meet with self-help groups and other outside service providers.

(6) Food services.

(a) Meals shall be provided in accordance with Section 25(12) of this administrative regulation.

(b) The client shall receive three (3) meals daily with no more than a fifteen (15) hour span between the evening meal and breakfast.

Section 31. Outpatient Treatment Program. (1) Client services.

(a) The client shall receive the following services:

1. An assessment in accordance with Section 25(1) of this administrative regulation;

2. Treatment planning in accordance with Section 25(2) of this administrative regulation;

3. Alcohol and other drug abuse counseling and education in accordance with Section 25(4) of this administrative regulation;

4. Development of a relapse prevention plan;

5. After-care planning in accordance with Section 25(3) of this administrative regulation;

6. Orientation to self-help groups; and

7. Case management in accordance with Section 25(7) of this administrative regulation.

(b) The client with needs in the following areas shall receive:

1. Preparation for a general education development equivalency certificate or other adult education;

2. Vocational rehabilitation;

3. Physical health, mental health, mental retardation, and developmental disability services in accordance with Section 25(9) and (10) of this administrative regulation;

4. Emergency medical services in accordance with Section 21 of this administrative regulation;

5. Training in daily living skills in accordance with Section 25(5) of this administrative regulation; and

6. Narcotic maintenance for an opiate addict in accordance with Section 25(13) of this administrative regulation.

(2) Treatment plan.

(a) A treatment plan shall be developed for the client before the fourth counseling session.

(b) A staff person primarily responsible for implementing the treatment plan shall be assigned before the fourth counseling session.

(c) Case conferences to review the treatment plan and the client's progress shall be conducted every six (6) months.

Section 32. Intensive Outpatient Treatment Program. (1) Outpatient treatment standards. An intensive outpatient treatment program shall meet the standards for an outpatient treatment program in Section 31 of this administrative regulation.

(2) Client services.

(a) The client shall receive the following services:

1. Recreational and leisure activities in accordance with Section 25(6) of this administrative regulation; and

2. Food services in accordance with Section 25(12) of this administrative regulation when the client receive services five (5) hours or more daily.

(b) The client needing medication shall self-administer medication in accordance with Section 25(11) of this administrative regulation.

(3) Program phases.

(a) A program shall consist of the following three (3) phases:

1. Initial;

2. Intermediate; and

3. After-care phase.

(b) The client shall complete all three (3) phases.

(c) Initial phase. In the initial phase, the client shall receive services which shall:

1. Be provided at least twelve (12) hours weekly, in a minimum of four (4) days; and

2. Include twelve (12) hours weekly of:

a. Individual and group counseling;

b. Alcohol and other drug abuse education;

c. Recreational activities;

d. Orientation to self-help programs; and

e. Family counseling or education.

(d) Intermediate phase. In the intermediate phase, the client shall receive services which shall:

1. Be provided at least six (6) hours weekly, in a minimum of two (2) days; and

2. Include six (6) hours weekly of:

a. Individual or group counseling;

b. Alcohol and other drug abuse education;

c. Orientation to self-help programs; and

d. Family counseling or education.

(e) After-care phase. In the after-care phase, the client shall receive services which shall:

1. Be provided at least one (1) hour weekly; and

2. Include individual, group, or family counseling.

(4) Treatment plan.

(a) A treatment plan shall be developed for the client before the fifth counseling session.

(b) A staff person primarily responsible for implementing the treatment plan shall be assigned before the fifth counseling session.

(c) Case conferences to review the treatment plan and the client's progress shall be conducted:

1. Once every six (6) weeks during the initial and intermediate phases;

2. Before the client enters the intermediate and after-care phases; and

3. Once every three (3) months during the after-care phase.

Section 33. Education Program. (1) The client shall receive instruction through a standardized curriculum which includes:

(a) Learning goals and objectives;

(b) Lesson plans; and

(c) Sequential delivery of instructional materials.

(2) The curriculum shall contain information on:

(a) The effects of alcohol and other drug abuse on:

1. Physical and mental health;

2. Family and peer relationships;

3. Job and school performance;

4. Spiritual life;

5. Personal finances; and

6. Legal status;

(b) The progressive nature of chemical dependency and the recovery process;

(c) Infectious diseases associated with the use of alcohol and other drugs; and

(d) The effects of alcohol and other drug use on pregnancy and fetal development.

(3) Instructional sessions shall not exceed three (3) hours daily and may be supplemented by counseling sessions and attendance at self-help groups.

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ELIZABETH REHM WACHTEL, PH.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for Monday, September 23, 1996 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be canceled unless interested persons notify the following office in writing by September 16, 1996 of their desire to appear and testify at the hearing: William K. Moore, Acting General Counsel, Cabinet for Health Services and Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: Currently there are 97 agencies licensed as nonmedical alcohol and education (NATE) centers and drug abuse treatment and education (DATE) centers which are affected. These agencies provide services to 55,000 clients per year. All agencies will be affected by the revised licensure requirements.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no 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 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: There will be increased costs associated with the stricter requirements for staffing, supervision and training. The need for agencies to employ more highly credentialed staff will result in increased costs to the alcohol and other drug abuse agencies. There will be some increased costs for training staff but this is negligible because agencies are currently required to provide training. There will be some increased costs associated with implementing a more structured and intensive set of supervision requirements. There will also be costs related to the increased paperwork requirements associated with documenting staff supervision and training.

2. Second and subsequent years: Same as the first year.

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: There will be some cost in providing technical assistance to the agencies affected and to the Office of Inspector General, Cabinet for Health Services, the administrative body responsible for enforcing the licensure regulations.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(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 administrative regulation, on:

(a) Geographical area in which administrative regulation will be

implemented: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no written 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: The licensure standards will improve the quality of services delivered to alcohol and other drug abuse clients particularly with the stricter requirements related to staff credentials, supervision and training. Enhancing the quality of services provided to these clients will further decrease the abuse of alcohol and other drugs in the state, thereby improving the health and safety of the citizens of the Commonwealth.

(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: There is no statute, administrative regulation or governmental policy in conflict.

(a) Necessity of proposed regulation if in conflict: None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. (Explain why tiering was or was not used) Tiering was not used since the requirements apply equally to all agencies.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of August 5, 1996

The August meeting of the Administrative Regulation Review Subcommittee was held on Monday, August 5, 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 July 1, 1996 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman, Senators Nick Kafoglis, Joey Pendleton, Richard L. Roeding; Representatives Jimmy Lee, James E. Bruce, Woody Allen.

LRC Staff: Greg Karambellas, Donna Little, Steve Lynn, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines, Cindy Schweickart, Louis J. Pierce, Melvin D. LeCompte, Kim Wikon, Nyra Shields, Sharon Cantrell, Patrice Carroll, Joe Lee.

Guests: Richard Casey, Paul P. Borden, KHEAA; Sherron Jackson, Dennis L. Taulbee, Council on Higher Education; Gwendolyn Horton, Beverly Watts, Kentucky Commission on Human Rights; Angela Robinson, Gail Prewitt, Finance Cabinet; Ken Adelson, Robin G. Hearn, Graham Duvall, Division of Disability Determinations; Susan Stopher, Board of Accountancy; Evan Reynolds, Attorney General's Office; Mark Brengelman, Gary Munsie, William Logan Smith, Board of Dentistry; John L. Corman, Jane A. Gardner, Landscape Architect Registration Board; Nancy Brinly, Board of Physical Therapy; John Phillips, Department of Fish and Wildlife Resources; Mark Farrow, Danny R. Willis, Department of Agriculture; David Reichert, Division of Charitable Gaming; Tamela Biggs, Jack Damron, Department of Corrections; Sandra Pullen Davis, Transportation Cabinet; Kyna Koch, Kevin Noland, Carole Kruse, Department of Education; Steve Forbes, Labor Cabinet; Debbie Linnig Michals, OSHA Review Commission; Frank L. Dempsey, Carla H. Montgomery, Department of Insurance; Judy Walden, Department of Housing, Buildings and Construction; Cookie Whitehouse, Cabinets for Families and Children and Health Services; Pat Patterson, Nelson Henson, Ken Roten, Cabinet for Families and Children; Robert Nelson, Ralph Von Derau, Ked Fitzpatrick, Marc Todd Short, Betsy Dunningan, Ed Maxwell, Elizabeth Rehm Wachtel, Mike Townsend, Dee Swain, John H. Walker, Cabinet for Health Services; Jeffery Drake, ESS; Ruby Jo Cummins, Kentucky Association of Health Care Facilities; Johnny C. Abbott, Harry L. Hedrick, USWA Local 1865; Herbert Segal, Steelworkers Union; John F. Nichols, Jr., Associated Industries of Kentucky; John Brazel, Kentucky Chamber of Commerce.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Kentucky Higher Education Assistance Authority: KHEAA Grant Program

11 KAR 5:130. Student application. Paul Borden, Executive Director, Kentucky Higher Education Assistance Authority, and Richard Casey, General Counsel, represented the Authority. Mr. Borden stated that: (1) the Authority is required annually to incorporate the Free Application for Federal Student Aid into this administrative regulation; (2) the form: (a) serves as a basic application for all state grant programs and most of the state, federal, and institutional financial aid programs; and (b) is updated each year through a federally-regulated process; and (3) this administrative regulation is being amended solely to incorporate the federal changes.

In response to a question by Senator Roeding, Ms. Borden stated that: (1) this administrative regulation is being promulgated in response to a federal mandate; (2) because the federal program requires completion of the federal application form, students are already required to complete it for financial assistance; (3) for the last fifteen years, Kentucky has been using the federal form and its needs assessment for its programs; and (4) using the federal form alleviates

the need for having a separate complex state application form.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY 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) Sections 1 and 2 were amended to divide the sections into subsections; and (3) Section 1 was amended to: (a) correct formatting errors in the incorporation by reference section; (b) correct grammar and punctuation errors as required by KRS 13A.222(4); and (c) delete superfluous language as required by KRS 13A.222(4)(a).

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships. Mr. Borden stated that: (1) the amendment to this administrative regulation is required by Senate Bill 152, enacted during the 1996 Regular Session, which modified the teacher scholarship program; and (2) this administrative regulation: establishes (a) the following order for offering scholarship awards to applicants for the upcoming year: 1. renewal applicants; 2. highly qualified, eligible initial applicants who are unconditionally admitted to a teacher education program based on the standards established by the Education Professional Standards Board (EPSB); 3. applicants conditionally admitted to a teacher education program who meet the EPSB standards; 4. highly qualified initial applicants who have not yet been admitted to a teacher education program, ranked in ascending order of expected family contribution; and 5. initial applicants seeking admission who meet other technical eligibility criteria; and (b) an award maximum of \$210 per semester hour for the coming academic year.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY 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) Sections 2 and 5(1) were amended to: (a) delete ambiguous and superfluous language, as required by KRS 13A.222(4)(a); and (b) clarify which teacher scholarship programs are affected by changes in the authorizing statute and in the administrative regulation; and (3) Sections 3, 6, and 9 were amended to correct grammar and punctuation errors, as required by KRS 13A.222(4).

Educational Savings Plan Trust

11 KAR 12:050. Substitution of a beneficiary. Mr. Borden stated that this administrative regulation: (1) provides a mechanism through which participants in the Kentucky Educational Savings Plan Trust program can substitute one beneficiary for another; and (2) requires the new beneficiary to be a current participant under the age of fifteen years.

In response to a question from Senator Roeding, Mr. Borden stated that: (1) this administrative regulation does not increase fees; and (2) the fee remains \$25.00 per substitution after the first two substitutions are made. Mr. Casey stated that: (1) this administrative regulation permits parents to substitute beneficiaries twice without the imposition of a fee; (2) this change was required because of the administrative and financial burden that had been placed on parents if: (a) they had established a savings account for their children; and (b) because one child decided not to attend an institution of higher education, the parents wanted to transfer the money in that child's account to another child; (3) before the amendment to this administrative regulation, the parents were required to: (a) cancel the account; (b) pay a cancellation fee; and (c) redeposit the money into the other child's account; (4) this administrative regulation permits parents to substitute beneficiaries without a fee for the first two times; and (5) this is an accommodation of the participants' needs, because the money in the accounts is their money.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the

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administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 1 was amended to: (a) clarify that the substitution of beneficiaries may be done at any time, subject to KRS 164A.330(7); (b) use "shall not" to express a prohibition as required by KRS 13A.222(4)(b); and (c) clarify that the fee for substituting beneficiaries is for each substitution after the second substitution.

