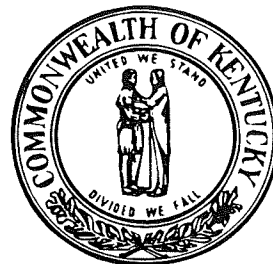


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 8
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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on February 3, 1997. See tentative agenda beginning on page 2935 of this Administrative Register.

ADMINISTRATIVE REGISTER - 2935

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - February 3, 1997 at 10 a.m.
Room 149, Capitol Annex**

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

LEGISLATIVE RESEARCH COMMISSION

Capital Planning Advisory Board

1 KAR 6:020. Policies and procedures.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

National Guard Tuition Assistance Program

11 KAR 13:010 (& E). National Guard Tuition Award Program. (Deferred from January)

COUNCIL ON HIGHER EDUCATION

Public Education Institutions

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

ATTORNEY GENERAL

Department of Law

Victims Advocacy Division

Medical Examination of Sexual Abuse Victims

40 KAR 3:020 & E. Protocol for operation of local multidisciplinary teams on child sexual abuse.

FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems

General Rules

105 KAR 1:200. Retirement procedures and forms.

DEPARTMENT OF MILITARY AFFAIRS

National Guard Tuition Award Program

106 KAR 3:010 (& E). Kentucky National Guard Tuition Award Program.

DEPARTMENT FOR LOCAL GOVERNMENT

Bonds

109 KAR 7:020. Energy conservation projects. (Amended After Hearing)

FINANCE AND ADMINISTRATION CABINET

Kentucky Board of Medical Licensure

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

201 KAR 9:041. Fee schedule.

201 KAR 9:141. Denial, probation, revocation and suspension of certificate.

201 KAR 9:310. Continuing medical education.

Board of Nursing

201 KAR 20:390 (& E). Nursing incentive scholarship fund. (Amended After Hearing)

TOURISM DEVELOPMENT CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 2:221 & E. Waterfowl seasons and limits.

301 KAR 2:222 & E. Waterfowl hunting requirements.

301 KAR 2:224 & E. Waterfowl hunting zones.

DEPARTMENT OF AGRICULTURE

Linked Deposits

302 KAR 3:010 & E. Linked Deposit Investment Program. (Emergency Expired 1/18/97)

CABINET FOR ECONOMIC DEVELOPMENT

Linked Deposit Investment Program

307 KAR 5:010 & E. Linked Deposit Investment Program. (Emergency Expired 1/18/97)

ADMINISTRATIVE REGISTER - 2937

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

- 704 KAR 20:305 (& E). Written examination prerequisites for teacher certification. (Emergency Expired 1/18/97)
- 704 KAR 20:430. Repeal of 704 KAR 20:001, 704 KAR 20:002, 704 KAR 20:032, and 704 KAR 20:040.
- 704 KAR 20:695. Standards for accreditation of teacher education. (Amended After Hearing) (Deferred from January)
- 704 KAR 20:700. Standards for admission to teacher education. (Not Amended After Hearing) (Deferred from January)
- 704 KAR 20:705. Admission, placement, and supervision in student teaching. (Not Amended After Hearing) (Deferred from January)

WORKFORCE DEVELOPMENT CABINET

Department for Employment Services

Division of Unemployment Insurance

- 787 KAR 1:320 (& E). Priority of deductions from benefits.

LABOR CABINET

Department of Workers' Claims

- 803 KAR 25:034E. Repeal of 803 KAR 25:035. (Deferred from January)
- 803 KAR 25:036 & E. Computation of life expectancies for purposes including apportionment and attorney's fees.

PUBLIC PROTECTION & REGULATION CABINET

Department of Insurance

Agents, Consultants, Solicitors and Adjustors

- 806 KAR 9:240 (& E). Financial institutions licensed as noncredit related insurance agents.

Health Insurance Contracts

- 806 KAR 17:140 & E. Health insurance rate filing requirements.

Group and Blanket Health Insurance

- 806 KAR 18:080E. Association uniform data collection. (Deferred from January)

Kentucky Racing Commission

Thoroughbred Racing

- 810 KAR 1:026. Racing associations. (Deferred from September)

Harness Racing (Deferred from December)

- 811 KAR 1:020. Registration and identification of horses.
- 811 KAR 1:035. Claiming races.
- 811 KAR 1:120. Licensing of race meetings.

CABINET FOR HEALTH SERVICES

Long-term Care

- 900 KAR 2:060. Hearings concerning transfer and discharge rights. (Public Hearing in November)

Department for Health Services

State Health Plan

- 902 KAR 17:040 & E. Data reporting by health care providers. (Amended After Hearing)

Health Services and Facilities

- 902 KAR 20:016. Hospitals; operations and services. (Public Hearing in November)
- 902 KAR 20:018. Operation and services; renal dialysis facilities.
- 902 KAR 20:041. Operation and services; facility care homes.
- 902 KAR 20:078. Operations and services; group homes.
- 902 KAR 20:160. Chemical dependency treatment services and facility specifications.
- 902 KAR 20:180. Psychiatric hospitals; operation and services. (Public Hearing in November)
- 902 KAR 20:320 & E. Psychiatric residential treatment facility operation and services. (Amended After Hearing) (Emergency Expired 1/18/97)

Hazardous Substances

- 902 KAR 47:080E. Training and certification requirements for individuals who perform lead-hazard detection or lead-hazard abatement. (Deferred from December)
- 902 KAR 47:090E. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement. (Deferred from December)
- 902 KAR 47:100E. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement. (Deferred from December)

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Division of Management & Development

Public Assistance

- 904 KAR 2:001. Definitions.
- 904 KAR 2:380. Child Support Enforcement Program application process.
- 904 KAR 2:390. Child Support Enforcement Program paternity establishment.
- 904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.
- 904 KAR 2:410E. Child support collection and distribution. (Deferred from December)

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 - 2941

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 obtain a request form from the Personnel Cabinet at 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to compensation for the unclassified service of state government is KRS 18A.005 and 18A.110.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 3:045. It will create a program to provide severance pay for federally-funded time limited employees whose positions are 100% federally funded upon termination of employment based upon termination or expiration of the program or project in which they work. The severance program would only be available where specifically authorized and entirely funded by the federal government.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The program would permit the Commonwealth to accept federal money that has been set aside for the purpose of providing severance benefits to federally-funded time limited employees whose employment is terminated as a result of the expiration or conclusion of the project or program in which they worked.

(d) The benefits expected from administrative regulation are: Full utilization of federal money authorized for severance programs and protection of the employees who are terminated.

(e) The administrative regulation will be implemented as follows: The agency managing the program would obtain certification from the federal grantor that money is available for the severance program. The amount of the award would be based on a schedule to be approved by the state agency and the Secretary of Personnel which allocated available federal funds according to a seniority-based schedule.

BOARD OF PHARMACY

January 14, 1997

Board of Pharmacy

(1) **201 KAR 2:225**, Special pharmacy permit - medical gasses.

(2) The Kentucky Board of Pharmacy intends to promulgate an administrative regulation creating 201 KAR 2:225 relating to the issuance of a special pharmacy permit for suppliers of medical gasses.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 24, 1997 at 9 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, 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 February 24, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, 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 Board of Pharmacy 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 issuance of a special pharmacy permit for medical gasses, since they are legend drugs, is found at KRS 315.010, 315.036, 315.121, and 315.191(1).

(b) The administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which suppliers of medical gasses shall register with the Board of Pharmacy and the method by which a consultant pharmacist shall review the records of the permitted establishment.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 315.036 authorizes the Board of Pharmacy to promulgate administrative regulations requiring the issuance of a permit for those entities that distribute prescription drugs. Medical gasses are by definition prescription drugs. This proposed administrative regulation is necessary to establish the method, manner, issuance and responsibility for documentation of the required records of the dispensing and distribution of medical gasses.

(d) The benefits expected from the administrative regulation are certainty by the public that the compendial requirements associated with medical gasses are retained throughout the distribution process.

(e) The administrative regulation will be implemented as follows: Each wholesaler of medical gasses will register with the Board of Pharmacy and be issued a permit. Each permittee will identify a consultant pharmacist who will review the records of the permittee on a quarterly basis for compliance with distribution and dispensing requirements.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than February 14, 1997.

ADMINISTRATIVE REGISTER - 2943

JUSTICE CABINET Department of Corrections

January 13, 1997
Justice Cabinet
Department of Corrections

- (1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections.
- (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 February 21, 1997, 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 February 21, 1997, the public hearing will be canceled.
- (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 6:020, as follows:
 1. Contraband (CPP 9.6) shall be amended to conform to KRS Chapter 13A requirements and update references.
 2. Search policy (CPP 9.8) shall be amended to conform to KRS Chapter 13A requirements, to clarify the search policy for employees, to reflect the recent decision in the 6th Circuit and to amend the consent forms.
 - (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 Department of Corrections 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.

TRANSPORTATION CABINET

February 1, 1997
Transportation Cabinet

- (1) **600 KAR 6:080**, Financial records and audits of firms relating to contracting for professional engineering and related services.
- (2) The Kentucky Transportation Cabinet intends to promulgate an amendment to 600 KAR 6:080 adopting the latest changes to 48 CFR Part 31 which governs the audits of the professional engineering and related service contracts of the Transportation Cabinet. This is needed since the federal government has recently made many amendments to 48 CFR Part 31.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 25, 1997 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 25, 1997, 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.

ADMINISTRATIVE REGISTER - 2945

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the safety inspections of motor vehicles used to transport persons for hire is KRS 281.600 and 281.635.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation numbered 601 KAR 1:006. It will establish safety criteria for taxicabs, limousines, airport shuttle vehicles, and wheelchair lift-equipped vans used to transport persons for hire. Further, it will mandate a periodic inspection of each of these vehicles which are currently not under the purview of a safety inspection program. Coordination with the Cabinet of Health Services' Medicaid Transportation program will be explored.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 281.600 allows the Transportation Cabinet to establish by administrative regulation safety requirements for motor vehicles. KRS 281.635 specifically allows the Transportation Cabinet to regulate taxicab safety for those taxicabs operating outside of a city which provides such regulation. Few cities require an annual safety inspection for taxicabs. Therefore, no one is overseeing the safety of the other taxicabs, limousines, airport shuttle vehicles, and wheelchair lift-equipped vans. This administrative regulation will establish the safety criteria and the method of inspection.

(d) The benefits expected from the administrative regulation are increased highway safety, customer comfort, and passenger well-being.

(e) The administrative regulation will be implemented as follows: The Transportation Cabinet intends to require a safety inspection program for all motor vehicles used to transport persons for hire. Those motor vehicles which are classified as commercial by the federal government are already required to be inspected on an annual basis. (See 601 KAR 1:005 and 603 KAR 5:072). In addition, the Federal Highway Administration funds a large portion of Kentucky's inspection program for commercial motor vehicles. The Transportation Cabinet has not determined how the inspection program and reporting should be accomplished. Ideas suggested include requesting the sheriff departments to inspect the vehicles, even though this would be quite different from their current type of inspection of vehicles brought into Kentucky; and training and certifying private mechanics to perform the inspections. The Transportation Cabinet is seeking comments on these ideas as well as any other inspection possibilities.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than February 17, 1997.