Council on Higher Education: Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals. Sherron Jackson, Director, Equal Opportunity and Facilities, and Dennis Taulbee, General Counsel, represented the Council. Mr. Taulbee stated that: (1) this administrative regulation: (a) related to desegregation under Senate Bill 398, which requires the Council to disapprove academic programs for public institutions that have failed to meet their equal opportunity goals; (b) established the criteria for evaluating the institutions; and (c) established specific dates relating to academic years and performance objectives; (2) because the current plan has expired, the Council needed to extend the dates for an additional year while it developed a new plan; and (3) most of the original amendments to the administrative regulation changed the dates.

In response to questions by Senator Roeding, Mr. Jackson stated that: (1) the objectives are established by the Council in conjunction with the institutions; (2) a workgroup works with Council staff to develop reasonable and obtainable objectives for the institutions; (3) if the institutions agree to the objectives, they are included in the plan as the objectives the institutions will be required to meet; (4) because the Council works with the institutions, the institutions have input into the establishment of the objectives; and (5) this administrative regulation: (a) established terms for determining compliance with the goals; and (b) did not establish the specific goals.

In response to questions by Senator Kafoglis, Mr. Jackson stated that: (1) in the most recent evaluation, there were varying degrees of performance by the institutions because the institutions: (a) met some of the objectives; (b) made progress towards meeting other objectives, and (c) did not meet some of the objectives; (2) the institution that is not automatically eligible to establish new academic programs is granted an opportunity to appear before the Council's Committee on Equal Opportunity to produce information showing that: (a) a current program failed to meet the objectives for a reason outside of the institution's control; and (b) the institution is making changes in the program to enhance its ability to reach the objectives; and (3) because waivers are not automatically granted, the Committee will make a recommendation to the full Council as to whether to grant a waiver to the institution.

In response to a question by Senator Roeding, Mr. Jackson stated that: (1) he could not address the issue of whether the objectives were too high; (2) the objectives are based on actual data, including the: (a) number of high school graduates; (b) entering freshmen enrollment; (c) the availability of students who can be recruited by an institution; (d) and other factors; (3) the objectives seek to answer two questions: (a) are students being recruited; and (b) once students are recruited, are the institutions providing services necessary to retain the students through graduation; (4) while institutions have the opportunity to request the Council to lower an objective, the Council must determine its response to the request; (5) as staff, he would present the institution's request to the Council for its determination; (6) when the objectives are being established, institutional and Council staff together; (a) review the information; and (b) agree upon the reasonable objectives for inclusion in the equal opportunity plans for the institutions; (7) the current process provides an institution the opportunity to receive a one year waiver if it: (a) has not met its goals; and (b) is ineligible for automatic approval of new academic programs; and (8) waivers have been requested by and granted for three institutions: (a) Western Kentucky University, (b) Eastern Kentucky University, and (c) the University of Kentucky.

Senator Roeding stated that: (1) he was happy to see the

waivers; (2) because both the local and global economies are changing, there should not be a program that makes the need for new programs secondary; and (3) because the need for education is undergoing a huge change, he hoped the Council and its Committee would review the economic situation when the objectives are established.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 2, 4, and 5 were amended to: (a) delete ambiguous and superfluous language, as required by KRS 13A.222(4)(a); (b) use "if" rather than "when" and "where", as required by KRS 13A.222(4)(i); (c) change the dates and numbers in the examples to comply with changes made to the actual formula; and (d) clarify which objectives apply to community colleges.

The Subcommittee approved this administrative regulation, as amended, with Senator Roeding voting "no".

Commission on Human Rights: Human Rights

104 KAR 1:020. Administrative proceeding. Beverly Watts, Executive Director, and Gwendolyn Horton, Principal Assistant to the Executive Director, represented the Commission. Ms. Horton stated that: (1) this administrative regulation conformed the Commission's administrative hearing proceeding with KRS Chapter 13B, governing administrative hearings, as amended by Senate Bill 292; and (b) the proposed amendments corrected formatting and sentence structure.

In response to a question by Representative Lee, Subcommittee staff stated that: (1) the proposed amendment corrected the issue of statutory authority raised in the initial staff review; and (2) the administrative regulation conformed to KRS Chapter 13B.

In response to a question by Senator Roeding, Ms. Horton stated that the Commission required all complaints filed with it to be signed and sworn before a notary.

This administrative regulation was amended as follows: (1) statutory citations were corrected; (2) forms were added to the incorporation by reference section; (3) the latest edition of the forms were incorporated by reference; and (4) amendments were made to conform to KRS 13A.220(4) formatting and KRS 13A.222 drafting requirements.

Board of Accountancy

201 KAR 1:040 & E. Procedures for conducting examination. Susan Stopher, Executive Director, represented the Board. Ms. Stopher stated that: (1) this administrative regulation was amended because nationally the CPA examination has become a nondisclosed examination; and (2) as with other professional examinations, CPA examinees are no longer permitted to take the examination materials home.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct the citation of the statutory authority, as required by KRS 13A.220(3)(e); (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 3 and 4 were amended to correct punctuation errors, as required by KRS 13A.222(4); (4) Section 5(5) was amended to delete superfluous language as required by KRS 13A.222(4); and (5) Section 6(2) was amended to delete "any or all", as required by KRS 13A.222(4)(b).

Board of Dentistry

201 KAR 8:015. Registration of dental laboratories and technicians with board. Gary Munsie, Executive Director, Board of Dentistry; William Smith, President, Board of Dentistry; and Mark Brengelman, Assistant Attorney General, and General Counsel to the Board, represented the Board. Mr. Munsie stated that the administrative

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regulation: (1) imposed a late fee on dental laboratories and technicians who register with the Board; and (2) required the dentists to keep on file in their offices the certificates of the laboratories with which they do business.

In response to a question by Representative Bruce, Mr. Munsie stated that: (1) the Board does not have a late filing fee for laboratories and technicians; and (2) a late fees of \$25 for a laboratory and \$5 for a technician are charged to encourage the timely payment of fees.

In response to a question by Representative Allen, Mr. Munsie stated that: (1) the Board required annual registration by December 31 to: (a) operate a laboratory; or (b) work as a technician for the next year; (2) without a late fee, the Board would receive the fee for the current year as late as September, rather than by the required deadline, December 31 of the previous year; (3) the Board believed that imposing a small late fee would encourage registration by December 31; (4) currently, laboratories pay \$50 a year, and technicians pay \$10 a year, to register; (5) this administrative regulation required payment of a late fee; (6) the Board did not believe the late fees would result in significant revenue for the Board; (7) he estimated that although the revenue would be less than \$1,000 a year, the fees would encourage proper registration; and (8) the late fee will: (a) not be charged to a new laboratory or technician who registers after December 31; and (b) be charged to existing laboratories or technicians who pay their registration late.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations, as required by KRS 13A.220(3)(e); (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 5 were amended to: (a) delete proposed amendments to the administrative regulation that exceeded the Board's statutory authority to issue certificates of authority rather than registration certificates, as required by KRS 13A.120(2)(h) and 313.520; and (b) clarify citations to other administrative regulations referenced in the administrative regulation; (4) Section 1, 2, and 5 were amended to: (a) use "shall not" and "shall", as required by KRS 13A.222(4)(b), (c); and (b) avoid using the prohibited words "said", "such", and "his/her", as prohibited by KRS 13A.222(4)(c); (5) Section 3 was amended to use the same format for dollar amounts; and (6) the review statement that was inadvertently omitted from the administrative regulation was included, pursuant to KRS 13A.220(5)(a).

Department of Housing, Buildings and Construction: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements. Judith Walden, General Counsel, represented the Department. Subcommittee staff stated that: (1) at the July Subcommittee meeting, this administrative regulation gave rise to a great deal of discussion relating to the establishment of a date certain for requiring continuing education of journeymen; and (2) the Department had proposed an amendment to this administrative regulations to require continuing education for journeymen, beginning fiscal year 97-98; (3) this date would result in a one-year delay in the master continuing education program; (3) the Board had approved training agencies for the master's HVAC program for this year, including the: (a) Kentucky Workforce Development Cabinet's Vo-Tech, which will provide courses throughout the state; (b) University of Kentucky; and (c) Kentucky Mechanical Contractor's Association; and (4) these training agencies are being considered for designation as providers of continuing education for journeymen.

In response to questions by Senator Kafoglis, Ms. Walden stated that: (1) the amendment would require continuing education for journeymen HVAC mechanics to begin in the licensing year 1997-98,

which begins a year from this July; and (2) without the amendment, the administrative regulation would delete the requirement for continuing education.

This administrative regulation was amended as follows: (1) the NECESSITY FUNCTION, AND CONFORMITY paragraph was amended to extend the continuing education requirements by one year, rather than to postpone the requirements indefinitely; (2) Section 2(2) was amended to: (a) re-insert the deleted material; and (b) change the date by which continuing education will be required from 1996 to 1997; and (3) Sections 2(3) and 6(5)(a) and (b) were amended to re-insert the deleted material.

Cabinet for Health Services: Department for Health Services: Local Health Departments

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees. John Walker, Assistant Counsel, Cabinet for Health Services; and Bob Nelson, Manager, Local Health Department Personnel Program, represented the Cabinet. Mr. Nelson stated that: (1) the administrative regulation: (a) related to the transfer, promotion and demotion of local health department employees; (b) originally was amended to update the statutory authority for the administrative regulation; and (c) was deferred to give the Department an opportunity to address issues raised at the July, 1996, meeting by the Subcommittee and its staff; and (2) the proposed amendment incorporated: (a) the Executive Order 96-862, signed by the Governor on July 2, 1996, that reorganized the Cabinet for Human Resources; and (b) suggestions made in the initial staff review of this administrative regulation.

In response to a question by Senator Roeding, Mr. Walker stated that: (1) Executive Order 96-862, which reorganized and split the Cabinet for Human Resources into two separate Cabinets, contained substantial differences from the prior executive order, EO 95-79; (2) the changes that were implemented by Executive Order 96-862 are not identical to the changes implemented under the reorganization bill that the General Assembly did not approve during the 1996 Regular Session; (3) the new Executive Order: (a) considered the issues raised by the General Assembly; and (b) made other substantial changes in the reorganization of the Cabinets.

This administrative regulation was amended as follows: (1) the name of the administrative body was amended to its new name under the new Executive Order; (2) the STATUTORY AUTHORITY and NECESSITY, FUNCTION AND CONFORMITY paragraphs were amended to replace references to EO 95-79 with EO 96-862 and (3) various sections were amended to: (a) conform to KRS 13A.220(4) formatting and KRS 13A.222 drafting requirements; and (b) place numerical expressions of percentage amounts in parenthesis after the word "percent" rather before the word.

Senator Roeding and Representative Allen objected to the amendment.

The Subcommittee approved this administrative regulation, as amended, with Senator Roeding and Representative Allen voting "no".

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Finance and Administration Cabinet: Personnel Pilot Programs

200 KAR 22:130 & E. Comprehensive Employment Manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations for use in the pilot personnel program. Gail Prewitt, Project Manager, Personnel Steering Committee, and Graham Duvall, Project Coordinator, Division of Disability Determination's Pilot Program. Mr. Duvall stated that this administrative regulation: (1) concerned the pilot program for the Division of Disability Determination; and (2) consisted of six sections, including: (a) administrative travel which had been approved by the Social Security Administration; (b) a supervisory review for first-line supervisors; (c) a customer survey; (d) a personalized work schedule for

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employees within a division; (e) employee evaluations; and (f) incentive increases.