February 1, 1997

Transportation Cabinet

(1) The Transportation Cabinet intends to amend the following administrative regulations relating to the Kentucky Airport Zoning Commission:

- 602 KAR 50:010. Definitions relating to 602 KAR Chapter 50.
- 602 KAR 50:030. Jurisdiction of the Kentucky Airport Zoning Commission.
- 602 KAR 50:040. Airport land uses.
- 602 KAR 50:050. Airport zoning map.
- 602 KAR 50:060. Construction within jurisdictional airspace.
- 602 KAR 50:070. Standards for determining obstructions.
- 602 KAR 50:090. Permit application procedure.
- 602 KAR 50:100. Standards for marking or lighting structures.
- 602 KAR 50:110. Valid permit period for alteration or construction of structure.
- 602 KAR 50:115. Enforcement procedures; violations.
- 602 KAR 50:120. Hearing procedures.

In addition the Transportation Cabinet may promulgate a new administrative regulation relating to the administrator of the Airport Zoning Commission. This administrative regulation will be numbered 602 KAR 50:130.

(2) The Kentucky Transportation Cabinet intends to promulgate amendments to the administrative regulations listed above, relating to the Kentucky Airport Zoning Commission. These administrative regulations have not been updated in several years and the Zoning Commission wishes to consider changes to these administrative regulations for updating purposes.

In addition, the administrative regulation relating to the Airport Zoning Administrator, 602 KAR 50:020, has expired. The Cabinet is considering a new administrative regulation 602 KAR 50:130 relating to the Zoning Administrator.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 25, 1997 at 2 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 25, 1997, 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.

ADMINISTRATIVE REGISTER - 2947

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the implementation of an administrative regulation relating to uniform traffic control devices is KRS 189.337 and 23 CFR Part 655 Subpart F.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend existing administrative regulation 603 KAR 5:050, Uniform traffic control devices. At the public comment hearing the Transportation Cabinet is soliciting comments on whether the cabinet should make applicable the "Manual on Uniform Traffic Control Devices" to public use parking lots as well as public use streets and highways.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.337(2) requires the Transportation Cabinet, Department of Highways to adopt a uniform system of traffic control devices. The Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the "Manual on Uniform Traffic Control Devices". This administrative regulation defines this system by incorporating by reference the "Manual on Uniform Traffic Control Devices" and the changes to it adopted by the Federal Highway Administration.

(d) The benefits expected are: Increased highway safety by the adoption of the latest amendments. An additional benefit will be the continued compliance with the federal mandate.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than February 15, 1997.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

January 9, 1997

Cabinet for Workforce Development

Department of Vocational Rehabilitation

(1) Regulation Number and Title: **781 KAR 1:030**, Order of selection and economic needs test for vocational rehabilitation services.

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 21, 1997 at 10 a.m., in the DVR Training Room, 209 St. Clair Street, Frankfort, Kentucky 40601.

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

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

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

b. If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 21, 1997 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:030 as follows: Section 2 is being revised to exclude from the economic needs test only those services excluded by federal regulation. The remaining services in subsection (2) will be moved to a new subsection (3) that will permit the commissioner to exclude optional services from the financial needs test based on availability of funds. A new subsection (5) of Section 2 is being added to require residential students of the Carl D. Perkins Comprehensive Rehabilitation Center who have excess monthly income or an individual government maintenance subsidy to contribute an amount not to exceed the presumed monthly value of in-kind support as defined by the Social Security Administration. The new subsection will allow for the center director to make hardship exceptions if agreed upon by the referring counselor.

(c) The necessity and function of the proposed administrative regulation is as follows: Federal regulations applicable to the vocational rehabilitation program permit states to adopt an economic needs test in order to distribute funds more equitably over the entire population of individuals with disabilities. This amendment to the existing financial needs test will satisfy federal guidelines while achieving a more equitable distribution of scarce resources.

(d) The benefits expected from administrative regulation are: The economic needs test allows the department to provide some services based on financial need. Eligible individuals who do not meet the financial aid criteria are required to participate in the cost of their programs. This financial participation encourages the individual's ownership of the program while allowing the department to conserve resources.

(e) The administrative regulation will be implemented as follows: Counseling staff will be advised of the changes. If it is necessary to exclude optional services from the financial needs test, the commissioner will notify counseling staff who will notify affected individuals. Individuals will be afforded an opportunity to request a hardship exception. Staff will advise individuals who desire residential accommodations at the Carl D. Perkins Comprehensive Rehabilitation Center that the economic needs test will be applied and that they will be expected to contribute a portion of the cost of maintenance expense if applicable. Individuals will be afforded an opportunity to request a hardship exception either prior to or after admission. Individuals who are dissatisfied with any decision may appeal pursuant to 781 KAR 1:010.

ADMINISTRATIVE REGISTER - 2949

of public convenience and necessity to construct a telecommunications antenna tower.

(b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will be a new regulation. It will require all applicants to file documents and information required by the regulation governing utility construction in general, 807 KAR 5:001, Sections 8 and 9, except for cost information required by Section 9(2)(e) and (f). As states no longer regulate the rates of wireless telecommunications companies, the information is irrelevant. All applicants must also file Federal Aviation Administration and Kentucky Airport Zoning Commission applications; any applicable Federal Communications Commission authorization; geotechnical report; directions to the proposed site; the sale or lease agreement on which the facility is proposed to be located; information regarding designers and builders of the facility; a site development plan, vertical profile sketch of the facility, and tower and foundation design plans signed and sealed by a professional engineer registered in Kentucky; and a map identifying every structure and every owner of real estate within 500 feet of the site. If the tower is proposed for an area outside a county containing a city of the first class, the applicant shall also file a statement that every person who owns property or resides within 500 feet of the site has been notified of the proposed construction and has been informed of his right to request intervention; a list of those who received the notice; a statement that the local planning unit or, if none, the county judge executive, has been notified of the proposed construction; a statement that notice of the proposed construction has been published in a newspaper of general circulation in the affected area; copies of the required notices; a statement that written notice has been posted on the site and on the nearest public access road; a brief description of the area involved, including its zoning classification; and a statement that the utility has considered the likely effects of the installation on nearby land uses and has concluded that the site is the most suitable one available. If the facility is proposed for a county containing a city of the first class, the applicant shall file a statement that the proposal has been submitted to the local planning unit, noting the date upon which the proposal was submitted, and attaching copies of documents so submitted. After the planning unit has made its decision, or after sixty days have passed without action from the planning unit, the utility shall file a copy of the decision or a statement that the statutory period has expired without action from the planning unit. If the utility wishes the commission to override a rejection by the planning unit, the utility shall file its request, together with evidence tending to show that there is no acceptable alternative site, including evidence of attempts by the utility to secure an alternate site to provide service to the area. A copy of this filing shall be served on the affected planning unit.

(c) The necessity and function of the proposed administrative regulation is as follows: The construction of antenna towers to provide telecommunications services has become extremely controversial. Frequently those who reside near a proposed construction site wish to be heard in opposition to the construction. The recently enacted KRS 278.650 provides that in a county containing a city of the first class, a proposal to construct an antenna tower must be submitted to the local planning commission before it is submitted to the Public Service Commission. If the local planning commission rejects the proposal, the Public Service Commission may override that decision if there is no acceptable alternative site and if the public convenience and necessity require the construction. However, if an antenna tower is proposed for an area outside a county containing a city of the first class, the Public Service Commission may consider the character of the area in which the tower is proposed to be constructed, along with likely effects of the construction on nearby land uses and values. The regulation the commission proposes to promulgate is necessary in order to implement KRS 278.650 in an orderly manner and to ensure that all interested parties are afforded full hearing under the law.

(d) The benefits expected from the proposed administrative regulation are: Requirements and procedures regarding certificates of public convenience and necessity for antenna towers will be updated to conform to new law.

(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.

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

January 3, 1997

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 15:026**, Existing boilers and pressure vessels; testing, repairs, inspection and safety factors.

(2) The Department of Housing, Buildings and Construction through the Board of Boiler and Pressure Vessel Rules intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, February 25, 1997, 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 February 25, 1997, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS Chapter 236 and 815 KAR 15:010 - 080.

ADMINISTRATIVE REGISTER - 2951

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 Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of these administrative regulations relating to 902 KAR 17:035E is 1966 Ky. Acts ch. 371.

(b) The "new" administrative regulations that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concern the State Health Plan for Facilities and Services and the annual updating of that plan.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, charges the name of the Department for Health Services to Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.015(18) requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in 1966 Ky. Acts ch. 371.

(d) The benefits expected from the administrative regulation are: Orderly and effective determination of health policy goals for health facilities and services in the Commonwealth. Ensure appropriate distribution of health services to all Kentuckians.

(e) The administrative regulation will be implemented as follows: The Division of Health Systems Development and the Department for Public Health will be responsible for the implementation of this new administrative regulation.

Office of Inspector General

January 13, 1997

Cabinet for Health Services

Office of Inspector General

(1) 902 KAR 20:008 - License procedures and fee schedule.

(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 February 28, 1997, 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 February 28, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621. Telephone: (502) 564-7900, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to license procedures and fee schedules is KRS 216B.042. KRS 216.530 mandates that all annual inspections of long-term care facilities be unannounced.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:008, Section 2(4)(a) to permit unannounced licensure inspections. Section 2(5) will be amended to delete references to the Commission on Health Economics Control and to include data submissions within reporting requirements. Section 2(7) will be amended to clarify that the licensure period is one year. Section 3 will be amended to alphabetize license types and to delete ambulance services from that listing. Section 3(2)(b) adds Alzheimer's nursing homes. Other amendments will delete references to the Cabinet for Human Resources and will refer to the Cabinet for Health Services in accordance with Executive Order 96-862, and will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation provides for the licensure requirements to operate a health facility and establishes the fee schedule for a license.

(d) The benefits expected from this proposed administrative regulation is that the amendments will permit unannounced routine inspections of all health facilities and health services, which may result in a more accurate evaluation of conditions. The amendments will also update the regulation by the deletion or addition of licensure categories and fee rates.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector

ADMINISTRATIVE REGISTER - 2953

Department for Mental Health and Mental Retardation Services Division of Substance Abuse

December 6, 1996
Cabinet for Health Services
Department for Mental Health and Mental Retardation Services
Division of Substance Abuse

(1) **908 KAR 1:370**, Licensing procedures and standards for agencies operating alcohol and other drug abuse treatment programs.

(2) The Department for Mental Health/Mental Retardation 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 February 21, 1997, 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 February 21, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet for Health Services, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (FAX).

(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 Mental Health and Mental Retardation Services, Division of Administration & Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the licensing procedures and standards for agencies operating alcohol and other drug abuse treatment programs is KRS 194.050 and 222.231.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will not amend an existing administrative regulation. It will provide for a single set of licensure standards for agencies operating both alcohol and other drug abuse treatment programs, as mandated by KRS 222.231, a new statute enacted in the regular session of the 1994 legislature.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation provides licensure requirements which establish minimum standards for agencies operating alcohol and other drug abuse outpatient, intensive outpatient, detoxification, residential and residential transitional treatment programs.

(d) The benefits expected from the administrative regulation are: The licensure standards will improve the quality of services delivered to alcohol and other drug abuse clients particularly with the increase in requirements related to staff credentials, supervision and training. Enhancing the quality of services provided to these clients will decrease the abuse of alcohol and other drugs in the state, thereby improving the health and safety of the citizens of the Commonwealth.

ADMINISTRATIVE REGISTER - 2955

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(7) Once an application has been declared complete, it shall not be amended to:

- (a) Increase the scope of the project; or
- (b) Increase the amount of the capital expenditure; or
- (c) Expand the size of the proposed service area; or
- (d) Change the location of the health facility or health service or legal applicant.

(8) An application that has been declared complete, may be amended to:

- (a) Decrease the scope of the project; or
- (b) Decrease the amount of the capital expenditure; or
- (c) Decrease the size of the proposed service area.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

Section 3. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for both formal and nonsubstantive review shall be as follows:

(a) Public notice for hospital, psychiatric, rehabilitation, chemical dependency and psychiatric residential treatment facilities, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:

- 1. February; and
- 2. August.

(b) Public notice for long-term care beds and intermediate care beds for mental retardation and developmentally disabled facilities shall be given on the third Thursday of the following months:

- 1. June; and
- 2. December.

(c) Public notice for transplantation, magnetic resonance imaging, lithotripter, radiation therapy, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:

- 1. January; and
- 2. July.

(d) Public notice for hospice and home health shall be given on the third Thursday of the following months:

- 1. March; and
- 2. September.

(e) Public notice for ambulance and air ambulance providers shall be given on the third Thursday of the following months:

- 1. November; and
- 2. May.

(f) Public notice for all applications requesting nonsubstantive review shall be given on the third Thursday of the following months:

- 1. February;
- 2. April;
- 3. June;
- 4. August;
- 5. October; and
- 6. December.

(g) Any proposals not listed above shall be placed in the most appropriate cycle as determined by the cabinet.

(2) In order to have an application deemed complete and placed on public notice, an application must be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 4. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for

certificate of need shall be reviewed for completeness pursuant to Section 5 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 6 of this administrative regulation.

(3) If granted nonsubstantive review status, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 7 of this administrative regulation.

Section 5. Completeness Review. (1) The provisions of this subsection shall apply to applications for certificate of need being reviewed for approval or denial of a certificate of need under both formal review and nonsubstantive review.

(2) Within fifteen (15) days of receipt of a certificate of need application, the cabinet shall determine whether the application is complete.

(3) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice that review of the application for approval or denial of a certificate of need has begun.

(4) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that a decision to grant or deny nonsubstantive review status will be made within ten (10) days of the date of the date that the application was deemed complete.

(5) Deeming an application complete means only that the applicant has minimally responded to the necessary items on the application. It does not address the accuracy or persuasiveness of the information contained in the application and shall not imply that the application has met the review criteria for approval of a certificate of need.

(6) If the cabinet finds that the application is incomplete, the cabinet shall provide the applicant with written notice of the information necessary to complete the application and shall notify the applicant that the cabinet will not deem the application complete unless within ten (10) days of the date of the cabinet's request for additional information:

(a) The applicant submits the information necessary to complete the application; or

(b) The applicant requests in writing that the cabinet review its application as submitted.

(7) If, upon the receipt of the additional information, the cabinet finds that the application is complete, the cabinet shall, for applicants proceeding under formal review:

(a) Notify the applicant in writing that the application for formal review has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice that review of the application for approval or denial of a certificate of need has begun.

(8) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that a decision to grant or deny nonsubstantive review status will be made within ten (10) days of the date that the application was deemed complete.

(9) If the applicant fails to provide the information necessary to complete the application, or if the information submitted is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the applica-

cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

(3) If an application is withdrawn, the applicant shall file a new letter of intent before resubmitting the application.

Section 11. Emergency Circumstances. (1) If emergency circumstances as defined in Section 1(6) of this administrative regulation arise, a licensed health facility or licensed health service may proceed to alleviate the emergency without first obtaining a certificate of need provided:

(a) The health facility or health service is licensed by the cabinet to provide the service necessary to alleviate the emergency; and

(b) The cabinet is notified in writing within five (5) days after the commencement of the provision of emergency circumstances.

(2) The notice to the cabinet shall contain the following information:

(a) A detailed description of the emergency;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency services are being provided; and

(d) If applicable, the name and addresses of the person to whom emergency services are being provided.

(3) If the provision of service to meet the emergency circumstances is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency services shall file a letter of intent and an application for a certificate of need pursuant to Section 2 of this administrative regulation.

(4) The person providing the emergency service may continue to alleviate the emergency circumstances until such time as the emergency ceases to exist or the cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 12. Conditions Relative to Certificate of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need approved for the establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

(3) Any person found by the cabinet to have violated KRS 216B.0615 shall be subject to the penalties for Class B misdemeanors set forth in KRS 532.090(b), 534.040(2)(b), and 534.050(1) as amended.

Section 13. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing such documents with the Office of Certificate of Need, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Documents may be filed by facsimile transmission provided that:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next working day after the due date.

(3) The Office of Certificate of Need shall endorse by file stamp the date of its filing and such endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by these administrative regulations, the date of notice, decision or order shall not be included.

(5) The last day of the period so computed is to be included,

unless it is a Saturday, a Sunday or legal state holiday, in which event the period runs until 4:30 p.m. eastern time of the first working day following a Saturday, Sunday, or legal state holiday.

Section 14. Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and party requesting the hearing and all known affected parties not less than ten (10) days prior to the date of the hearing; and

(b) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if all persons who requested the hearing agree in writing to its cancellation; agreement of other affected persons shall not be required.

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference. The purposes of the conference are to formulate and simplify the issues, identify additional information and evidence needed for the hearing, and dispose of pending motions. A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record. The hearing officer may tape record the conference or have a stenographer present. During the preliminary conference, the hearing officer may:

(a) Instruct the parties to:

1. Formulate and submit a list of genuine contested issues to be decided at the hearing;

2. Raise and address issues that can be decided before the hearing; or

3. Formulate and submit stipulations to facts, laws, and other matters.

(b) Prescribe the manner and extent of the participation of the parties or persons who shall participate;

(c) Rule on any pending motions for discovery or subpoenas; or

(d) Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) Seven (7) days prior to any scheduled hearing, all persons wishing to participate as a party to the proceedings shall file two (2) copies of the following with the cabinet and serve copies on all known affected parties:

(a) Witness List (Form #3);

(b) Exhibit List (Form #4) and attached exhibits; and

(c) Notice of Appearance (Form #5).

(8) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Every party appearing at the hearing shall enter an appearance by stating their name and address.

(9) Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(10) The hearing officer may allow testimony or other evidence on

KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be presumed to be a willful violation of KRS Chapter 216B and shall be subject to the penalties set forth at KRS 216B.990(2).

Section 18. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on "Progress Report Form #8" at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall:

(a) Determine whether the required elements have been completed; and

(b) If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in paragraph

(a) of this subsection, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment shall provide plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; and

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable;

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include;

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include;

1. For conversion of bed projects, documentation that the beds in the project are licensed; and

2. For construction projects;

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion;

(18) For projects not involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensing and Regulation.

(19) The cabinet or its designee may grant no more than two (2) extensions of six (6) months for good cause shown when the

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(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have been transferred from the Health Policy Board. Revenue is also generated from application fees.

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

(a) Geographical area in which administrative regulation will be implemented: To be determined after the notice of intent hearing.

(b) Kentucky: To be determined after the notice of intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The 1996 General Assembly transferred this function to the Cabinet for Health Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services to carry out its certificate of need mandates.

(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: Failure to promulgate this administrative regulation would cause result in the cabinet being unable to administer the certificate of need process.

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

(a) Necessity of proposed regulation if in conflict: No conflict.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied as the certificate of need process is applied uniformly for all of those entities that apply.

STATEMENT OF EMERGENCY 902 KAR 17:035E

This emergency administrative regulation incorporates by reference the 1996 Update to the State Health Plan for Facilities and Services, which is used by the Cabinet for Health Services in its review of applications for certificates of need. Although KRS 216B.015 requires that the State Health Plan be updated annually, the State Health Plan has not been updated since 1995. In that the certificate of need process and state health planning process was not transferred to the cabinet until July of 1996, this is the cabinet's earliest opportunity to update the State Health Plan for 1996. Since meaningful review of certificate of need applications is dependent upon the State Health Plan containing updated health facility and health service inventories as well as updated need projections, it is necessary to promulgate this administrative regulation as an emergency service. An ordinary administrative regulation is not sufficient because an ordinary administrative regulation would not become effective until mid-1997. The State Health Plan contains review criteria that relates to the quality of health facilities and health services. Failure to promulgate this administrative regulation as an emergency would mean that the cabinet's review of certificate of need applications would be limited as to the necessary data and information relating to quality of service delivery and would thus pose a threat to the health and safety of the citizens of the Commonwealth. It is, therefore, necessary to promulgate this emergency administrative regulation in order to meet the statutory requirement of annually updating the State Health Plan, and the need to provide current information to be used in the review of applications for certificate of need. The submission of this administrative regulation constitutes approval of the 1996 Update to the State Health Plan for Facilities

and Services. 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 on December 18, 1996.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Health Services

902 KAR 17:035E. State Health Plan for Facilities and Services.

RELATES TO: KRS 216B.010 to 216B.130

STATUTORY AUTHORITY: KRS 216B.010, 216B.015, EO 96-862

EFFECTIVE: December 18, 1996

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 its programs under the Cabinet for Health Services. KRS 216B.015 requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B.

Section 1. Incorporation by Reference. (1) The 1996 update to the 1996-1998 Kentucky State Health Plan is hereby incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m. Monday through Friday.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: December 18, 1996

FILED WITH LRC: December 18, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Kendell, Branch Manager

(1) Type and number of entities affected: This administrative regulation will affect all state agencies and entities that may contribute to preparing the State Health Plan.

(2) Direct and indirect costs or savings to those affected: There should be no direct costs or savings to those affected as the administrative regulation merely changes responsibility for preparing the State Health Plan from the Kentucky Health Policy Board to the Cabinet for Health Services.

(a) 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 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 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: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be

hospital that, for newborns, are thirty (30) days beyond the date of discharge for the mother, and for all other children after thirty (30) days from the date of admission; or

(b) Children under age six (6) in a disproportionate share hospital that, for newborns, are thirty (30) days beyond the date of discharge for the mother, and for all other children after thirty (30) days from the date of admission.

(10) "Indexing factor" means the amount that the cost of providing a service is expected to increase during the rate year.

(11) "Indigent days" means days in excess of fourteen (14) covered days for Medicaid recipients and all days of service provided to individuals eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days, with eligibility determined in accordance with criteria shown in 907 KAR 1:635, and which are uninsured or unreimbursed by any other source.

(12) "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(13) "Pediatric teaching hospital" means hospitals as defined in KRS 205.565.

(14) "Professional component costs" and "professional costs" means those professional costs resulting from services provided by anesthesiologists, cardiologists, electroencephalographists, pathologists, radiologists, psychiatrists and emergency room physicians and for which the hospital is reimbursed.

(15) "State university teaching hospital" means a hospital which is owned or operated by a state supported university with a medical school. As of the date of this administrative regulation, Kentucky's designated state teaching hospitals are those owned or operated by the University of Kentucky or the University of Louisville. Effective January 1, 1997 this definition shall include hospitals in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical schools are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville. A hospital's participation in or agreement to allow a residency program or rotation shall not be construed to mean the facility houses teaching components of programs for the University of Kentucky or the University of Louisville medical schools.