In response to a question by Senator Roeding, Subcommittee staff stated that: (1) the statement of emergency for the emergency administrative regulation was attached to the ordinary administrative regulation; (2) while the Cabinet was advised by staff to promulgate this administrative regulation as an emergency in order to allow enough time for the program to work before the program expired, Subcommittee members had determined that this use of the emergency regulatory procedure did not comply with the requirements for the promulgation of an emergency administrative regulation established by KRS 13A.190; and (3) the Cabinet had previously been informed by Senator Preston that an emergency in the future should not be used for this type of administrative regulation, unless the statute: (a) specifically authorized it to promulgate an emergency administrative regulation for that reason; or (b) established a more specific deadline than existed in the existing statute.

In response to a question by Senator Roeding, Ms. Prewitt stated that the manual incorporated by reference was approximately 50 pages long.

Senator Roeding stated that when an agency incorporated something by reference, it should not be included in an emergency administrative regulation in order to give members and the public a chance to review the incorporated material.

In response to a question by Senator Roeding, Ms. Prewitt stated that: (1) amendments were made to the employee handbook; (2) for the pilot programs, the Cabinet: (a) revised the standard Department of Personnel Employee Handbook under the merit system; and (b) highlighted any changes made by the Steering Committee for the staff; and (3) the Cabinet submitted a manual to staff with only the amendments highlighted.

Senator Roeding stated that the Cabinet was asking the Subcommittee to approve something the members had not seen.

Chairman Crenshaw stated that if Senator Roeding wanted to see a copy of the incorporated material, staff would provide him with one.

Senator Roeding stated that any item that was incorporated by reference should be reviewed by the members with the administrative regulation.

Ms. Prewitt stated that: (1) the major change in the manual was to the evaluation system, which is something many of the pilot programs wanted to work on because the current evaluation system was highly criticized; and (2) the changes established criteria for performance.

Subcommittee staff stated that: (1) a summary of the material incorporated by reference was attached to each administrative regulation, as required by KRS 13A.2251; (2) because of the volume of material sent to Subcommittee members with administrative regulations, Subcommittee staff did not attach the complete text of material incorporated by reference; (3) if a Subcommittee member wanted a particular item that was incorporated by reference, the member could notify Subcommittee staff and the Regulations Compiler's Office would forward the material to the member; (4) a Subcommittee member would be sent all material incorporated by reference if he wished; (5) if all the incorporated material was forwarded, members would have boxes of material each month; (5) if a member wanted to examine a particular item, he could: (a) request a copy of the original document to be mailed to him; or (b) contact the staff attorney who was reviewing the material to go over the material with the member; (6) a promulgating agency: (a) is required by law to provide a copy of the material upon request; and (b) sends in "clean" and "dirty" sheets for incorporated materials, which are copies of the sheets: (a) in which the changes have been made showing the brackets and underlines; and (b) showing how the pages that have been amended will appear after the amendments have become effective.

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050 & E. Fees. John Carman, Chairman, and Jane Gardner, Executive Director, represented the Board. Mr. Carman stated that this administrative regulation modified the fee structure because the: (1) Board has found that the cost of purchasing the examinations from the national organization exceeded the amount the Board charged candidates for the examination; and (2) administrative costs of the Board had increased over the past several years because of statutory changes, especially the requirements for continuing education.

In response to questions by Chairman Crenshaw, Mr. Carman stated that: (1) the examination fee increase was \$177; (2) the national examination consisted of seven sections and the cost varies by section; (3) on the average, the Board had been charging a maximum of \$100 per section; and (4) the Board: (a) is trying to bring the examination charges in line with its costs; and (b) had broken the costs down per section.

In response to a question by Representative Allen, Mr. Carman stated that: (1) the \$177 was the estimated increase from what the Board currently charges, rather than the estimated costs; (2) the cost was: (a) approximately \$420 for the entire examination; (b) not \$100 per section; (3) the Board chose to break the costs down per section, because candidates were taking partial sections of the examination each time it was offered in order to increase their scores; (4) the pass rates have increased on a national basis; (5) the Board was already charging the examination fee on a section by section basis even though the administrative regulation did not provide for section by section charges; (6) the examination fees were increased because the Board purchases the examination from the national organization, the Council of Landscape Architectural Registration Boards, that prepares and writes the examination for use in all of the states that license landscape architects; (7) the national organization charges each state board a fee for the examination; and (8) this administrative regulation should help the Board break even with the costs it incurs in purchasing the examination and with other associated costs.

In response to questions by Senator Roeding, Mr. Carman stated that: (1) a one-time nonrefundable \$50 processing fee was: (a) charged for new applications for the examination; and (b) deducted from the costs of the total examination; (2) A candidate will not be charged another processing fee if he: (a) failed part of the examination; and (b) the next year: 1. took the whole examination again; or 2. took additional parts of the examination; (3) the Board conducts a two-to-three month process of verifying application materials; and (4) the processing fee is a new fee.

In response to a question by Senator Pendleton, Mr. Carman stated that: (1) the Board had approximately 200 registrants on its roster; (2) the number of registrants on the roster varied by about ten percent yearly; (3) the examination was offered twice a year, in June and in December; (4) an average of 15 to 20 people, including repeat-takers, take the examination each time; and (5) the total number of examinees was 220 to 240 annually.

In response to a question by Representative Bruce, Mr. Carman stated that: (1) the trend is that 15 to 30 people will take the test each year in Kentucky; (2) the Board had licensed 200 to 210 people thus far; (3) the number of people licensed by the Board increased annually; (4) while the Board's fees were similar to those charged in other states, the examination costs were probably lower in Kentucky than in other states; and (5) the Board charged \$100 dues a year.

In response to Representative Allen's request for a roll call vote for approving this administrative regulation, Subcommittee staff stated that: (1) the failure of a motion to approve an administrative regulation did not mean that the Subcommittee had determined that the administrative regulation was deficient; (2) a specific motion to find an administrative regulation deficient was required; (3) on a motion to approve, a member may register his objection to the administrative regulation by voting against the motion to approve.

The Subcommittee approved this administrative regulation with

Representative Allen and Senator Roeding voting "no".

Board of Physical Therapy

201 KAR 22:031. Therapist's licensing procedure. Nancy Brinly, Executive Secretary, represented the Board. Subcommittee staff stated that: (1) the Board had agreed to a further review of the three Board administrative regulations considered by the Subcommittee at this meeting, because: (a) Subcommittee staff were unable to complete the reviews; and (b) the Board met earlier than Subcommittee staff could finish the amendments, or Board staff present them to the Board; (2) Subcommittee staff will finish the reviews and send suggested amendments to the Board, which will file amendments to the administrative regulations if it agreed with the suggested amendments; and (3) there were no questions regarding statutory authority for the three administrative regulations.

Ms. Brinly stated that this administrative regulation was amended to: (1) change from a paper and pencil examination for therapists to a computer-based examination that is being initiated throughout the country; and (2) decrease the administrative fee for re-examination candidates from \$25 to \$10.

In response to a question by Representative Allen, Ms. Brinly stated that: (1) overall, the total amount of fees that will be paid for the computer-based examination will be higher than the amount of fees for the paper and pencil examination; (2) those fees are governed by a separate administrative regulation; and (3) this administrative regulation included a fee decrease for the amount the Board charged as an administrative, processing fee for re-examination candidates.

201 KAR 22:106. Assistant's certification procedure. Ms. Brinly stated that this administrative regulation: (1) while similar to 201 KAR 22:031, governed associates, pre-licensees, and physical therapy assistants; and (2) changed the examination from a paper and pencil examination to a computer-based examination.

201 KAR 22:135. Fees. Ms. Brinly stated that: (1) this administrative regulation: (a) established application fees; and (b) increased the: 1. biennial renewal fee from \$80 to \$100; and 2. reinstatement application fee from \$105 to \$125; (2) this was the first increase in renewal fees since 1984, when the Board changed the fees from a \$40 annual fee to an \$80 biannual fee; (3) the other fee increases were: (a) related purely to the computer-based examination; and (b) added the costs of the Sylvan Learning Center, the computer-based site, to the examination fee.

In response to a question by Representative Allen, Ms. Brinly stated that: (1) the computer-based testing site fee charged by Sylvan was: (a) \$60 for physical therapists' four-hour examination; (b) \$45 for physical therapist assistants; and (c) in addition to the \$185 examination fee; and (2) the money the Board charged applicants was considered wash money to cover its costs for the examination.

Representative Allen stated that: (1) the money was not wash money for the people required to pay it; and (2) he was concerned that: (a) every agency requested differing fee increases; and (b) the amount of money charged licensees adds up.

In response, Ms. Brinly stated that: (1) this amount represented the cost to the Board for which it was required to recover; (2) the Board was excited because applicants received their examination results in a week, they would be able to work and make more money sooner than they would using the paper and pencil examinations; (3) she believed Sylvan charged too much money for the physical therapy examinations because it charged \$20 for the nursing examination; (4) the reason for the different charges for the examinations was that nationally there are 250,000 nurses examined annually and only 15,000 physical therapists a year; and (5) the Board hoped to obtain a better contract from the computer-based site in the future.

In response to a question by Representative Bruce, Ms. Brinly stated that: (1) prior to the 1984 change, the Board charged \$40 annually; (2) after 1984, the Board charged \$80 biannually; and (3) under this administrative regulation, the Board will charge \$100

biannually.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:176. Deer control tags. John Phillips, Technical Program Coordinator, represented the Department. Mr. Phillips stated that this administrative regulation: (1) specified conditions and procedures for issuing special antlerless deer control tags to landowners with crop damage; (2) differed from the existing administrative regulation, 301 KAR 2:211, which was repealed, by establishing procedures for the issuance of out-of-hunting season deer destruction permits for landowners suffering from crop damage who cannot wait for the permits during hunting season; (3) defined "environmental habitat damage" for cases where crops are not being grown; and (4) specified conditions to be met by land owners with over a thousand acres to receive deer control tags before the habitat or crop damage occurs.

In response to a question by Representative Allen, Mr. Phillips stated that: (1) if the Department determined that crop damage was severe, a landowner could request a special permit to control the damage; (2) the permits were free; (3) this administrative regulation: (a) did not interfere with a landowner's right to shoot deer at any time; and (b) allowed landowners who shot deer during the summer under a special destruction permit to utilize the meat rather than wasting the deer.

In response to a question by Representative Bruce, Mr. Phillips stated that: (1) if a landowner had crop damage, he should contact the Department; (2) the Department would send a representative to the property to assess the damage; and (3) if the landowner can wait until hunting season, he will be given special antlerless permits that allow landowners to permit hunters to take two extra deer from his property free of charge.

Department of Agriculture: Tobacco Sales

302 KAR 78:020E. Use, sale and distribution of tobacco products. Mark Farrow, General Counsel, and Danny Willis, Executive Director, Office for Consumer and Public Services, represented the Department. Mr. Farrow stated that this administrative regulation: (1) was the result of Senate Bill 137, the teen tobacco bill that passed with an emergency clause in March, 1996; and (2) established the: (a) proper identification for retail clerks to request from tobacco purchasers; and (b) signage requirements for the retail establishments.

In response to a question by Representative Allen, Mr. Farrow stated that the signs were required to: (1) be 5.5 by 8.5 inches; (2) include the prohibition against selling or distributing tobacco products to persons under age eighteen that is pursuant to KRS 438.310(1); and (3) be posted in a conspicuous place within the establishment.

In response to a question by Representative Allen, Mr. Willis stated that: (1) the signs were distributed by Department employees as they inspect the businesses; (2) while businesses were not required to use the Department's signs, they were required to comply with the language requirements; (3) the Department's signs are being made available to all retailers by the inspectors in each Kentucky county; and (4) the Department was working with the Retail Association and the Grocers' Association, who are helping with the distribution of the signs.

In response to a question by Senator Roeding, Mr. Farrow stated that if a retail establishment sells tobacco products, it is required to post a sign with the proper size and wording furnished by itself or the Department, even if it sells tobacco products only through a vending machine.

In response to a question by Representative Bruce, Mr. Farrow stated that many retail establishments had already posted signs, including "we card" signs distributed by the Kentucky Retail Federation.