(16) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year-end and the beginning of the rate year.

(17) "Type I hospital status" means those in-state disproportionate share hospitals with 100 beds or less that participate in the Medicaid Program.

(18) "Type II hospital status" means those in-state disproportionate share hospitals with 101 beds or more that participate in the Medicaid Program, except for those hospitals that meet the criteria to be defined as a Type III or Type IV status hospital.

(19) "Type III hospital status" means those in-state disproportionate share state university teaching hospitals, owned and operated by either the University of Kentucky or the University of Louisville medical schools, that have requested a Type III status which has been approved by the Department for Medicaid Services.

(20) "Type IV hospital status" means those in-state disproportionate share hospitals participating in the Medicaid Program that are state owned psychiatric hospitals.

(21) "Type V hospital status" means those out-of-state disproportionate share hospitals participating in the Medicaid Program.

(22) "Universal rate year" or "rate year" means the rate year, under the prospective payment system, beginning January 1 for which payment rates are established for all hospitals for a twelve (12) month period regardless of the hospital's fiscal year end. Effective July 1, 1997 the "universal rate year" or "rate year" shall mean the rate year, under the prospective payment system, beginning July 1 for which payment rates are established for all hospitals for a twelve (12) month

period regardless of the hospital's fiscal year end.

(23) "Upper payment limit" means the maximum amount the Medicaid Program shall pay for an inpatient day of care under specified circumstances; upper payment limits may vary based on factors, such as utilization factors, teaching hospital status, and age of the patient.

Section 2. Acute Care Hospital, Rehabilitation Hospital and [Mental Hospital (Including) Psychiatric Hospital (Facility)] Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medicaid [Medical Assistance] through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

[Section 2. Establishment of Payment Rates. (1) The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised November 29, 1993, which is incorporated by reference in this administrative regulation.

(2) For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential).

(3) The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.]

Section 3. [General Description of the Payment System. The following provisions shall be applicable for purposes of setting inpatient hospital payment rates:

(+) Use of Prospective Rates. (1) Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.

(a) The prospective rate shall include [be all-inclusive in that] both routine and ancillary cost [shall be reimbursed through the rate].

(b) Once a base year is selected for setting a rate, that base year shall not change. [For universal rate years prior to January 1, 1995 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used.]

(c) [For universal rate years beginning on or after January 1, 1995:] The prospective rate shall not be subject to retroactive adjustment, except for [to the extent that] facilities with a rate based on unaudited data. These facilities shall have their rate appropriately revised for the rate year when the audited cost report for the base year is received from the fiscal intermediary or an independent audit firm under contract with the department.

(d) Total prospective payments shall not exceed the total customary charges in the prospective year.

(2) (a) Overpayments shall be recouped by:

(a) [1-By] Payment from the provider of the amount of the overpayment; or

(b) [2-By] The withholding of the overpayment amount from future payments due the provider.

Section 4. (2) Use of a Universal [uniform] Rate Year. (1) A universal [uniform] rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. Effective July 1, 1997 the universal rate year shall be established as

aid capital costs and professional component costs) at the weighted median per diem cost for hospitals in the array;

(b) A psychiatric hospital designated by the department ~~(cabinet)~~ as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; and

(c) The projected cost may be adjusted for usual cost of living increases using the DRI [Data Resources, Incorporated] Index.

(5) After ~~(a-Upper)~~ being set, the arrays and upper limits shall not be altered due to revisions or corrections of data. ~~(-however)~~ The arrays or upper limits may be changed as a result of changes of agency policy.

(6) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper limit shall not be established.

~~(d-Disproportionate share hospitals shall also receive, in addition to regular program payments, disproportionate share hospital payments as described in the Reimbursement Manual at Section 402C.)~~

(7) ~~(e-)~~ Provider taxes shall be considered an allowable cost with that portion attributable to Medicaid utilization included in the per diem rates. ~~(For the rate period beginning November 29, 1993, the allowable cost of the tax shall be added to the hospital rate with no effects and without regard for usual upper limits. For subsequent rate periods the cost (excluding, effective March 1, 1994, any per diem rate adjustments for the prior rate period relating to provider taxes) shall be shown in the appropriate cost report with adjustment as necessary to reflect an annual amount.)~~

(8) Except as otherwise indicated in this administrative regulation the following controls shall be applied to the per diem rate increases for acute care hospitals except for those providing only rehabilitation services.

(a) ~~(f-)~~ Allowable rate ~~(cost)~~ growth from the prior rate ~~(base)~~ year to the new rate ~~(base)~~ year shall be limited to not more than one and one-half (1 1/2) times the DRI [Data Resources, Inc.] inflation amount for the same time period.

(b) Limits shall be applied to the ~~(by component)~~ capital and operating cost per diem component only.

(c) Rate ~~(-cost)~~ growth beyond the allowable amounts shall be considered unallowable cost for rate setting purposes.

(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.

(9) ~~(2-)~~ For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay ~~(defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission))~~, the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

Section 11. Disproportionate Share Hospitals. ~~(b)~~ The following upper limits and payment principles shall apply to disproportionate share hospitals ~~(as defined in subsection (9) of this section)~~.

(1) ~~(1-)~~ Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursery ~~(nursing)~~ days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in that peer grouping ~~(the array)~~. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) as shown in subsection (7) ~~(9)(b)2~~ of this section. ~~These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS~~

~~205.640 and Section 102C of the Reimbursement Manual]~~.

(2) ~~(2- Designated)~~ State university teaching hospitals, having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, ~~(and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville))~~ shall have an upper limit set at 126 percent of the weighted median per diem cost for ~~(all other)~~ hospitals of ~~(comparable size (401 beds and up))~~. Designated state pediatric teaching hospitals shall have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group.

(a) The state pediatric teaching hospitals shall also be paid, in addition to the facility's ~~(facilities)~~ base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. ~~(In addition to the per diem amount computed using the limits specified in this subparagraph, the)~~

(b) Hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) as shown in subsection (7) ~~(9)(b)2~~ of this section. ~~These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual]~~.

(3) ~~(3-)~~ Psychiatric hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. ~~(The hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.)~~

(4) Acute care hospitals with 100 beds or less shall have an upper limit set at 110 percent of the weighted median per diem for hospitals in the array.

(5) ~~(4-)~~ All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the peer grouping ~~(array)~~. ~~(In addition to the per diem amount computed in this manner, the)~~ Hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) ~~(4as shown in subsection (7) (9)(b)2 of this section)~~. ~~These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual]~~.

(6) The disproportionate share hospital payments for the period beginning February 20, 1995 shall be made as follows:

(a) The disproportionate share hospital payments for Type I and Type II hospitals shall include a volume adjustment.

1. The adjustment shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate.

2. Total disproportionate share volume adjustment payments to Type I and Type II hospitals for indigent care services provided during the 1996 fiscal year shall not exceed \$86,500,000. If payments will cause the limit to be exceeded, all hospitals' volume adjustment amounts shall be adjusted proportionately.

3. The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

(b) The disproportionate share hospital payments for Type III and IV hospitals shall be equal to 100 percent of the cost of services to Medicaid patients, less the amount paid by Medicaid as usual Medicaid per diem payments, plus the cost of services to uninsured patients, less any cash payments made by the uninsured patients. Type III status shall be granted to a state university teaching hospital if the hospital agrees as a part of its request for a Type III status to forego any local or state government contributions for charity care

payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost; and

ii. For services provided for the January 1, 1994 through June 30, 1994 period by the difference between the hospital's January 1, 1994 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost.

(vi) Any acute care or psychiatric disproportionate share hospital of 100 beds or less shall receive an additional disproportionate share hospital payment of \$200,000 for the period March 1, 1994 through June 30, 1994. This payment shall be made in two (2) equal installments of \$100,000 each with the first payment amount to be paid on or before March 31, 1994 and the second payment amount to be paid on or before June 30, 1994.

e. Each Type XI hospital shall qualify for an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

2. The disproportionate share hospital payments for the period beginning July 1, 1994 and thereafter shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate (except that total disproportionate share payments for indigent care services provided during the 1995 fiscal year shall not exceed \$81,000,000; if payments will cause the limits to be exceeded, all hospitals earned amounts shall be adjusted proportionately). The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

3. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median-based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or psychiatric hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.]

Section 12. In-state Nondisproportionate Share Hospitals. In-state nondisproportionate share hospitals shall be compensated in the manner described in Section 11(6)(a) of this administrative regulation for services provided by the hospital to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to 100 percent of the federal poverty level, except for nonemergency care rendered through a hospital emergency room, in accordance with KRS 205.640.

Section 13. [4.] Payments to Participating Out-of-state Hospitals. (1) [Effective with regard to services provided on or after July 1, 1990] Participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered to eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size

hospital, except as specified in subsection (2) of this section.

(2) [Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out of state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission.] Participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) in any hospital; and children under age six (6) in disproportionate share hospitals, without regard to length of stay or number of admissions of the infants and children.

(3) [Effective with regard to services provided on or after February 1, 1991.] Professional costs [(i.e., physician fees)] for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 14. Material Incorporated by Reference. (1) The "Medicaid Reimbursement Manual for Hospital Inpatient Services" dated December 1996, shall be incorporated by reference in this administrative regulation.

(2) For any reimbursement issue or area not specified in the manual, the department shall apply Medicare standards and principles, excluding the Medicare inpatient routine nursing salary differential.

(3) The Medicaid Reimbursement Manual for Hospital Inpatient Services shall be on file in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621.

(4) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(5) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 15. Provider Appeal Rights. Negative actions may be appealed in accordance with 907 KAR 1:671.

Section 16. [5-] Except as otherwise specified the changes shown in this administrative regulation shall be applicable [effective] with regard to services provided on or after December 18, 1996. [November 29, 1993.]

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: December 17, 1996
FILED WITH LRC: December 18, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: All hospitals participating in the Medicaid Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the

ADMINISTRATIVE 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 January 6, 1997, unless otherwise noted.

**FINANCE AND ADMINISTRATION CABINET
Board of Hairdressers and Cosmetologists
(As Amended)**

201 KAR 12:082. School's course of instruction.

RELATES TO: KRS 317.050(8), 317A.060(1), 317A.090
STATUTORY AUTHORITY: KRS 317A.060(1), 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)

requires ~~[authorizes]~~ the board to promulgate administrative regulations governing schools of cosmetology. KRS 317A.090 establishes the requirements for schools of cosmetology. KRS 317A.050(7)(d) provides that a license to operate a school of cosmetology may be granted if the applicant has complied with applicable statutes and administrative regulations governing schools of cosmetology. This administrative regulation establishes requirements for the course of instruction of schools of cosmetology ~~[pursuant to the cited sections of KRS Chapter 317A].~~

Section 1. The regular courses of instruction for cosmetology students shall contain the following:

(1) Professional practices.

(a) The cosmetology profession.

1. Cosmetology vocabulary.

2. Brief history: how it began, and changes.

3. Ethics: ethics in a beauty salon; and salon conduct.

(b) Salon procedures.

1. Hygiene and good grooming: personal and public; personal characteristics; and responsibilities of a cosmetologist ~~[the cosmetologist]~~.