In response to a question by Representative Allen, Mr. Farrow stated that ABC: (1) was in charge of the enforcement aspects; and

(2) had been working to establish baseline figures to measure any decreases in smoking among persons under age eighteen. Mr. Willis stated that: (1) current data was not currently available on the number of people smoking under age eighteen; and (2) in the near future, the Department should have data on the percentage of teenagers who have been able to purchase tobacco.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Jack Damron, General Counsel, and Tamela Biggs, General Counsel, represented the Department. Ms. Biggs stated that this administrative regulation included the following amendments to two Department policies: (1) CPP 27-10-01 was deleted because amendments to some of the other policies regarding probation and parole had made this policy obsolete; and (2) CPP 16.4, Inmate Packages, was amended to reflect the Department's new policy: (a) regarding packages that the inmates may receive from home; and (b) the number and types of packages they can receive from vendors.

In response to a question by Chairman Crenshaw, Ms. Biggs stated that: (1) under the old policy, an inmate could receive two home-mailed packages per year, including a Christmas package; (2) under the new policy, an inmate can receive one home package regardless of the length of his sentence; (3) under the old policy, the number of vendor packages was limited to a maximum of two per calendar quarter; (4) under the new policy; (a) the limit is one per calendar quarter; and (b) if an inmate wanted more than one vendor package, he may: 1. discuss the potential order with the warden; and 2. be authorized by the warden to receive an extra vendor package; (5) the policy was amended because next to visitation, home packages posed the greatest problem for the Department in controlling contraband entering the facilities; (6) every home package that is sent in must be dismantled and inspected by the Department to ensure that there is no contraband; (7) the drugs, weapons, and other contraband found by the Department in home packages was turned over to law enforcement or destroyed; and (8) by limiting the number of home packages that an inmate may receive, the Department will significantly reduce the amount of contraband coming in through the mail.

In response to a question by Senator Kafoglis, Ms. Biggs stated that unsolicited packages were returned to the sender.

In response to a question by Senator Roeding, Ms. Biggs stated that: (1) if found contraband was either drugs or a weapon, the contraband was turned over to the appropriate law enforcement agency for prosecution; and (2) if the contraband was gang insignia or gang colors, pornographic magazines or books, or some other type of contraband, the inmate was given one of three alternatives for disposing of the contraband.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291. Sandra Pullen-Davis, Staff Assistant, Office of the Secretary, represented the Department. Ms. Pullen-Davis stated that: (1) this administrative regulation implemented the federal mandate that Kentucky and all other states join the International Fuel Tax Agreement by July 1, 1996; (2) during the 1996 Regular Session, the General Assembly enacted House Bill 322 which: (a) allowed Kentucky to join the Agreement; and (b) amended the taxing statutes for motor carriers in the trucking industry to be compatible with the federal mandate; and (3) this administrative regulation established: (a) applications; (b) tax payment procedures; (c) required forms, and (d) other implementation procedures that related to the taxes imposed on motor carriers.

In response to questions by Representative Bruce, Ms. Pullen-Davis stated that: (1) all states were required to become members of the International Fuel Tax Agreement; (2) the tax amount differed

because Kentucky had to repeal a tax it imposed on vehicles with a weight above 60,000 pounds; (3) because the Agreement did not allow for different taxing structures for any of the weights of vehicles, if a state taxes a vehicle about 26,000 pounds, all vehicles must be taxed the same for fuel tax; 4) because Kentucky did not tax all weights the same, the different tax was repealed by the General Assembly; (5) the legislation was drafted to continue the exemption for farm trucks from the tax imposed by KRS Chapter 138; and (5) the administrative regulation clearly stated that farm trucks that previously had been granted this exemption would continue to be exempted.

In response to a question by Senator Roeding, Ms. Pullen-Davis stated that although Kentucky would lose \$7 million because of the repealed tax, without the amendment Kentucky would have lost \$35 million.

Department of Highways: Right-of-way

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways. Ms. Pullen-Davis stated that this administrative regulation was amended to: (1) bring the Department into compliance with the requirements established by KRS Chapter 13B relating to administrative hearings; and (2) made minor technical corrections on where the tourist-oriented directional signs could be placed.

In response to questions by Senator Roeding, Ms. Pullen-Davis stated that: (1) a golf course sign was allowed to be placed on a TODS signs; (2) because only the state and its contractor were permitted to place signs on state-maintained right-of-ways, a city was not allowed to place signs on those right-of-ways; (3) a tourist attraction that was off the interstate in a fully-controlled limited access parkway could be placed on a TODS sign; (4) in Frankfort, there were several blue TODS signs on the west side of town that: (a) advertised Rebecca Ruth Candy, the Knights Inn, Canoe Kentucky, and other businesses; and (b) showed which direction to drive to reach these businesses; (5) businesses who wished to be included on a TODS sign were required to apply to the state's contractor, Kentucky Logo Sign Group; (6) in district offices the: (a) permits engineers kept copies of the application forms; and (b) forms were available in the central office; (7) through the federal funding enhancement program, Ice-T, money was included that could be used by non-profit entities, such as a museum, to purchase space on TODS signs; (8) businesses must go through the state to have signs made and placed on the interstates; and (9) the signs: (a) cost \$216 a year; and (b) were constantly in need of repair or replacement.

In response to questions by Representative Lee, Ms. Pullen-Davis stated that: (1) minimum operating hours were required for the LOGO program because the federal government manual, Uniform Traffic Control Devices, which included the LOGO program, required states that adopted the LOGO program to also adopt the federal criteria for the LOGO programs, including hours of service; (2) because there were more businesses that wanted to be on a LOGO sign than there were spaces available, the operating hours served as a priority system for determining which businesses would acquire that space; (3) the state wanted businesses open during the majority of hours when travelers would: (a) be using those services; and (b) pass the signs; (4) the criteria for placing a LOGO and TODS sign differed; and (5) while she did not recall that hours of operation were a requirement for participation in the TODS program, they were a requirement of the LOGO program.

Traffic

603 KAR 5:066. Weight mass limits for trucks. Ms. Pullen-Davis stated that this administrative regulation: (1) established new axle configurations for the operation of trucks because: (a) previously the configurations were based on the number and placement of the axles on the trucks; and (b) the progressive trucking industry had changed the placement of axles under the trucks; and (2) used the federal government formula which recognized that trucks meeting the formula would not damage the highways more than the trucks that were currently allowed.

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In response to a question by Representative Bruce, Ms. Pullen-Davis stated that the only effect this administrative regulation would have on trucks hauling farm products would be to allow the use of a new axle configuration if desired.

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. Kevin Noland, General Counsel, represented the Department. Mr. Noland stated that: (1) the education administrative regulations on the agenda included six emergency administrative regulations and two repealing administrative regulations that all related to amending the administrative hearing processes to conform to KRS Chapter 13B; (2) the amending administrative regulations were 701 KAR 5:020E, 701 KAR 5:055E, 701 KAR 5:090E, 702 KAR 1:080E; 703 KAR 3:205E, and 707 KAR 1:180E; (3) in 1994, the General Assembly enacted House Bill 334 that required by July 15, 1996, that all state agencies and state board administrative hearings follow a uniform process; (4) in the 1996 Regular Session, the General Assembly enacted Senate Bill 292 which made additional amendments to the hearing process; (5) these emergency administrative regulations were promulgated to amend the Department's hearing processes to conform with KRS Chapter 13B; and (6) because Senate Bill 292 deleted the requirement that the State Board promulgate administrative regulations on two subjects that are now covered by the hearing procedures established by KRS Chapter 13B, the agenda included the repeal of two administrative regulations: (a) 701 KAR 5:050; and (b) 701 KAR 5:085.

Chairman Crenshaw stated that after the hearing administrative regulations were considered together, the repealing administrative regulations would be considered together.

In response to a question by Representative Bruce, Mr. Noland stated that: (1) 702 KAR 7:065E dealt more specifically with the Kentucky High School Athletic Association by-laws than 701 KAR 5:020E; and (2) when the new hearing procedures had become effective, the Interim Joint Committee on State Government informed the Department that there must be an evidentiary hearing at one level in the process.

Senator Roeding stated that considering a number of administrative regulations as a block made it difficult to remember what was included in each administrative regulation.

Chairman Crenshaw stated that the Subcommittee had been told by staff and by Mr. Noland that the administrative regulations in this block dealt with hearing procedures.

Subcommittee staff stated that because these administrative regulations were emergencies: (1) they would be reviewed by the Subcommittee at a subsequent meeting as ordinary administrative regulations; and (2) Subcommittee members would be able to ask additional questions concerning them.

The following administrative regulations were approved by the Subcommittee as a group: 701 KAR 5:020E, 701 KAR 5:055E, 701 KAR 5:090E, 702 KAR 1:080E, 703 KAR 3:205E, and 707 KAR 1:180E.

701 KAR 5:051E. Repeal of 701 KAR 5:050. Subcommittee staff stated that: (1) the two repealing administrative regulations had problems that should be corrected when the Department filed the ordinary administrative regulations; (2) the title of the repealing administrative regulations should be "Repeal of [the number of the administrative regulation being repealed]", rather than "Summary hearing procedures"; (3) Section 2, which stated that the provisions of the administrative regulation shall apply beginning July 15, was not needed because KRS Chapter 13A provided that an emergency administrative regulation is effective when filed; and (4) KRS Chapter 13A: (a) prohibited the establishment of the effective date of an administrative regulation in an administrative regulation; and (b) permitted a delayed enforcement date for a particular provision.

The following repealing administrative regulations were approved by the Subcommittee: 701 KAR 5:051E, and 701 KAR 5:086E.

701 KAR 5:055E. Removal hearing procedures.

701 KAR 5:086E. Repeal of 701 KAR 5:085.

701 KAR 5:090E. Teacher disciplinary hearings.

Office of District Support Services: General Administration

702 KAR 1:080E. Transfer of annexed property; hearing.

School Administration and Finance

702 KAR 3:130. Internal accounting. Mr. Noland and Kyna Koch, Director, Division of Finance, represented the Department on this administrative regulation. Mr. Noland stated that: (1) this administrative regulation: (a) governed auditing of school district accounts; and (b) required auditing of school activity funds by a CPA; (c) audits were: 1. not limited to the high school activity fund; and 2. required of all high school activity funds of a school district; (2) under the previous administrative regulation, a local board could appoint a committee that did not include CPAs to review the funds; and (3) the Local Superintendents Advisory Council: (a) unanimously supported this administrative regulation; and (b) had requested some assurance that the accounts of all the schools in their districts were in proper condition.

In response to a question by Senator Roeding, Mr. Noland stated that Section 3 referred to the document incorporated by reference, the Uniform Program of Accounting for School Activity Funds in Kentucky Schools. Ms. Koch stated that the material: (1) served as a guide for accounting for activity funds; (2) was commonly referred to as the "Red Book" in local school districts; and (3) was amended to: (a) omit the committee from the auditing process; and (b) require a CPA to perform the audit.

In response to a question by Senator Roeding, Ms. Koch stated that: (1) almost all of the school districts were already following the procedures included in this administrative regulation; and (2) less than five districts used the committee process for auditing school accounts.

School Terms, Attendance and Operation

702 KAR 7:065E. Designation of agent to manage high school interscholastic athletics. Mr. Noland stated that: (1) this administrative regulation was amended each year to incorporate by reference the current year's Kentucky High School Athletic Association's handbook, which included the by-laws; and (2) the by-laws were amended to require that an administrative hearing: (a) conform to KRS Chapter 13B that governs administrative hearings; and (b) be an evidentiary hearing.

In response to questions by Senator Roeding, Mr. Noland stated that: (1) KHSAA By-law 25, regarding limitations on cheerleading seasons, was amended to: (a) prohibit organized practices prior to July 15; and (b) limit the number of competitions a team may enter; (2) in order to coordinate high school sports, seasons for all sports have limitations; and (3) the statewide cheerleading organization: (a) was involved in amending this by-law; and (b) supported the amendment.

Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:205E. Management Improvement Program.

Office of Learning Programs Development: Office of Instruction

704 KAR 3:390. Extended school services. Mr. Noland stated that this administrative regulation: (1) governed extended school services which the General Assembly funded to provide additional help to students outside the regular school day: (a) after-school; (b) on Saturdays; or (c) during the summer; (2) included the grant funding formula used by the Kentucky Board of Education to fund these services, rather than requiring the State Board to annually approve a formula; and (3) would reduce paperwork because it eliminated the requirement that each district submit an annual evaluation of the extended school service program.

Office of Special Instructional Services: Exceptional and Handicapped Programs

707 KAR 1:180E. Due process procedures.

Labor Cabinet: Kentucky Occupational Safety and Health Review Commission

803 KAR 50:010 (&E). Hearings; procedure, disposition. The following people represented the Commission: Debbie Lynn Michaels, Executive Director of the OSHA Review Commission; Johnny Abott, Local 1865 United Steelworkers of America; David Barnhill, Area Director for the United States Department of Labor OSHA; Herbert Seagull, Attorney for the United Steelworkers Union; John Nichols, Associated Industries of Kentucky; John Braezel, Manager of Public Affairs, Kentucky Chamber of Commerce; Steve Forbes, Federal-State Coordinator for Kentucky Labor Cabinet; and Harry Lee Hedrick, Local 1865 United Steelworkers of America.

Department of Insurance: Liability Self-insurance Groups

806 KAR 46:030. Reasonable time for violation correction. Carla Montgomery, General Counsel, and Frank Dempsey, General Counsel, represented the Department. Ms. Montgomery stated that this administrative regulation established thirty days as the reasonable time for liability self-insurance groups to correct a violation, because KRS 304.48-220(1)(e) permitted the Department to suspend or revoke a certificate of filing if a self-insurance group has not corrected a violation within a reasonable amount of time.

Department of Housing, Buildings and Construction: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Master heating, ventilation and air conditioning (HVAC) contractor licensing requirements. Judith Walden, General Counsel, represented the Department. Ms. Walden stated that: (1) the Subcommittee had deferred this administrative regulation and 815 KAR 8:020 at its July meeting; (2) this administrative regulation reduced the passing score on the examination from 75% to 70%.

In response to questions by Senator Kafoglis, Ms. Walden stated that: (1) this administrative regulation was not amended because the Subcommittee had not requested the Board to make any amendments to it; (2) the Subcommittee had requested that amendments be made to 815 KAR 8:020; and (3) she did not know why the Subcommittee had requested deferral of this administrative regulation.

Subcommittee staff stated that: (1) both administrative regulations were deferred; (2) while Subcommittee members had raised questions concerning the reduction of the score required to pass, they had not objected to the change; and (3) their primary objections had been to the continuing education requirements for journeymen established by 815 KAR 8:020.

Cabinet for Health Services: Department for Health Services: Health Services and Facilities

902 KAR 20:018. Operation and services; renal dialysis facilities. Ralph Von Derau, Health Planner, Office of Inspector General, and John Walker, Assistant Counsel, Cabinet for Health Services, represented the Cabinet. Mr. Von Derau stated that this administrative regulation was amended to: (1) revise the testing schedule for Hepatitis B to conform with the 1990 revised recommendations from the Center for Disease Control, US Department of Health and Human Services; and (2) replaced references to the "Cabinet for Human Resources" with the "Cabinet for Health Services."

In response to a question by Senator Roeding, Mr. Von Derau stated that the costs for the initial printing were included in the general budget as a continuous cost for administrative regulations.

Department for Medicaid Services: Medicaid Services

907 KAR 1:060 & E. Medical transportation. John Walker, Assistant Counsel, Cabinet for Health Services; and Ked Fitzpatrick, Cabinet for Health Services, represented the Cabinet. Mr. Fitzpatrick stated that this administrative regulation: (1) continued with some of the revisions made in July 1995; and (2) included subsequent modifications pursuant to the resolution of a court case.

907 KAR 1:061 & E. Payments for medical transportation. Mr. Fitzpatrick stated that the amendments to this administrative regula-

tion were the same amendments that had been made to 907 KAR 1:060 in response to the resolution of a court case.

In response to questions by Chairman Crenshaw, Mr. Fitzpatrick stated that: (1) the Cabinet revised the methods used to compute payments for Medical transportation; (2) the changes included: (a) ambulance transportation providers and other providers; (b) higher base rates; and (c) lower rates for additional passengers; and (3) there was an increase of approximately \$1-2 million per year net expense.

In response to a question by Senator Roeding, Mr. Fitzpatrick stated that: (1) the ALS rates had been increased from \$50 to \$85 for a one-way trip; (2) the Cabinet had included some extra expenses in the administrative regulation, that included an improved method of providing for reimbursement; (3) the administrative regulation: (a) provided for fare reimbursement without permitting individuals to churn the system; and (b) included a reduced payment for additional passengers, that in one instance, decreased from \$10 to \$4; (4) rather than pay taxi fares for two or three people at the same time, the Cabinet will pay one taxi fare for multiple passengers; and (5) the Cabinet: (a) was trying to identify and remedy ways in which people take advantage of the system; and (b) believed that the increased rates were justified pursuant to the court order.

Representative Allen made a motion to find this administrative regulation deficient; Senator Roeding seconded the motion. The motion was defeated on a roll call vote with Senators Kafoglis and Pendleton, and Representatives Bruce, Lee, and Crenshaw voting "no"; and Senator Roeding and Representative Allen voting "yes".

This administrative regulation was approved, with Senator Roeding and Representative Allen voting "no".

Department for Mental Health and Mental Retardation Services: Substance Abuse

908 KAR 1:340 & E. Narcotic treatment programs. John Walker, Assistant Counsel, Cabinet for Health Services; Ed Maxwell, Clinical Director, Department of Mental Health; and Mike Townsend, Director, Division of Substance Abuse. Mr. Townsend stated that this administrative regulation: (1) established procedures for applying for and operating narcotic treatment programs in Kentucky; (2) was originally filed as an emergency administrative regulation effective January 31, 1996; (3) was filed as an ordinary administrative regulation on May 15, with a public hearing held on June 21; and (4) included some amendments to address issues that have been raised regarding the administrative regulation.

In response to questions by Representative Bruce, Mr. Townsend stated that: (1) this administrative regulation applied to any program operating in Kentucky that provided methadone maintenance, which is a special program that allowed persons who are addicted to narcotics to be maintained on a narcotic known as methadone; (2) methadone was: (a) a synthetic narcotic used to treat drug dependency for persons who were addicted to narcotic drugs; and (b) regulated by the federal government; (3) the procedures established in the administrative regulation: (a) allowed approved programs to treat patients in Kentucky using methadone maintenance; and (b) regulated who could establish a methadone maintenance treatment program in Kentucky; (4) the Cabinet: (a) believed the procedures were restrictive; and (b) reviewed similar programs in six or eight states prior to promulgating this administrative regulation; (5) the administrative regulation required: (a) extremely responsible programs to provide this service; and (b) the medical director to be either a psychiatrist with three years of experience in the addictions field or a certified addictionologist; (6) one applicant for a treatment program withdrew his application to establish a treatment center near a roller skating rink after he received a copy of the administrative regulations; (7) there were some mental health programs that provided this type of treatment, including a program in: (a) Lexington, operated by the Bluegrass Mental Health/Mental Retardation Board; (b) Louisville, operated by the Louisville Public Health Department; and (8) this administrative regulation: (a) allowed both non-profit and for-profit

agencies to operate treatment programs in Kentucky; and (b) required compliance with local zoning ordinances before a program was established.

Mr. Walker stated that the administrative regulation was drafted very carefully in response to concerns expressed by the communities about methadone programs coming into town.

In response to questions by Senator Kafoglis, Mr. Maxwell stated that: (1) while there was a written Board examination for addictionologists, he was not sure about the details of the training requirements; (2) any licensed physician could pursue the training and sit for the examination; (3) addictionologists included internists, family practice physicians, psychiatrists, and others; and (4) the training program had been established by the Board.

In response to questions by Senator Roeding, Mr. Townsend stated that: (1) this administrative regulation: (a) did not take away local control in placing these services; and (b) any program must comply with local zoning ordinances and conditions of that community; (2) if the zoning board or community prohibited methadone programs, the program could not be operated in that community; and (3) the Health Policy Board issued a ruling that: (a) this administrative regulation did not fall under the certificate of need process; and (b) these treatment programs were required to comply with local zoning ordinances.

In response to questions by Senator Kafoglis, Mr. Townsend stated that: (1) he did not think there was a prohibition about locating a program in a shopping center; (2) the issue was whether the program met local ordinances or zoning laws within that community; (3) under local zoning laws, a program would have to qualify as a medical facility or physician's office in order to operate a methadone treatment program for persons addicted to narcotics; (4) the methadone program must include a physician, methadone dispensing personnel, and counseling personnel; and (5) a local ordinance could prohibit that kind of program in the community.

Mr. Walker stated that: (1) the zoning process allowed public hearings on proposals to open facilities or on the question of compliance; (2) a community that objected to the proposed site of a particular business had an opportunity to appear before its zoning board and express their opinions; and (3) the zoning board might listen to their concerns.

Chairman Crenshaw stated that: (1) if a proposed plan fell within the zoning law requirements, opponents were required to prove the plan did not fall within the requirements in order to keep the planned project out of the community; and (2) even though citizens might oppose a project, the zoning board and city council were required to allow a project that met the requirements of the zoning laws.

Mr. Walker stated that: (1) a community may enact an ordinance prohibiting the location of a methadone treatment program in certain areas; (2) the legislature may want to: (a) place these programs under the Certificate of Need process at its 1998 Regular Session; and (b) include additional protections regarding the location of the treatment facilities; and (3) without legislative action, the Cabinet could only require that the programs obtain local approval before they apply to the Cabinet.

Representative Bruce stated that: (a) the Subcommittee could reconsider this administrative regulation and find it deficient; (b) such a finding would require legislative action during the 1998 Regular Session before the Cabinet could enforce the administrative regulation.

In response to a question by Senator Kafoglis, Mr. Townsend stated that: (1) there was nothing the state could do to restrict a health facility outside of the certificate of need process; and (2) the only latitude the state had was to rely on local ordinances and zoning laws.

Mr. Walker stated that: (1) the Cabinet was willing to examine its processes and administrative regulations to determine if the administrative regulation could be tightened up in accordance with the current statutory framework; (2) once the requirements were tightened,

supporters of the treatment programs would challenge that decision; and (3) as applications came into the Cabinet, it would determine if additional requirements were necessary.

In response to a suggestion by Senator Roeding to notify the affected neighborhood when a methadone treatment program is proposed, Mr. Walker stated that while the Cabinet would look at that possibility, the main concern was to notify communities through the zoning process.

In response to a suggestion by Representative Bruce to send the Certificate of Need Branch a letter asking it to consider placing these programs under its review, Mr. Walker stated that if Representative Bruce or any member of the General Assembly asked them to review an issue, they would do so.

In response to questions by Representative Lee, Mr. Walker stated that: (1) the certificate of need process: (a) focused on the needs of a particular area; (b) required identification of the location of the particular health service; and (c) included notification of the people that would be served in that proposed area; (2) he thought there should be a process by which the community was made aware of what was proposed; and (3) the certificate of need process considered objections raised regarding the location of a facility within the community.

Mr. Townsend stated that: (1) a person who applied for a certificate of need was required to notify the newspapers in the community of his application; and (2) the issue: (a) was whether the community had the authority to restrict a proposed clinic without an ordinance specifically prohibiting methadone clinics in that community; and (b) included a situation where a licensed physician or health care facility proposed expanding the business to include the treatment of methadone patients.

In response to questions by Representative Lee, Mr. Walker stated that: (1) if methadone treatment programs were covered by the Certificate of Need process, it would be possible to approve the program with the stipulation that the facility be located in a certain area; and (2) in approving a certificate of need request, the Cabinet had the authority to consider the location of the proposed service and the opinions of the community.

In response to questions by Representative Lee, Mr. Townsend stated that: (1) because this because this program was not governed by the Certificate of Need statutes or administrative regulations, the state could not prohibit the location of a program within a community if that program complied with applicable zoning and community ordinances; (2) he was not an expert on the Certificate of Need process, but once a certificate was approved, a need for that service was certified; (3) he did not think the Certificate of Need process permitted the Cabinet to require a specific location for a needed service; (4) the Certificate of Need process established that a need existed for the service; and (5) the issue was whether a zoning commission in a local community would decide whether the program was appropriate under its zoning laws to allow it to be placed in a neighborhood.