2. Professional attitudes and salesmanship; personality development; salesmanship and business management; customer relationship; and telephone personality.

3. Public relations and psychology: behavior; and proper image.

(c) Specialty services.

1. Facial treatments and make-up: facial treatment/make-up preparation; implements and supplies; procedure in giving a plain facial; purpose and effect of message movements; facial cosmetics; special problems; eyebrow arching; and lash and brow dye.

2. Nail technology ~~[Manicuring]~~: purpose and effect; preparation; equipment; and procedures, including the following: plain manicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of lacquer, and application of artificial nails.

(2) Life sciences (general anatomy).

(a) Osteology: definition; and functions.

(b) Myology: definition; functions; and types.

(c) Neurology: definition; functions; types (motor and sensory); and principal nerves of the head, face and neck.

(d) Angiology: definition; composition of blood; and function of blood.

(e) Dermatology: structure of skin; functions of skin; appendages of skin; conditions of the skin; and lesions of the skin.

(f) Trichology: structure of hair; composition; blood and nerve supply; growth and regeneration; color, texture, elasticity, porosity; and conditions to be recognized.

(g) Nails: structure and composition; growth and regeneration;

and irregularities.

(3) Physical sciences (chemistry and treatment).

(a) Chemistry.

1. Elements, compounds, and mixtures: properties of; acid and alkali; and chemistry of water.

2. Composition and uses of cosmetics: for the body; for the skin and face; and for the scalp and hair.

3. Chemistry of hair lightening.

4. Chemistry of hair coloring.

5. Chemical hair relaxing.

6. Chemistry of make-up.

7. Chemistry of facial treatments.

8. Chemistry of rinses: soaps and shampoos; and detergents.

9. Chemistry of cold waving.

(b) Scalp and hair treatments: purpose and effects; preparation and procedure; use of cap; electricity and therapeutic ray; and safety rules.

(c) Shampoos and rinses: importance of good shampoo; purpose of effects; required materials and implements; brushing and drying; types of shampoos; rinses (not colored); and composition.

(d) Hair coloring: principal reasons for coloring; advantages of coloring; classifications of hair coloring; variation of products; procedures; and safety measures.

(e) Hair lightening: types of lighteners; implements and supplies; procedure; special problems in hair lightening; fillers and toners; removal of aniline derivative tints; and tint back to natural coloring.

(f) Cold waving: basic requirements; scalp and hair analysis; hair porosity; hair texture; hair elasticity; hair density; curling rods and chemicals; variation of permanent wave products; procedures; problems; and safety measures.

(g) Sterilization and sanitation: definitions; importance; sterilization rules; and methods of sterilization.

(4) Hair designing or sculpturing.

(a) Hair shaping: fundamentals of hair shaping; correct use of tools; designing and planning the hair cut; sectioning and thinning; razor and shear shaping; wig shaping; and safety precautions.

(b) Hair styling: finger waving; pin curls; hair partings; artistry hair styling; dressing of the coiffure; special consideration in hair styling; chemical hair relaxing and styling; facial types; and hair pressing and types of hot-iron curling.

(c) Care and styling of wigs: purpose; quality; types of wigs; ordering wigs; cleaning; shaping; tinting and color rinsing; setting; and safety precautions.

Section 2. A school ~~[Schools]~~ shall teach the students about ~~[of]~~ the various supplies and equipment used in the usual salon practices.

Section 3. A school ~~[Schools]~~ shall have the following charts or visual aids available for students' use:

(1) Charts or visual aids showing anatomy of muscles of face and neck with special reference to the direction of muscle fibers and function of muscle or groups of muscles;

(2) Charts or visual aids showing anatomy of nails.

Section 4. A student shall receive not less than 1,800 hours in clinical class work and scientific lectures with 450 minimum lecture hours for science and theory and 1,305 minimum clinic and practice hours; and forty-five (45) hours of applicable Kentucky statutes and administrative regulations.

Section 5. One (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS

- (8) Teaching aids, audio-visual techniques, eight (80) hours.
- (9) Demonstration techniques, fifty-five (55) hours.
- (10) Examinations and analysis, sixty (60) hours.
- (11) Classroom management, forty-five (45) hours.
- (12) Recordkeeping, twenty-five (25) hours.
- (13) Teaching observation, sixty-five (65) hours.
- (14) Teacher assistant, ninety (90) hours.
- (15) Pupil teaching (practice teaching), 270 hours.

Section 16. A student instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. A student instructor shall not assume ~~any of~~ the duties and responsibilities of a licensed supervising instructor.

Section 17. All records of apprentice instructors' hours earned shall be recorded on the "Monthly Attendance Report" ~~a standard~~ form supplied by the board office on or before the tenth day of each month.

Section 18. If the board permits a student to enroll in a school for a special brush-up course in any of the following subjects, the student shall be required to have a course of training of the following number of hours in the course or courses he desires to take:

- (1) Permanent waving, and all chemical control, 150 hours.
- (2) Nail technology ~~(Manicuring)~~, hand and arm massage, and application of artificial nails ~~(bleach)~~, 100 hours.
- (3) All iron curls, 100 hours.
- (4) Facials, 125 hours.
- (5) Hair coloring and bleaching, 150 hours.
- (6) Scalp massage, 25 hours.
- (7) Hair shaping, trimming, and thinning, 125 hours.
- (8) Science, 100 hours.
- (9) Hair dressing and styling, 150 hours.

Section 19. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Certification Of Cosmetology Field Trip * Hours (1995)" Kentucky State Board of Hairdressers and Cosmetologists; and
- (b) "Certification Of Cosmetology Student Education Show * Hours (1995)", Kentucky State Board of Hairdressers and Cosmetologists; and
- (c) The "Monthly Attendance Report" Form, 1993 edition, Kentucky State Board of Hairdressers and Cosmetologists.

(2) These forms may be inspected, copied, or obtained at Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHIRLEY MEDLEY, Chairman

APPROVED BY AGENCY: September 3, 1996

FILED WITH LRC: September 24, 1996 at 3 p.m.

**GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(As Amended)**

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

RELATES TO: KRS 317A.050(8)

STATUTORY AUTHORITY: KRS 317A.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: Beginning July 1, 1997, KRS 317A.050(8) requires cosmetologists, cosmetology instructors and nail technicians to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation. This administrative

regulation establishes the requirements for sponsoring a continuing education program and for providing proof of attendance at a continuing education program.

Section 1. (1) A sponsor ~~[Sponsors]~~ of a continuing education program ~~[programs]~~ shall request approval of the board on an "Application for Approval of Continuing Education Program" form and shall agree to submit the information required by subsection (2) of this section. The application shall state the date, subject offered, total hours of instruction, names and qualifications of speakers, fees to be charged, evaluation form, and other pertinent information.

(2) The sponsor shall agree to:

- (a) Accurately record attendance at each presentation;
- (b) Complete a record of attendance confirming the number of clock hours actually attended for each attendee; and
- (c) Submit a list of attendees within thirty (30) days after the program to the board office.

Section 2. An application ~~[Applications]~~ for approval of a continuing education program shall be submitted to the office of the board at least ninety (90) days prior to the starting date of the program. The board shall approve or deny the request in writing within sixty (60) days of receipt of the application.

Section 3. The program shall consist of an organized program of learning which:

- (1) Contributes directly to the competency of the licensee;
- (2) Pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and
- (3) Pertains to the health, safety, welfare, and protection of the public including ~~[but not limited to]~~ sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens, and HIV/AIDS education.

Section 4. A program ~~[All programs]~~ shall specify the course objectives, content, prerequisites, requirements, and the number of continuing education hours to be earned. The information shall ~~[also]~~ be specified in all promotional materials.

Section 5. A program ~~[All programs]~~ shall be generic product related and shall not be used to promote, sell or advertise a ~~[any]~~ product.

Section 6. A sponsor shall be: ~~[Sponsors shall include, but not be limited to:]~~

- (1) A private and vocational technical schools of cosmetology offering cosmetology and nail technician courses;
- (2) An association or organization ~~[Associations and organizations]~~ whose membership consists of licensees of the board;
- (3) A college, university, or other institution ~~[Colleges, universities and other institutions]~~ of higher education recognized by the Kentucky Council on Higher Education;
- (4) Individuals who hold an active cosmetologist license, instructor of cosmetology license or nail technicians license and have special education, training and experience in cosmetology;
- (5) Other persons who have a license, degree, special education, training and experience relating to the subject matter of the program;
- (6) State agency programs;
- (7) Manufacturers and distributor product shows shall not be approved.

Section 7. The board may monitor or review any continuing education program approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may withdraw approval of the hours granted to the program.

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(4) Central Kentucky Wildlife Management Area.

(a) A person shall not hunt:

1. Migratory game [~~Persons shall not hunt migratory~~] birds after October 13, except as provided in 301 KAR 2:221.

2. Woodcock.

(b) A dove hunter shall not carry firearms except during shooting hours.

(5) Grayson Lake Wildlife Management Area.

(a) A migratory bird hunter [~~hunters~~] shall check in and out daily at a designated check station [~~stations~~].

(b) A person [~~Persons~~] shall not hunt:

1. Within the no wake zone at the dam site marina;

2. On Deer Creek Fork; or

3. On or from the shores of Camp Webb or the state park.

(6) Land Between the Lakes. A person [~~Persons~~] shall not hunt doves, woodcock or common snipe between the last Saturday in September and November 30.

(7) West Kentucky Wildlife Management Area. A person shall not hunt:

(a) [~~Persons shall not hunt~~] Doves after October 13, except on tracts 2, 3, 6, and 7 during the November-December portion of the season.

(b) [~~Persons shall not hunt~~] Woodcock and snipe except on tracts 2, 3, 6, and 7.

(c) [~~Persons shall not hunt~~] On tracts designated by numbers followed by the letter "A".

(8) Yatesville Lake Wildlife Management Area. A migratory game bird hunter [~~hunters~~] shall check in and out daily.

(9) A person [~~Persons~~] shall not hunt migratory game birds on the main block of Robinson Forest.

Section 7. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for dove hunting fields on department property after considering the following:

(a) Terrain of the field [~~fields~~];

(b) Topography of the field [~~fields~~];

(c) Providing for approximately forty (40) yards between hunters.

(2) Strategically located signs shall be posted in fields advising hunters:

(a) Of recommended hunter densities;

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) A hunter [~~Hunters~~] behaving in an unsafe or uncooperative manner shall be required to leave the premises.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: October 25, 1996 at 9 am.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)**

401 KAR 32:030. Pretransport requirements.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99, 40 CFR 262 Subpart C

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-510 and 49 CFR Subpart C [~~Parts 172, 173, 178, and 179~~] and to establish requirements for labeling,

marking, placarding, and accumulation time.

Section 1. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable DOT U.S. Department of Transportation regulations on packaging under 49 CFR Subpart C [~~Parts 173, 178, and 179 (1989)~~].

Section 2. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable DOT U. S. Department of Transportation regulations on hazardous materials, under 49 CFR Subpart C [~~172 (1989)~~].

Section 3. Marking. (1) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable DOT U.S. Department of Transportation regulations on hazardous materials under 49 CFR Subpart C [~~172 (1989)~~].