Chairman Crenshaw: (1) stated that the emergency administrative regulation expired on August 18; and (2) asked, if the Subcommittee conditionally approved the administrative regulation, would the Cabinet be willing to return to the Subcommittee's September, 1996, meeting after the Subcommittee and Cabinet staffs had the opportunity to research the issue.

In response, Mr. Walker stated that the Cabinet would be willing to explore any suggestions to tighten up the administrative regulation and address the concerns of the Subcommittee.

Representative Lee stated that: (1) he did not think the Subcommittee needed to work towards a Certificate of Need requirement if that did not address the issue raised by the location of these programs within a neighborhood; and (2) the Subcommittee needed to know what criteria or administrative regulation was needed, or what help it could provide, to control the location of these programs.

Mr. Walker stated that the Cabinet would be happy to come back

next month.

Representative Bruce stated that the Cabinet could stipulate that if a majority of a neighborhood complained about a proposed location, the program would be required to select an alternative location within that community.

Senator Kafoglis made a motion to approve the administrative regulation on the condition that it be reconsidered by the Subcommittee at its September meeting, and Representative Lee seconded the motion.

The administrative regulation was approved with that condition.

The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:

State Board of Elections: Forms and Procedures

31 KAR 4:040E. Absentee ballots cast in county clerk's office.

Voting

31 KAR 5:010E. Absentee voting.

Department of Law: Attorney General

40 KAR 1:040. Parties who may request an opinion.

40 KAR 1:050. Subjects on which opinions may be issued.

40 KAR 1:060. Subjects on which an opinion shall not be issued.

40 KAR 1:070. Procedures for requesting and issuing an opinion.

Personnel: Department of Personnel; Classified

101 KAR 2:100E. Leave administrative regulations.

Department of Personnel; Unclassified

101 KAR 3:010E. Leave administrative regulations for unclassified service.

Finance and Administration Cabinet: Purchasing

200 KAR 5:302E. Delegation of authority.

Board of Accountancy

201 KAR 1:045E. Examination subjects, grading and reexamination.

201 KAR 1:130E. Examination application procedure.

Kentucky Board of Dentistry

201 KAR 8:430 (&E). Unprofessional conduct. Gary Munsie, Executive Director, Board of Dentistry; William Smith, President, Board of Dentistry; and Mark Brengelman, Assistant Attorney General, and General Counsel to the Board, represented the Board. In response to a question by Senator Kafoglis, Subcommittee staff stated that: (1) the administrative regulation conforms to statutory authority, KRS Chapter 313; and (2) the initial staff review had inadvertently omitted the notation that the administrative regulation did conform.

In response to questions by Senator Kafoglis, Mr. Brengelman stated that: (1) the Board wanted to have a catch-all provision that it could rely on in extenuating circumstances; (2) the administrative regulation contains appropriate safeguards in the other nine sections, and in section 10 which requires that the conduct: (a) create a danger to either the public, the patient, or the employees of the licensee; (b) demonstrate a lack of moral qualifications to practice under KRS Chapter 313; or (c) bring the profession under disrepute; (3) currently, the statutory definitions of "unprofessional conduct" were equally as broad; (4) the emergency administrative regulation had been promulgated because the Jefferson Circuit Court found the term "unprofessional conduct" too vague; (5) the Board wanted to keep a catch-all provision in the administrative regulation while further defining the other prohibited types of unprofessional conduct; (6) while a court could find the definition to be vague if the Board relied solely on section 10, a court would not find Section 10 vague if the Board relied on the other nine provisions of the administrative regulation; (7) while the statute provided that a judicial appeal may be

taken from decisions of the Board within thirty days, this administrative regulation did not provide for an appeals process to the Board; and (8) a licensee had a right to a due process hearing before the Board whenever he was cited for unprofessional conduct by the Board.

Chairman Crenshaw: (1) stated that some of the language in Section 10 seemed very broad, especially the language "which demonstrates a lack of moral qualifications"; (2) asked the Board if it would be willing to defer this administrative regulation in order to address the issues raised concerning Section 10; and (3) stated that: (a) Subcommittee staff would be willing to meet with the Board to draft language that is not as vague; and (b) the Constitution contained language that prohibited moral tests. Mr. Brengelman stated that the language in Section 10 mirrors the statutory language allowing the Board to discipline its licensees for conviction of a misdemeanor involving moral turpitude or conviction of any felony.

Mr. Munsie stated that: (1) while he was willing to defer consideration of Section 10, he would like to have the first nine sections approved. Subcommittee staff stated that: (1) the Subcommittee could not approve part of an administrative regulation and defer another part of the administrative regulation; (2) if the administrative regulation was deferred, it would be considered at the September, 1996, Subcommittee meeting, and (3) Subcommittee staff would meet with Board staff in sufficient time for the Board to review Subcommittee staff recommendations. Mr. Brengelman stated that since the emergency administrative regulation was still in effect, the public would be sufficiently protected while the process takes additional time. Subcommittee staff stated that the emergency administrative regulation would expire on November 17, 1996.

Mr. Munsie stated that because the next meeting of the Board is scheduled for the second week of September, this administrative regulation may need to be deferred until October. Subcommittee staff stated that: (1) deferrals must be done month-to-month; (2) the Subcommittee staff would try to have required amendments ready for Board staff to present to the Board by its September, 1996, meeting; and (3) if the Board wanted to defer to the October, 1996, Subcommittee meeting, the administrative regulation could be deferred at the September, 1996, Subcommittee meeting.

Prior to the deferral, this administrative regulation was amended as follows:

(1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations, pursuant to KRS 13A.220(3)(e); (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation pursuant to KRS 13A.220(3)(f); (3) Sections 1 through 10 were amended to delete the various sections, and replace them with one section containing several subsections; (4) Section 3 was amended to: (a) delete "but not limited to", pursuant to KRS 13A.100; (b) use the singular, rather than the plural, pursuant to KRS 13A.222(4)(a); and (c) delete superfluous language pursuant to KRS 13A.222(4)(a); (5) Section 4 was amended to use "shall", pursuant to KRS 13A.222(4)(b); (6) Sections 5, 6, and 8 were amended to: (a) correct grammar and punctuation errors, pursuant to KRS 13A.222(4); and (b) delete superfluous language, pursuant to KRS 13A.222(4)(a); and (7) Section 9 was amended to clarify which statutes were referenced in this administrative regulation.

Kentucky Board of Registration for Professional Geologists

201 KAR 31:060. Code of professional conduct.

Kentucky Board of Certification of Marriage and Family Therapists

201 KAR 32:060. Continuing education requirements.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 50:035E. Permits.

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Justice Cabinet: Charitable Gaming

500 KAR 11:001E. Definitions.
500 KAR 11:110E. Keno.

Kentucky Board of Education: Department of Education: Office of District Support Services: School Administration and Finance

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

Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance

787 KAR 1:210 (&E). Employer contribution rates.

Cabinet for Health Services: Department for Health Services: Radiation Operators Certification

902 KAR 105:070E. Violations and enforcement.

Water Fluoridation

902 KAR 115:020E. Enforcement of water fluoridation program.

Cabinet for Families and Children: Department for Social Insurance: Food Stamp Program

904 KAR 3:042E. Food Stamp Employment and Training Program.

Department for Social Services: Child Welfare

905 KAR 1:360E. Private child care levels of care.

Cabinet for Health Services: Department for Medicaid Services: Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded 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 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities.

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

Payment and Services

907 KAR 3:005E. Physicians' services.

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

OTHER BUSINESS

Amendment of Administrative Regulations at Subcommittee Meeting

Representative Bruce (1) asked why each administrative regulation had an amendment; and (2) stated that: (a) members received too many amendments; (b) agency personnel should talk with Subcommittee staff prior to filing administrative regulations to alleviate the need for amendments; and (c) while he could understand the need for an occasional amendment, it was ridiculous having an amendment for each administrative regulation on the agenda.

Subcommittee staff stated that: (1) many of the amendments were made at its suggestion because of formatting, drafting, or other legal issues raised by the administrative regulation; (2) if an agency accepted Subcommittee staff recommendations, they filed an amendment prepared by Subcommittee staff; and (3) many of the amendments primarily involved drafting, formatting, and citation of statutes.

In response to a question from Representative Bruce, Subcommittee staff stated that it: (1) had conducted courses for agency personnel to assist them in properly drafting administrative regulations; and (2) is trying to offer more courses as soon as it became current with its backlog of work.

Provider Letters and Compliance with KRS 13A.130

Senator Roeding: (1) stated that: (a) he had Subcommittee staff distribute a Pharmacy Letter he had received as a provider from the Cabinet for Human Resources that affected a lot of people in Kentucky; (b) he was concerned that the Provider Letters affected so many people without going through the regulatory review procedure established by KRS Chapter 13A; and (c) while he was not stating anything against a particular provider letter, pursuant to KRS 13A.100, 13A.120, and 13A.130, a Provider Letter should have gone through the regulatory procedure established by KRS Chapter 13A because the Cabinet: 1. was authorized to promulgate an administrative regulation governing the subject matter; and 2. had done something relating to the subject matter that affected so many of Kentucky's citizens; and (2) made a motion that Subcommittee staff review the Pharmacy and Provider Letters to make sure they conformed to KRS 13A.100, 13A.120, and 13A.130.

Chairman Crenshaw stated that: (1) because the Subcommittee had been reduced in staff for a period of time, this request should be done without a formal motion; and (2) now that the Subcommittee was up to full staff, staff would be given sixty days to look at this issue.

Senator Roeding stated that: (1) it had been brought to his attention that a particular product was erroneously omitted from a Provider Letter; and (2) sometimes it takes month for a product that had been approved for the operational drug list to be included on the list.

Chairman Crenshaw stated that rather than discussing whether there was a violation, Subcommittee staff would be given time to catch up and review the issue over the next sixty days.

The Subcommittee adjourned at 12:50 p.m. until September 9, 1996 at 10 a.m. in Room 149 of the State Capitol Annex.

ADMINISTRATIVE REGISTER - C1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates C2

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 C12

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 C20

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 - C2

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)

200 KAR 5:021E	1778	3-15-96
Replaced	2044	7-5-96
200 KAR 5:302E	2249	5-15-96
200 KAR 22:120E	1553	1-12-96
Replaced	2191	7-5-96
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
Replaced		7-5-96
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
Replaced		7-5-96
500 KAR 6:150E	1558	2-14-96
Replaced		7-5-96
500 KAR 6:190E	1559	2-14-96
Replaced		7-5-96
500 KAR 6:200E	1560	2-14-96
Replaced		7-5-96
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
Replaced	2063	7-5-96
803 KAR 2:425E	1567	2-15-96
Replaced	2068	7-5-96
803 KAR 2:500E	1569	2-15-96
Replaced	2070	7-5-96
803 KAR 50:010E	2259	5-15-96
806 KAR 17:066E	1779	2-29-96
Replaced	2077	7-5-96
902 KAR 1:400E	2267	5-13-96
902 KAR 14:070E	2269	5-15-96
902 KAR 17:021E	2272	4-30-96
Expires		11-17-96
904 KAR 2:015E	1571	1-30-96
Replaced	2141	7-5-96
904 KAR 2:016E	1285	12-5-95
Expired		6-19-96

904 KAR 2:116E	1447	1-4-96
Replaced	2158	7-5-96
904 KAR 3:042E	1977	4-15-96
905 KAR 1:360E	1292	11-22-95
Withdrawn		6-6-96
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
Expired		5-19-96
907 KAR 1:675E	1295	12-5-95
Expired		6-19-96
907 KAR 1:677E	1299	12-5-95
Expired		6-19-96
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

ORDINARY ADMINISTRATIVE REGULATIONS:

13 KAR 2:050		
Amended	2040	(See Volume 23)
31 KAR 4:030		
Amended	2041	(See Volume 23)
40 KAR 5:010	2189	(See Volume 23)
105 KAR 1:140		
Amended	1871	6-6-96
200 KAR 5:021		
Amended	2044	7-5-96
200 KAR 5:301		
Repealed	2249	5-15-96
200 KAR 22:120	2191	7-5-96
201 KAR 1:160	2192	(See Volume 23)
201 KAR 8:015		
Amended	2311	(See Volume 23)
201 KAR 8:121	2504	(See Volume 23)
201 KAR 8:150		
Amended	2312	(See Volume 23)
201 KAR 8:260		
Amended	2314	(See Volume 23)
201 KAR 8:330		
Amended	2317	(See Volume 23)
201 KAR 11:400		
Amended	2045	(See Volume 23)
201 KAR 15:010		
Amended	2317	(See Volume 23)
201 KAR 15:030		
Amended	2318	8-1-96
201 KAR 15:040		
Amended	2319	8-1-96