(2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in such transportation in accordance with the requirements of 49 CFR Subpart C [~~172-304 (1989)~~]. The following words and information shall be displayed: "Hazardous Waste - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____

Manifest Document Number _____

Section 4. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall offer the initial transporter the appropriate placards according to DOT U.S. Department of Transportation regulations for hazardous materials under 49 CFR Subpart C and [~~Part 172,~~] Subpart F [~~(1989)~~].

Section 5. Accumulation Time. (1) Except as provided in subsections (3), (4), (5), and (6) of this section and Section 6 of this administrative regulation, a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status if:

(a) The waste is placed:

1. In containers and the generator complies with 401 KAR 35:180, 35:275, 35:280, and 35:281; or

2. In tanks and the generator complies with 401 KAR 35:190 (except Sections 8(3) and 11 and forty-five (45) days prior to closing a tank, the generator notifies the cabinet in writing of the intent to begin closure), 35:275, 35:280, and 35:281; or

3. On drip pads and the generator complies with 401 KAR 35:285 and maintains the following records at the facility:

a. A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety (90) days; and

b. Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

4. The waste is placed in containment buildings and the generator complies with 401 KAR 35:245, and placed its professional engineer certification that the building complies with the design standards specified in Section 2 of 401 KAR 35:245 in the facility's operating record no later than sixty (60) days after the date of initial operation of the unit. After February 18, 1993, professional engineer (PE) certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

a. A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety (90) days, a written description of the waste generation and management practices

of human health, safety, and the environment, the cabinet may revoke the approval and all treatment activities shall cease.

(4) The cabinet shall refund any fees paid in accordance with Section 2(4) of 401 KAR 39:110 if it fails to provide a written determination within sixty (60) days of receipt of a generator's request to treat hazardous waste.

[Section 6. Accumulation Time for Small Quantity Generators. (1) A generator generating a total quantity of hazardous waste greater than 100 kilograms, but less than 1,000 kilograms during a calendar month for every month in a calendar year (that is, a registered small quantity generator), may accumulate without a permit for up to 180 days. The on-site accumulation may occur without a permit for not more than 6,000 kilograms for up to 270 days if the generator is obligated to ship or haul the waste over 200 miles.

(2) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he transports his waste or offers his waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 401 KAR Chapters 34 and 35 and the permit requirements of 401 KAR Chapter 38 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the cabinet if hazardous wastes will remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) A small quantity generator may accumulate hazardous waste on-site for 180 days (or for 270 days if he is obligated to transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or without having interim status provided that he complies with the requirements of Section 5(1) of this administrative regulation.

(4) A small quantity generator may accumulate hazardous waste in satellite areas provided that he complies with the requirements of Section 5(3) of this administrative regulation.]

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: July 11, 1996
FILED WITH LRC: July 12, 1996 at 9 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)**

401 KAR 34:060. Groundwater protection.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities. This administrative regulation establishes the minimum groundwater protection standards for new hazardous waste sites or facilities. This administrative regulation is equivalent to federal standards established in 40 CFR 264 Subpart F except for: language

that has been added to clarify federal intent; Section 5 of this administrative regulation, which references MCLs found in 401 KAR Chapter 8 to provide consistency with federal policy and other Kentucky environmental programs; Section 8(3) of this administrative regulation, which establishes a minimum two inch monitoring well requirement appropriate for Kentucky's unique environment; and Sections 8(11) and 13 of this administrative regulation, which provide for and establish forms to provide monitoring information for Kentucky's groundwater database.

Section 1. Applicability. (1)(a) Except as provided in subsection (2) of this section, the requirement in this administrative regulation apply to owners and operators of facilities that treat, store, or dispose of hazardous waste. The owner or operator shall satisfy the requirements of paragraph (b) of this subsection for all wastes (or constituents thereof) contained in solid waste management units at the facility regardless of the time at which waste was placed in such units.

(b) All solid waste management units shall comply with the requirements in Section 12 of this administrative regulation. A surface impoundment, waste pile, land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") shall comply with the requirements of Sections 2 through 11 of this administrative regulation in lieu of Section 12 of this administrative regulation for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of Section 12 of this administrative regulation apply to regulated units.

(2) The owner or operator's regulated unit or units are not subject to administrative regulation for releases into the uppermost aquifer under this administrative regulation if:

(a) The owner or operator is exempted under Section 1 of 401 KAR 34:010; or

(b) He operates a unit which the cabinet finds:

1. Is an engineered structure;
2. Does not receive or contain liquid waste or wastes containing free liquids;
3. Is designed and operated to exclude liquid, precipitation, and other run-on and run-off;
4. Has both inner and outer layers of containment enclosing the waste;
5. Has a leak detection system built into each containment layer;
6. The owner or operator shall provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and postclosure care periods; and
7. To a reasonable degree of certainty, shall not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the postclosure care period.

(c) The cabinet finds pursuant to 401 KAR 34:220, Section 8(4) that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 401 KAR 34:220, Section 6, has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this subsection can only relieve an owner or operator of responsibility to meet the requirements of this administrative regulation during the postclosure care period; ~~or~~

(d) The cabinet finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the postclosure care period specified under 401 KAR 34:070, Section 8. This demonstration shall be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration; or

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ent in the groundwater at the time that limit is specified in the permit; or

(b) Shall not exceed the maximum contaminant level listed in the following table. [For any of the constituents listed in 401 KAR Chapter 8 (Table I), shall not exceed the respective MCL value listed [given] in 401 KAR Chapter 8] [that Table] if the background level of the constituent is below the maximum contaminant level given in the table [MCL value given in 401 KAR Chapter 8] and if the owner or operator has utilized appropriate sampling methods capable of detecting the constituent values listed in the table: [401 KAR Chapter 8 (Table I); or]

MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUNDWATER PROTECTION*

Constituent	Maximum Contaminant Level (mg/l)
Aldicarb	0.003
Antimony	0.006
Arsenic	0.05
Barium	2
Benzene	0.005
Benzo(a)pyrene	0.0002
Beryllium	0.004
Cadmium	0.005
Carbon tetrachloride	0.005
Chlordane	0.002
Chromium	0.1
Cyanide (as free Cyanide)	0.2
Dibromochloropropane	0.0002
1,2-Dichloroethane	0.005
o-Dichlorobenzene	0.6
p-Dichlorobenzene	0.075
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane (Methylene chloride)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
1,2-Dichloropropane	0.005
Di(2-ethylhexyl)phthalate	0.006
Dinoseb	0.007
Endothall	0.1
Endrin	0.002
Ethylene dibromide (1,2-Dibromoethane)	0.00005
Fluoride	4.0
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lead	0.05
Lindane	0.0002
Mercury	0.002
Methoxychlor	0.04
Monochlorobenzene	0.1
Nickel	0.1
Polychlorinated biphenyls	0.0005
Pentachlorophenol	0.001
Selenium	0.05
Silver	0.05
Tetrachloroethylene	0.005
Thallium	0.002
Toluene	1
Toxaphene	0.003
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005

1,2,4-Trichlorobenzene	0.07
1,1,2-Trichloroethane	0.005
2,4,5-TP Silvex	0.05
2,3,7,8-TCDD (Dioxin)	3.0 x 10 ⁻⁸
Vinyl chloride	0.002

*NOTE: This table applies in lieu of Section 5 of 401 KAR 30:031.

(c) Shall not exceed an alternate limit established by the cabinet under subsection (2) of this section.

(2) The cabinet shall establish an alternate concentration limit for a hazardous constituent if it [he] finds that the constituent shall not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the cabinet shall consider the following factors:

(a) Potential adverse effects on groundwater quality, considering:

(TABLE I)

MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUNDWATER PROTECTION

Constituent	Maximum Concentration
Arsenic	0.05 mg/l
Barium	1.0 mg/l
Cadmium	0.01 mg/l
Chromium	0.05 mg/l
Lead	0.05 mg/l
Mercury	0.002 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Endrin (1,2,3,4,10,10 hexachloro-1,7 epoxy 1,4,4a,5,6,7,8,9a-octahydro 1,4-endo, endo-5,8-dimethanonaphthalene)	0.0002 mg/l
Lindane (1,2,3,4,5,6, hexachloro-cyclohexane, gamma isomer)	0.004 mg/l
Methoxychlor (1,1,1 Trichloro 2,2, bis (p-methoxyphenyl ethane))	0.1 mg/l
Toxaphene (C ₁₂ H ₁₂ Cl ₈ , Techni-cal chlorinated camphene, 67-69 percent chlorine)	0.005 mg/l
2,4-D (2,4 Dichlorophenoxyacetic acid)	0.1 mg/l
2,4,5-TP Silvex (2,4,5-Trichloro-phenoxypropionic acid)	0.01 mg/l

1. The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;
2. The hydrogeological characteristics of the facility and surrounding land;
3. The quantity of groundwater and the direction of groundwater flow;

4. The proximity and withdrawal rates of groundwater users;
5. The current and future uses of groundwater in the area;
6. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
7. The potential for health risks caused by human exposure to waste constituents;
8. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
9. The persistence and permanence of the potential adverse effects; and

(b) Potential adverse effects of hydraulically connected surface water quality, considering:

permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (PQL's) are used in any of the following statistical procedures to comply with subsection (9)(e) of this section, the PQL [pql] shall be proposed by the owner or operator and approved by the cabinet. Use of any of the following statistical methods shall be protective of human health and the environment and shall comply with the performance standards outlined in subsection (9) of this section. The statistical methods which an owner or operator may specify are:

(a) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(b) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(c) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or [ef] prediction limit.

(d) A control chart approach that gives control limits for each constituent.

(e) Another statistical test method submitted by the owner or operator and approved by the cabinet.

(9) Any statistical method chosen under subsection (8) of this section for specification in the unit permit shall comply with the following performance standards, as appropriate:

(a) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one (1) statistical method may be needed.

(b) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(c) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and shall be approved by the cabinet if it is protective of human health and the environment.

(d) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be proposed by the owner or operator and shall be approved by the cabinet if it finds these parameters to be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of concentration values for each constituent of concern.

(e) The statistical method shall account for data below the limit of detection with one (1) or more statistical procedures that are protective of human health and the environment. Any practical qualification limit (PQL [pql]) approved by the cabinet under subsection (8) of this section that is used in the statistical method shall be

the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operation conditions that are available to the facility.

(f) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(10) Groundwater monitoring data collected in accordance with subsection (7) of this section, including actual levels of constituents, shall be maintained in the facility operating record. The cabinet shall specify in the permit when the data shall be submitted for review.

(11) The groundwater monitoring data may be submitted on Groundwater Sample Analysis form, DEP Form 8046 (August 1995), and Hazardous Waste Groundwater Report form, DEP Form 8046A (March 1996). These forms are incorporated by reference in Section 13 of this administrative regulation. The owner or operator may use their own document, provided the language is identical to that specified in DEP Form 8046 and DEP Form 8046A.

Section 9. Detection Monitoring Program. An owner or operator required to establish a detection monitoring program under this administrative regulation shall, at a minimum, discharge the following responsibilities:

(1) The owner or operator shall monitor for indicator parameters (for example, [e-g-] specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The cabinet shall specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(a) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(b) The mobility, stability, and persistence of waste constituents or their reaction products in the saturated and unsaturated zone beneath the waste management area;

(c) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(d) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the background groundwater quality.

(2) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under Section 6 of this regulation. The groundwater monitoring system shall comply with Section 8(1)(b), (2) and (3) of this administrative regulation.

(3) The owner or operator shall conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to subsection (1) of this section in accordance with Section 8(7) of this administrative regulation. The owner or operator shall maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under Section 8(8) of this administrative regulation.

(4) The cabinet shall specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under subsection (1) of this section in accordance with Section 8(7) of this administrative regulation. A sequence of at least four (4) samples from each well (background and compliance wells) shall be collected at least semiannually during detection monitoring.

(5) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer as specified in the permit. This determination shall be made at least annually.

(6) The owner or operator shall determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit pursuant to subsection (1) of this section at a frequency specified under subsection (4) of this section.

(4) The owner or operator shall determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to subsection (1) of this section, at a frequency specified under subsection (6) of this section.

(a) In determining whether statistically significant evidence of increased contamination exists, the owner or operator shall use the method(s) specified in the permit under Section 8(8) of this administrative regulation. The method(s) shall compare data collected at the compliance point(s) to a concentration limit developed in accordance with Section 5 of 401 KAR 34:060.

(b) The owner or operator shall determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The cabinet shall specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(5) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer as specified in the permit and which shall be no less frequently than at least annually.

(6) The cabinet shall specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with Section 8(7) of this administrative regulation. A sequence of at least four (4) samples from each well (background and compliance wells) shall be collected at least semiannually during the compliance period of the facility.

(7) The owner or operator shall analyze samples from all monitoring wells at the compliance point for all constituents contained in 401 KAR 34:360 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in Section 9(6) of this administrative regulation. If the owner or operator finds 401 KAR 34:360 constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one (1) month and repeat the 401 KAR 34:360 analysis. If the second analysis confirms the presence of new constituents, the owner or operator shall report the concentration of these additional constituents to the cabinet within seven (7) days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she shall report the concentrations of these additional constituents to the cabinet within seven (7) days after completion of the initial analysis and shall add them to the monitoring list.

(8) If the owner or operator determines, pursuant to subsection (4) of this section, that any concentration limits under Section 5 of this administrative regulation are being exceeded at any monitoring well at the point of compliance, he or she shall:

(a) Notify the cabinet of this finding in writing within seven (7) days. The notification shall indicate what concentration limits have been exceeded.

(b) Submit to the cabinet an application for a permit modification to establish a corrective action program meeting the requirements of Section 11 of this administrative regulation within 180 days, or within ninety (90) days if an engineering feasibility study has been previously submitted to the cabinet under Section 9(8)(e) of this administrative regulation. The application shall at a minimum include the following information:

1. A detailed description of corrective actions that shall achieve compliance with the groundwater protection standard specified in the permit under subsection (1) of this section; and

2. A plan for a groundwater monitoring program that shall demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(9) If the owner or operator determines, pursuant to subsection (4) of this section, that the groundwater concentration limits under this section are being exceeded at any monitoring well at the point of compliance, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis or statistical evaluation or natural variation in the groundwater. In making a demonstration under this subsection, the owner or operator shall:

(a) Notify the cabinet in writing within seven (7) days that he intends to make a demonstration under this subsection;

(b) If appropriate, within ninety (90) days, submit a report to the cabinet which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(c) Within ninety (90) days, submit to the cabinet an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

(d) Continue to monitor in accordance with the compliance monitoring program established under this section.

(10) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he shall, within ninety (90) days, submit an application for a permit modification to make any appropriate changes to the program.

Section 11. Corrective Action Program. An owner or operator required to establish a corrective action program under this administrative regulation shall, at a minimum, discharge the following responsibilities:

(1) The owner or operator shall take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under Section 3 of this administrative regulation. The cabinet shall specify the groundwater protection standard in the facility permit, including:

(a) A list of the hazardous constituents identified under Section 4 of this administrative regulation;

(b) Concentration limits under Section 5 of this administrative regulation for each of those hazardous constituents;

(c) The compliance point under Section 6 of this administrative regulation; and

(d) The compliance period under Section 7 of this administrative regulation.

(2) The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit shall specify the specific measures that shall be taken.

(3) The owner or operator shall begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The cabinet shall specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit shall specify when the corrective action shall begin and such a requirement shall operate in lieu of Section 10(9)(b) of this administrative regulation.

(4) In conjunction with a corrective action program, the owner or operator shall establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under Section 10 of this administrative regulation and shall be as effective as that program in determining compliance with the groundwater protection standard under Section 3 of this administrative regulation and in determining the success of a corrective action program under subsection (5) of this section, where appropriate.

(5) In addition to the other requirements of this section, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under Section 4 of this

other jurisdiction.

Section 2. (1) A schedule of penalty points shall be applied to determine if a person is a habitually reckless or negligent driver. The following penalties may be imposed on the driving privilege:

- (a) Denial;
- (b) Withdrawal;
- (c) Suspension; or

(d) Revocation of a driving license. [To assist the Transportation Cabinet in making a determination that a person is a habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws in accordance with KRS 186.570 a schedule of penalty points is established for the purpose of denying, withdrawing, suspending or revoking that person's driving privilege and operator's license.]

(2) Value points for the various classifications of moving traffic offenses, or a driving privilege suspension period for certain named offenses, shall be assessed as set out in Sections 3 and 4 of this administrative regulation for all persons.

(3) Points shall be assessed or driving privilege suspensions invoked for conviction, forfeiture of bail, or payment of fine, with or without a court appearance, for the enumerated offenses whether the conviction is received from a court of competent jurisdiction within the Commonwealth of Kentucky or any other jurisdiction, except that out-of-state speeding offenses shall not be considered by the cabinet for the assessment of value points.

(2)(a) Points shall be assessed or a driving privilege suspended for any of the following relating to the traffic laws of any state:

- 1. Conviction;
- 2. Forfeiture of bail; or

3. Payment of a fine, with or without a court appearance.

(b) A speeding violation in another state shall not be considered by the cabinet for assessment of penalty points.

(3) [(4)] Information regarding a conviction [convictions] may be secured from an [any] official source or record available to public or cabinet inspection.

(4) A complete record of a [(5) Complete records of] driving privilege suspension [suspensions] and point system assessment [assessments] shall be maintained in the Transportation Cabinet for a period of:

(a) Five (5) years for a noncommercial vehicle operator; [vehicles operators] and

(b) Ten (10) years for a commercial vehicle operator [operators].

Section 3. Conviction for one (1) of the following serious violations of the motor vehicle laws may be cause for suspension of the driving privilege [of the person so convicted] for the period of time indicated:

- (1) Racing - 90 days;
- (2) Speeding 26 MPH or more over limit - 90 days; or
- (3) Attempting to elude law enforcement officer by use of motor vehicle - 90 days.

Section 4. Conviction for any one (1) of the following moving traffic offenses shall be cause for assessment of the points indicated:

- (1) Speeding 15 MPH or less over the limit - 3 (except as provided in KRS 186.572);
- (2) Speeding 16 MPH or more, but less than 26 MPH, over the limit - 6;
- (3) Failure to stop for church or school bus - 6;
- (4) Improper passing - 5;
- (5) Reckless driving - 4;
- (6) Driving on wrong side of road - 4;
- (7) Following too closely - 4;
- (8) Failure to yield to emergency vehicle - 4;
- (9) Changing drivers in a moving vehicle - 4;
- (10) Vehicle not under control - 4;

(11) Stop violation (electric signal, railroad crossing, stop sign) - 3;

(12) Failure to yield - 3;

(13) Wrong way on one-way street - 3;

(14) Too fast for conditions - 3;

(15) Too slow for conditions - 3;

(16) Improper start - 3;

(17) Improper driving - 3;

(18) Careless driving - 3;

(19) Failure to yield left lane - 3;

(20) Improper lane usage - 3;

(21) Failure to illuminate headlights - 3;

(22) Failure to dim headlights - 3;

(23) Any other moving hazardous violation[s] - 3;

(24) Commission of a moving hazardous violation which involves an accident - 6; or

(25) Combination of two (2) or more moving hazardous violations in [any] one (1) occurrence - 6.

Section 5. (1)(a) If a person of eighteen (18) or more years accumulates six (6) or more penalty points within a two (2) year period, the Transportation Cabinet may send a letter to the address shown on his driving history record that shall advise him of the number of penalty points on his driving history record.

(b) The letter shall inform the person of the penalties which may be imposed if he accumulates [were to accumulate] twelve (12) points within two (2) years.

(2)(a) If a person of less than eighteen (18) years accumulates four (4) or more penalty points within a two (2) year period, the Transportation Cabinet may send a letter to the address shown on his driving history record that shall advise him of the number of penalty points on his driving history record.

(b) The letter shall inform the person of the penalties which may be imposed if he accumulates [were to accumulate] more than six (6) points prior to his 18th birthday.

Section 6. (1) The cabinet may:

(a) Suspend the driving privilege of a person:

1. Eighteen (18) years of age or above who accumulates twelve (12) penalty points within a period of two (2) years;

2. Less than eighteen (18) years of age who accumulates six (6) or more penalty points within a period of two (2) years.

(b) For a period of:

1. Six (6) months for the first accumulation;

2. One (1) year for the second accumulation; and

3. Two (2) years for a subsequent accumulation within a two (2) year period. [If a of eighteen (18) or more years person accumulates twelve (12) points within a period of two (2) years or a person of less than eighteen (18) years accumulates more than six (6) points in a period of two (2) years, the cabinet may suspend the driving privilege of the [such] person for a period of six (6) months for the first [such] accumulation of [twelve (12)] points, one (1) year for the second [such] accumulation of [twelve (12)] points, and two (2) years for any subsequent accumulation of [twelve (12)] points within a two (2) year period.]

(2) If the penalty for conviction of a first offense is suspension of the driving privilege for six (6) or fewer months:

(a) A suspension for a subsequent conviction of a similar offense shall be for a period of at least one (1) year; and

(b) A suspension for a third or greater conviction of a similar offense shall be for a period of two (2) or more years. [For any offense for which the suspension of the driving privilege is six (6) months or less for the first offense, the second conviction of a similar offense shall result in a suspension period of not less than one (1) year, and any subsequent conviction for any similar offense not less than two (2) years.]

thereafter the aggrieved party may file an action against the Transportation Cabinet in the circuit court of the county in which he resides or in Franklin Circuit Court.]

(7) The Transportation Cabinet shall conduct the administrative hearing pursuant to the provisions of KRS Chapter 13B.

Section 13. Incorporation by Reference. (1) Transportation Cabinet Probation Request Form, TC 94-51, effective January 1993, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 8 a.m.

**TRANSPORTATION CABINET
Department of Highways
Division of Transportation Planning
(As Amended)**

603 KAR 5:115. Coal-haul highway system; reporting requirements.

RELATES TO: KRS 42.455(8), 177.977, 177.9771

STATUTORY AUTHORITY: KRS 42.455(8), 174.080(2), 177.977(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080(2) and 177.977(2) authorize the Transportation Cabinet to promulgate administrative regulations regarding the designation of the official coal-haul highway system. Reporting by shippers or owners of coal or coal by-products is necessary for the annual preparation and publication of the report of the coal-haul highway system. This administrative regulation designates the procedures and intervals by which information shall be reported to the cabinet by a shipper or owner. [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 the procedures and intervals to be used in reporting this information to the Transportation Cabinet. In addition, KRS 177.9771 requires the coal road system transportation report to include coal by products. Reporting [Allowing] the transportation of coal by products [to be reported] to the Transportation Cabinet is necessary in order for the cabinet to prepare this report.]