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
201 KAR 15:050 Amended	2321	(See Volume 23)	501 KAR 6:120 Amended	1889	6-6-96
201 KAR 15:080 Amended	2322	(See Volume 23)	501 KAR 6:170 Amended	1891	
201 KAR 15:090 Amended	2323	(See Volume 23)	Amended	2054	7-5-96
201 KAR 20:070 Amended	1872		As Amended	2292	6-6-96
As Amended	2287	6-6-96	601 KAR 1:005 Amended	1716	
201 KAR 32:040 Withdrawn	1911	6-3-96	Amended	2029	
201 KAR 32:050	1911	(See Volume 23)	As Amended	2293	6-6-96
201 KAR 34:010	1913	(See Volume 23)	601 KAR 1:029 Amended	1719	
202 KAR 4:010	1747		As Amended	2295	6-6-96
As Amended	2288	6-6-96	601 KAR 1:030 Amended	1720	
301 KAR 2:111 Amended	2325	(See Volume 23)	As Amended	2295	6-6-96
301 KAR 2:172 Amended	1874	6-6-96	601 KAR 1:031 Amended	1724	
301 KAR 2:174 Amended	1877	6-6-96	As Amended	2298	6-6-96
301 KAR 2:178 Amended	1878		601 KAR 1:040 Amended	1725	
As Amended	2289	6-6-96	As Amended	2299	6-6-96
401 KAR 50:010 Amended	1686		601 KAR 1:085 Repealed	2299	6-6-96
Amended	2006	6-6-96	601 KAR 1:090 Repealed	2299	6-6-96
401 KAR 50:033	1752	6-6-96	601 KAR 1:105 Repealed	2299	6-6-96
401 KAR 51:001 Amended	1691		601 KAR 1:170 Repealed	2299	6-6-96
Amended	2010	6-6-96	601 KAR 1:200	2504	(See Volume 23)
401 KAR 51:010 Amended	2326		702 KAR 3:041	2194	(See Volume 23)
Expired*		7-12-96	702 KAR 5:080 Amended	2056	(See Volume 23)
401 KAR 59:001 Amended	1695		704 KAR 20:084 Amended	1892	6-6-96
Amended	2014	6-6-96	704 KAR 20:100 Repealed	2301	6-6-96
401 KAR 61:001 Amended	1699		704 KAR 20:260 Amended	1894	
Amended	2018	6-6-96	Died*		6-13-96
401 KAR 63:001 Amended	1703		704 KAR 20:540 Amended	1896	
Amended	2023	6-6-96	As Amended	2301	6-6-96
401 KAR 65:001 Amended	1707		781 KAR 1:040 Amended	2059	(See Volume 23)
Amended	2027	6-6-96	781 KAR 1:070 Amended	2061	(See Volume 23)
500 KAR 6:110 Amended	2047	(See Volume 23)	803 KAR 2:320 Amended	2063	7-5-96
500 KAR 6:150 Amended	2049	(See Volume 23)	803 KAR 2:425 Amended	2068	7-5-96
500 KAR 6:190	2193	(See Volume 23)	803 KAR 2:500 Amended	2070	7-5-96
500 KAR 6:200 Amended	2050	(See Volume 23)	803 KAR 25:010 Amended	2071	7-5-96
501 KAR 6:020 Amended	1882	6-6-96	806 KAR 3:160 Amended	1741	
Amended	2052	(See Volume 23)	Amended	2033	(See Volume 23)
Amended	2331	8-1-96	806 KAR 5:025 Amended	1755	
501 KAR 6:030 Amended	1884	6-6-96	2035		(See Volume 23)
501 KAR 6:040 Amended	1886	6-6-96	806 KAR 17:066 Amended	2077	7-5-96
501 KAR 6:060 Amended	1843	6-6-96			
Amended	2333	(See Volume 23)			

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
807 KAR 5:026 Amended	2114	(See Volume 23)	902 KAR 13:090 Amended	2406	8-1-96
807 KAR 5:062	1915	(See Volume 23)	902 KAR 13:120 Amended	2408	8-1-96
815 KAR 8:010 Amended	2335	(See Volume 23)	902 KAR 13:130 Amended	2411	8-1-96
815 KAR 8:020 Amended	2337	(See Volume 23)	902 KAR 15:010 Amended	2415	8-1-96
815 KAR 8:030 Amended	2118	7-5-96	902 KAR 15:020 Amended	2418	8-1-96
815 KAR 20:020 Amended	2119	7-5-96	902 KAR 17:020 Repealed	2272	4-30-96
815 KAR 20:130 Amended	2339	8-1-96	902 KAR 20:350 Amended	2422	8-1-96
815 KAR 30:060 Amended	2342	8-1-96	902 KAR 22:030 Amended	2428	8-1-96
815 KAR 35:015 Amended	2346	8-1-96	902 KAR 45:005 Amended	2432	8-1-96
815 KAR 35:030 Amended	2349	(See Volume 23)	902 KAR 45:006 Amended	2445	8-1-96
900 KAR 2:020 Amended	2122	7-5-96	902 KAR 45:020 Amended	2450	8-1-96
900 KAR 2:060 Amended	2124	7-5-96	902 KAR 45:040 Amended	2455	8-1-96
Expired*			902 KAR 45:080 Amended	2459	8-1-96
902 KAR 4:040 Amended	2352	8-1-96	902 KAR 45:100 Amended	2463	8-1-96
902 KAR 7:010 Amended	2355	8-1-96	902 KAR 45:150 Amended	2469	8-1-96
902 KAR 8:090 Amended	2359	(See Volume 23)	902 KAR 47:040 Amended	2472	8-1-96
902 KAR 8:140 Amended	2360	8-1-96	902 KAR 47:050 Amended	2474	8-1-96
902 KAR 9:010 Amended	2362	8-1-96	902 KAR 47:060 Amended	2477	8-1-96
902 KAR 10:020 Amended	2365	8-1-96	902 KAR 47:070 Amended	2478	8-1-96
902 KAR 10:030 Amended	2367	8-1-96	902 KAR 55:010 Amended	2480	8-1-96
902 KAR 10:040 Amended	2369	8-1-96	902 KAR 55:030 Amended	1900	
902 KAR 10:045 Amended	2373	8-1-96	As Amended	2302	6-6-96
902 KAR 10:050 Amended	2376	8-1-96	902 KAR 55:070 Amended	2481	8-1-96
902 KAR 10:120 Amended	2378	8-1-96	902 KAR 100:040 Amended	2483	8-1-96
902 KAR 10:140 Amended	2392	8-1-96	902 KAR 100:170 Amended	2490	8-1-96
902 KAR 10:150 Amended	2394	8-1-96	904 KAR 2:015 Amended	2141	7-5-96
902 KAR 10:160 Amended	2399	8-1-96	904 KAR 2:016 Amended	2146	7-5-96
902 KAR 10:170 Amended	2403	8-1-96	904 KAR 2:055 Amended	2153	7-5-96
902 KAR 13:010 Amended	2125	(See Volume 23)	904 KAR 2:116 Amended	2158	7-5-96
902 KAR 13:020 Amended	2127	(See Volume 23)	904 KAR 2:400 Amended	2495	8-1-96
902 KAR 13:050 Amended	2129	(See Volume 23)	904 KAR 3:020 Amended	1901	6-6-96
902 KAR 13:070 Amended	2136	(See Volume 23)	904 KAR 3:060 Amended	2162	7-5-96
902 KAR 13:080 Amended	2138	(See Volume 23)			

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
904 KAR 3:070					
Amended	2165	7-5-96			
906 KAR 1:060					
Amended	2169	7-5-96			
906 KAR 1:080					
Amended	2171	7-5-96			
906 KAR 1:100					
Amended	2174	7-5-96			
907 KAR 1:060					
Amended	2497				
907 KAR 1:061					
Amended	2499				
907 KAR 1:320					
Amended	2076	7-5-96			
907 KAR 1:505					
Amended	1906	6-6-96			
907 KAR 1:510					
Amended	1908	6-6-96			
907 KAR 1:560	2195	7-5-96			
907 KAR 1:671					
Amended	2178	7-5-96			
907 KAR 1:672	2198	7-5-96			
907 KAR 1:673	2201	7-5-96			
907 KAR 1:675	1916				
Amended	2304	7-5-96			
907 KAR 1:677	1920				
Amended	2307	7-5-96			
908 KAR 1:340	2512	(See Volume 23)			
908 KAR 2:060					
Amended	1909	6-6-96			

*Statement of Consideration Not Filed by Deadline

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Amended	1401		Amended	471	
200 KAR 5:306			301 KAR 4:200		
Amended	1405		Amended	472	
200 KAR 5:325	1470		302 KAR 78:020	1471	
200 KAR 15:010			401 KAR 30:005	1052	
Amended	462		401 KAR 30:010		
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Amended	464		401 KAR 30:080		
201 KAR 1:130			Amended	492	
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401 KAR 34:060			Amended	735	
Amended	589		401 KAR 35:230		
401 KAR 34:070			Amended	738	
Amended	597		401 KAR 35:245	1133	
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Amended	603		Amended	742	
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Amended	606		Amended	744	
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Amended	626		401 KAR 36:005	1154	
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Amended	635		Amended	783	
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401 KAR 42:005			Amended	1418	
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909 KAR 1:055 Repealed	423	7-11-96			
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909 KAR 1:070 Repealed	423	7-11-96			
909 KAR 1:080 Repealed	423	7-11-96			
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160.476	702 KAR 3:270	205.520	907 KAR 1:022E
160.477	702 KAR 3:270		907 KAR 1:025E
161.020	704 KAR 20:052		907 KAR 1:450
	704 KAR 20:475E		907 KAR 3:005
	704 KAR 20:670		907 KAR 3:010
161.028	704 KAR 20:052	205.560	907 KAR 3:020E
	704 KAR 20:305E	211.180	902 KAR 2:060
	704 KAR 20:475E		902 KAR 2:090
	704 KAR 20:670		902 KAR 115:020E
161.030	704 KAR 20:052	211.870	902 KAR 105:070E
	704 KAR 20:305E	211.890	902 KAR 105:070E
	704 KAR 20:475E	211.950-211.956	902 KAR 14:010
	704 KAR 20:670		902 KAR 14:070
161.200	702 KAR 7:055E		902 KAR 14:080
	702 KAR 7:125E		902 KAR 14:082
161.770	701 KAR 5:090		902 KAR 14:090
161.790	701 KAR 5:090	214.032	902 KAR 2:060
163.510	735 KAR 1:010	214.034	902 KAR 2:060
	735 KAR 1:020		902 KAR 2:090
164.020	13 KAR 2:060	214.036	902 KAR 2:060
	13 KAR 2:070	216.2920-216.2929	902 KAR 17:040E
164.744	11 KAR 8:030	Chapter 216B	909 KAR 1:005E
164.753	11 KAR 8:030	211.993	902 KAR 105:070E
164.7535	11 KAR 5:130	216B.010-216B.130	900 KAR 6:010E
164.769	11 KAR 8:030		900 KAR 6:030E
164.780	11 KAR 5:130		902 KAR 14:070
164.785	11 KAR 5:130		902 KAR 14:080
164A.310	11 KAR 12:070		902 KAR 14:082
164A.325	11 KAR 12:050		902 KAR 14:090
164A.330	11 KAR 12:050		902 KAR 17:030E
	11 KAR 12:070		902 KAR 20:018
164A.335	11 KAR 12:070		902 KAR 20:320E
164A.744-164A.753	11 KAR 5:130	216B.010-216B.131	900 KAR 6:020E
167.150	707 KAR 1:180		902 KAR 20:275E
174.400-174.425	601 KAR 1:025	216B.105	900 KAR 6:040E
176.130-176.220	603 KAR 2:015	216B.450-216B.459	902 KAR 20:320E
Chapter 177	603 KAR 2:015	216B.455	900 KAR 6:010E
177.9771	603 KAR 5:230		900 KAR 6:030E
186.411	601 KAR 13:090	216B.990	900 KAR 6:010E
	601 KAR 13:100		900 KAR 6:020E
186.440	601 KAR 13:100		900 KAR 6:030E
186.444	601 KAR 13:090		902 KAR 14:070
	601 KAR 13:100		902 KAR 14:080
186.570	601 KAR 13:090		902 KAR 14:082
	601 KAR 13:100		902 KAR 14:090
189.222	603 KAR 5:066		902 KAR 20:018
	603 KAR 5:330E		902 KAR 20:275E
189.230	603 KAR 5:230		902 KAR 20:320E
189.337	603 KAR 4:040	217.950	902 KAR 55:100
189.540	702 KAR 5:130	217.952	902 KAR 55:100
194.030	902 KAR 16:011E	222.231	908 KAR 1:360
	904 KAR 2:470E	222.460-222.475	908 KAR 1:300
194.050	904 KAR 3:042	224.01	401 KAR 30:005
Chapter 196	501 KAR 6:020		401 KAR 30:010
	501 KAR 6:130		401 KAR 30:031
	501 KAR 6:170		401 KAR 31:005
Chapter 197	501 KAR 6:020		401 KAR 31:010
	501 KAR 6:130		401 KAR 31:030
	501 KAR 6:170		401 KAR 31:040
199.640-199.670	905 KAR 1:360		401 KAR 31:070
199.898	905 KAR 2:100E		401 KAR 31:110
199.8982	905 KAR 2:100E		401 KAR 31:120
205.200	902 KAR 16:011E		401 KAR 31:160
	904 KAR 2:470E		401 KAR 31:170
205.245	902 KAR 16:011E		401 KAR 32:005
	904 KAR 2:470E		401 KAR 32:010

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	401 KAR 32:020		401 KAR 34:050
	401 KAR 32:030		401 KAR 34:060
	401 KAR 32:040		401 KAR 34:070
	401 KAR 32:050		401 KAR 34:080
	401 KAR 33:005		401 KAR 34:090
	401 KAR 33:010		401 KAR 34:100
	401 KAR 34:005		401 KAR 34:120
	401 KAR 34:010		401 KAR 34:180
	401 KAR 34:020		401 KAR 34:190
	401 KAR 34:050		401 KAR 34:200
	401 KAR 34:060		401 KAR 34:210
	401 KAR 34:070		401 KAR 34:230
	401 KAR 34:090		401 KAR 34:240
	401 KAR 34:100		401 KAR 34:245
	401 KAR 34:120		401 KAR 34:250
	401 KAR 34:190		401 KAR 34:275
	401 KAR 34:245		401 KAR 34:280
	401 KAR 34:275		401 KAR 34:281
	401 KAR 34:280		401 KAR 34:287
	401 KAR 34:281		401 KAR 34:290
	401 KAR 34:287		401 KAR 34:360
	401 KAR 35:005		401 KAR 35:005
	401 KAR 35:020		401 KAR 35:010
	401 KAR 35:050		401 KAR 35:020
	401 KAR 35:070		401 KAR 35:050
	401 KAR 35:190		401 KAR 35:060
	401 KAR 35:245		401 KAR 35:070
	401 KAR 35:281		401 KAR 35:080
	401 KAR 36:005		401 KAR 35:090
	401 KAR 36:030		401 KAR 35:100
	401 KAR 37:005		401 KAR 35:120
	401 KAR 37:010		401 KAR 35:180
	401 KAR 37:030		401 KAR 35:190
	401 KAR 37:040		401 KAR 35:200
	401 KAR 37:050		401 KAR 35:210
	401 KAR 38:005		401 KAR 35:230
	401 KAR 38:010		401 KAR 35:245
	401 KAR 38:020		401 KAR 35:250
	401 KAR 38:040		401 KAR 35:275
	401 KAR 38:050		401 KAR 35:280
	401 KAR 38:060		401 KAR 35:281
	401 KAR 38:070		401 KAR 35:290
	401 KAR 39:005		401 KAR 36:005
	401 KAR 40:001		401 KAR 36:020
	401 KAR 42:005		401 KAR 36:025
	401 KAR 43:005		401 KAR 36:030
	401 KAR 48:005		401 KAR 36:070
	401 KAR 30:005		401 KAR 37:005
	401 KAR 30:010		401 KAR 37:010
	401 KAR 30:031		401 KAR 37:030
	401 KAR 30:040		401 KAR 37:040
	401 KAR 30:080		401 KAR 37:050
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	401 KAR 31:060		401 KAR 38:010
	401 KAR 32:005		401 KAR 38:020
	401 KAR 32:010		401 KAR 38:030
	401 KAR 32:020		401 KAR 38:040
	401 KAR 32:030		401 KAR 38:050
	401 KAR 32:040		401 KAR 38:060
	401 KAR 32:050		401 KAR 38:070
	401 KAR 32:100		401 KAR 38:080
	401 KAR 33:005		401 KAR 38:090
	401 KAR 33:010		401 KAR 38:100
	401 KAR 34:005		401 KAR 38:150
	401 KAR 34:010		401 KAR 38:160
	401 KAR 34:020		401 KAR 38:170

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401 KAR 30:031	401 KAR 30:031	401 KAR 38:070	401 KAR 38:070
401 KAR 30:080	401 KAR 30:080	401 KAR 38:080	401 KAR 38:080
401 KAR 31:010	401 KAR 31:010	401 KAR 38:090	401 KAR 38:090
401 KAR 31:040	401 KAR 31:040	401 KAR 38:100	401 KAR 38:100
401 KAR 31:060	401 KAR 31:060	401 KAR 38:150	401 KAR 38:150
401 KAR 31:070	401 KAR 31:070	401 KAR 38:160	401 KAR 38:160
401 KAR 31:120	401 KAR 31:120	401 KAR 38:170	401 KAR 38:170
401 KAR 31:160	401 KAR 31:160	401 KAR 38:190	401 KAR 38:190
401 KAR 31:170	401 KAR 31:170	401 KAR 38:250	401 KAR 38:250
401 KAR 32:010	401 KAR 32:010	401 KAR 38:500	401 KAR 38:500
401 KAR 32:020	401 KAR 32:020	401 KAR 39:080	401 KAR 39:080
401 KAR 32:030	401 KAR 32:030	401 KAR 39:110	401 KAR 39:110
401 KAR 32:040	401 KAR 32:040	401 KAR 39:120	401 KAR 39:120
401 KAR 32:050	401 KAR 32:050	401 KAR 40:001	401 KAR 40:001
401 KAR 32:100	401 KAR 32:100	401 KAR 48:005	401 KAR 48:005
401 KAR 33:010	401 KAR 33:010	810 KAR 1:026	810 KAR 1:026
401 KAR 34:010	401 KAR 34:010	810 KAR 1:026	810 KAR 1:026
401 KAR 34:020	401 KAR 34:020	810 KAR 1:026	810 KAR 1:026
401 KAR 34:050	401 KAR 34:050	503 KAR 6:010E	503 KAR 6:010E
401 KAR 34:060	401 KAR 34:060	503 KAR 6:020E	503 KAR 6:020E
401 KAR 34:070	401 KAR 34:070	503 KAR 6:030E	503 KAR 6:030E
401 KAR 34:090	401 KAR 34:090	503 KAR 6:040E	503 KAR 6:040E
401 KAR 34:100	401 KAR 34:100	503 KAR 6:050E	503 KAR 6:050E
401 KAR 34:120	401 KAR 34:120	503 KAR 6:060E	503 KAR 6:060E
401 KAR 34:180	401 KAR 34:180	503 KAR 6:070E	503 KAR 6:070E
401 KAR 34:190	401 KAR 34:190	503 KAR 6:080E	503 KAR 6:080E
401 KAR 34:200	401 KAR 34:200	503 KAR 6:090E	503 KAR 6:090E
401 KAR 34:210	401 KAR 34:210	503 KAR 6:100E	503 KAR 6:100E
401 KAR 34:230	401 KAR 34:230	503 KAR 6:110E	503 KAR 6:110E
401 KAR 34:240	401 KAR 34:240	502 KAR 60:010E	502 KAR 60:010E
401 KAR 34:250	401 KAR 34:250	500 KAR 11:001	500 KAR 11:001
401 KAR 34:275	401 KAR 34:275	500 KAR 11:080	500 KAR 11:080
401 KAR 34:280	401 KAR 34:280	500 KAR 11:090	500 KAR 11:090
401 KAR 34:360	401 KAR 34:360	500 KAR 11:110	500 KAR 11:110
401 KAR 35:010	401 KAR 35:010	500 KAR 11:015	500 KAR 11:015
401 KAR 35:020	401 KAR 35:020	500 KAR 11:070	500 KAR 11:070
401 KAR 35:050	401 KAR 35:050	500 KAR 11:010	500 KAR 11:010
401 KAR 35:060	401 KAR 35:060	500 KAR 11:015	500 KAR 11:015
401 KAR 35:070	401 KAR 35:070	500 KAR 11:070	500 KAR 11:070
401 KAR 35:080	401 KAR 35:080	500 KAR 11:060	500 KAR 11:060
401 KAR 35:090	401 KAR 35:090	500 KAR 11:030	500 KAR 11:030
401 KAR 35:100	401 KAR 35:100	500 KAR 11:025	500 KAR 11:025
401 KAR 35:120	401 KAR 35:120	500 KAR 11:120	500 KAR 11:120
401 KAR 35:180	401 KAR 35:180	500 KAR 11:025	500 KAR 11:025
401 KAR 35:190	401 KAR 35:190	804 KAR 11:010	804 KAR 11:010
401 KAR 35:200	401 KAR 35:200	601 KAR 1:101	601 KAR 1:101
401 KAR 35:210	401 KAR 35:210	806 KAR 18:060E	806 KAR 18:060E
401 KAR 35:230	401 KAR 35:230	806 KAR 46:030	806 KAR 46:030
401 KAR 35:250	401 KAR 35:250	902 KAR 55:100	902 KAR 55:100
401 KAR 35:275	401 KAR 35:275	902 KAR 55:100	902 KAR 55:100
401 KAR 35:280	401 KAR 35:280	201 KAR 8:430	201 KAR 8:430
401 KAR 35:290	401 KAR 35:290	201 KAR 12:200E	201 KAR 12:200E
401 KAR 36:020	401 KAR 36:020	201 KAR 12:082E	201 KAR 12:082E
401 KAR 36:025	401 KAR 36:025	201 KAR 12:082E	201 KAR 12:082E
401 KAR 36:030	401 KAR 36:030	201 KAR 31:060	201 KAR 31:060
401 KAR 36:070	401 KAR 36:070	201 KAR 10:050	201 KAR 10:050
401 KAR 37:010	401 KAR 37:010	201 KAR 10:050	201 KAR 10:050
401 KAR 37:030	401 KAR 37:030	201 KAR 1:045	201 KAR 1:045
401 KAR 37:040	401 KAR 37:040	201 KAR 1:130	201 KAR 1:130
401 KAR 37:050	401 KAR 37:050	201 KAR 1:040	201 KAR 1:040
401 KAR 38:010	401 KAR 38:010	201 KAR 1:045	201 KAR 1:045
401 KAR 38:020	401 KAR 38:020	201 KAR 1:130	201 KAR 1:130
401 KAR 38:030	401 KAR 38:030	201 KAR 22:106	201 KAR 22:106
401 KAR 38:040	401 KAR 38:040	201 KAR 22:135	201 KAR 22:135
401 KAR 38:050	401 KAR 38:050	201 KAR 22:031	201 KAR 22:031
401 KAR 38:060	401 KAR 38:060	201 KAR 22:135	201 KAR 22:135

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327.080	201 KAR 22:031	401 KAR	34:281
335.340	201 KAR 32:060	401 KAR	34:287
Chapter 338	803 KAR 50:010	401 KAR	35:005
341.270	787 KAR 1:210	401 KAR	35:010
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