Section 1. Definitions. (1) "Coal by-product" means:

(a) Bottom ash;

(b) Burned coal waste known as red dog;

(c) Coal cinders;

(d) Coal slag;

(e) Fly ash;

(f) Scrubber sludge; or

(g) Wet bottom boiler slag.

(2) "First interval" means January 1 through June 30.

(3) "Interval" means a semiannual reporting period.

(4) "Owner" means an individual, partnership, joint venture, association or corporation that owns the coal at the time of transport.

(5) "Second interval" means July 1 through December 31.

"Owner" means any individual, partnership, joint venture, association or corporation who owns the coal at the time of transport.

(2) "Interval" means a semiannual reporting period. The first interval of each calendar year shall be January 1 through June 30. The second interval of each calendar year shall be July 1 through December 31.

(3) "Coal by product" means any of the following:

(a) Fly ash;

(b) Bottom ash;

(c) Wet bottom boiler slag;

(d) Scrubber sludge;

(e) Burned coal waste known as red dog;

(f) Coal slag; or

(g) Coal cinders.]

Section 2. Reporting Requirements. (1) An owner shall file with the cabinet form TC 59-100, "Coal Shipment Route and Tonnage Report", within thirty (30) days after the interval in which coal is shipped over a:

(a) Road; or

(b) Rural and secondary road.

(2) A form TC 59-100 shall be filed for the shipment of coal to or from the following:

(a) Mine mouth or pit;

(b) Processing plant;

(c) Tipple;

(d) Loading dock; or

(e) Customer. [On or before the 30th [20th] day of the month following the interval in which any coal is shipped over public highways, roads, or streets by or on behalf of any owner from a mine mouth or pit to a processing plant, tipple, loading dock, or customer, or from any of the foregoing locations to another of these locations, the owner shall file a report on Form TC 59-100, Coal Shipment Route and Tonnage Report.] [This form, last revised in August, 1995, is incorporated by reference as a part of this administrative regulation.]

(3) [(2)] Form TC 59-100 shall be completed by providing the following information about the coal being reported:

(a) Origin;

(b) Destination;

(c) Tonnage [Tons]; and

(d) Specific route used for transportation of the coal with approximate mileage [for [Approximate highway mileage including] state-maintained highways, county roads, and city streets].

(4) [(3)] Form TC 59-100 shall be [is] mailed semiannually in December and June by the Division of Transportation Planning to various entities involved with mining, processing, transporting, or brokering coal.

(5) [(4)] Nonreceipt of Form TC 59-100 [the mailed form] shall not excuse the failure to submit [be justification for not submitting] the required information.

[(5)] Blank copies of the form TC 59-100 may be viewed, copied, or obtained from the Division of Transportation Planning, 125 Holmes Street, Frankfort, Kentucky 40622. The office telephone number is (502) 564-7183.]

Section 3. Reporting Responsibility. (1) It shall be [is] the exclusive responsibility of an owner of [any] coal transported over a road or rural and secondary road [the Commonwealth's highways] to ensure that the coal transportation is reported accurately to the Transportation Cabinet. The reporting may be done by the:

(a) Owner;

(b) Owner's [his] agent;

(c) Contractor;

(d) Processor; or

(e) Shipper.

(2)(a) An owner who doesn't ship [Owners who ship no] coal

(d) [(4)] The evaluation criteria for assessing the qualification [proposals];

(e) [(6)] The date, time, and place where a qualification [proposals] shall be received; and

(f) [(6)] Any other stipulations and clarifications the local school district may require.

Section 3. An energy construction measure [measures] for an educational facility may [facilities shall] be bid pursuant to KRS Chapter 45A, 162.070, and 702 KAR 4:160 upon approval by the chief state school officer. Energy construction conservation measures not bid shall be identified and publicly advertised by the local school district to secure a competitive proposal from a qualified energy service provider. The proposal shall be awarded upon approval of the chief state school officer. All processes of energy savings contracts shall comply with applicable requirements of 702 KAR 4:160 which may include [including]:

- (1) Project submittals;
- (2) Design review and approvals;
- (3) Design and construction contract approvals;
- (4) Performance bonds;
- (5) Bidding of energy construction measures;
- (6) Change orders; and
- (7) Contract administration.

Section 4. A [The] certified energy service provider shall provide a sufficient performance and payment bond to the local school district to cover the savings guaranteed in the energy savings contract pursuant to 702 KAR 4:160. A certified energy service provider may prequalify a contractor for energy savings measures to ensure performance required under the energy savings guaranty. Prequalification criteria for materials and labor shall follow requirements specified in 702 KAR 4:160.

Section 5. The North American Energy Measurement and Verification Protocol document, dated March 1996, and the Technical Assistance Report form, dated September 1995, are [is] incorporated herein by reference and may be copied and inspected at the Division of Facilities Management, 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: December 5, 1996

FILED WITH LRC: December 6, 1996 at 10 a.m.

LABOR CABINET
Department of Workers Claims
(As Amended)

803 KAR 25.015 Procedure in workers' compensation enforcement hearings.

RELATES TO: KRS Chapters 13B, 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 promulgate

[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 establishes procedures for [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 a [any] day that falls on a Monday through Friday, with the exception of a [any] state or federal holiday, or other day [days] on which the Department of Workers' Claims is officially closed for business.

Section 2. Issuance of Citation and Notice of Contest. If [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-delivered [or hand delivery may be made] by authorized personnel of the Department of Workers' Claims. 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 in accordance with KRS Chapter 13B.

(2) In accordance with KRS 342.990(5), a [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 the [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.]

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(2) A hospital may request a review of its assigned ratio by filing a written appeal with the commissioner ~~[of the Department of Workers' Claims]~~ no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1) The commissioner ~~[of the Department of Workers' Claims]~~ shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year. A new hospital shall be assigned a cost-to-charge ratio of eighty (80) percentile until it has been in operation for one (1) full fiscal year. A hospital ~~["hospital", as defined in this administrative regulation]~~ that does not file Worksheets A and G-2 of HCFA 2552 shall ~~[also]~~ be assigned a cost-to-charge ratio of eighty (80) percentile.

(2) An ~~[Any]~~ assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner ~~[of the Department of Workers' Claims pursuant to this administrative regulation]~~.

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of ~~[the Commonwealth of]~~ Kentucky shall be deemed to have agreed to be subject to ~~[the provisions of]~~ this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342 ~~[the Kentucky Workers' Compensation Act]~~.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital ~~[hospitals]~~, using Worksheets A and G-2 of the HCFA 2552.

Section 7. Reports to be Filed by Hospitals. Each bill ~~[All bills]~~ submitted by a hospital pursuant to this administrative regulation shall be submitted on a uniform billing form as required by 803 KAR 25:096 ~~[prescribed by the Cabinet for Health Services]~~ ~~[Kentucky Health Policy Board]~~ pursuant to KRS Chapter 216.

Section 8. Billing and Audit Procedures. (1) A ~~[Any]~~ hospital providing ~~[only]~~ the technical component of a procedure shall bill and be paid for the technical component ~~[only]~~.

(2) An ~~[Any]~~ independent practitioner providing ~~[only]~~ the professional component shall bill for and be paid ~~for~~ the professional component ~~[only]~~. An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate billing form required by 803 KAR 25:096 ~~[prescribed by the Cabinet for Health Services]~~ ~~[Kentucky Health Policy Board]~~ pursuant to KRS Chapter 216.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the forms required by 803 KAR 25:096 ~~[prescribed by the Cabinet for Health Services]~~ ~~[Kentucky Health Policy Board]~~ pursuant to KRS Chapter 216 when billing for professional services and shall be compensated pursuant to the Kentucky Medical Fee Schedule for Physicians adopted pursuant to 803 KAR 25:089. An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital. The hospital may bill for the professional component of the service under the Workers' Compensation Medical Fee Schedule for Physicians in these circumstances.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital. ~~[Any hospital-based practitioners performing~~

~~services which are regulated pursuant to 803 KAR 25:089 [(Kentucky medical Fee Schedule for Physicians)] in a hospital as defined in Section 1 of this administrative regulation shall not bill for services rendered pursuant to 803 KAR 25:089, but shall receive their payment or salary directly from the hospital employing them.]~~

(4) Unbundling shall not be practiced. ~~[Kentucky law requires the employer or employer's insurer [(or insurer)] to provide all medical care necessary to cure and relieve the effects of the employee's injury. Accordingly, under no circumstances should the employee be billed for medical treatment under KRS 342.020. This shall not prohibit the hospital from billing the employee for items or services not provided for under the Kentucky Workers' Compensation Act.~~

~~(5) The practice of "unbundling," as defined in Section 1(3) of this administrative regulation, is hereby prohibited.]~~

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: November 13, 1996

FILED WITH LRC: November 13, 1996 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (As Amended)

804 KAR 4:330. Direct sales from out-of-state companies.

RELATES TO: KRS 244.165[-244.167]

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the State Alcoholic Beverage Control Board to promulgate administrative regulations regarding control of the sale of alcoholic beverages. This administrative regulation is necessary to provide procedural due process for a person or business alleged to have committed a violation of KRS 244.165. ~~[KRS 244.165 and 244.167, enacted by the 1996 General Assembly, became effective July 15, 1996. KRS 244.165 and 244.167 prohibit a person who is in the business of selling alcoholic beverages in another state or country, from shipping or causing to be shipped, any alcoholic beverage directly to any Kentucky resident or business who does not hold a valid wholesale or distributor license issued by the Commonwealth of Kentucky.]~~

Section 1. (1) If the department finds probable cause that a first offense violation of KRS 244.165 has occurred, it shall:

(a) Issue an administrative citation to the alleged violator; and

(b) Conduct a hearing on the charge in accordance with KRS Chapter 13B.

(2) If the board determines that a violation occurred, it shall issue a cease and desist order to the violator. ~~[The shipment of any alcoholic beverage into the Commonwealth of Kentucky in violation of KRS 244.165 or 244.167 shall create a rebuttable presumption that the shipment was intentional.]~~

Section 2. In a proceeding brought pursuant to KRS 244.165, the department shall bear the burden of proving that the alleged violation was accompanied by the following mental state:

(1) Willful;

(2) Intentional; or

(3) Reckless. ~~[If the Department of Alcoholic Beverage Control finds probable cause that a violation of KRS 244.165 or 244.167 has occurred, it may issue an administrative citation to the alleged violator in accordance with the provisions of KRS Chapters 241 and 13B. The evidentiary hearing on the allegations contained in the citation shall conform with the requirements of KRS Chapter 13B.]~~

Section 3. A person found to have willfully, intentionally, or

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trative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system [all types of plumbing systems]. This amendment is necessary to provide for the addition of future plumbing fixtures without the cost of breaking up concrete, and to adjust the code requirements to reflect the reduction in water usage. (See Sections 6(2) and 7 of this administrative regulation.)

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) A stack [Stacks] shall be supported at its base and each pipe [their bases and all pipes] shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of each vertical stack and at each trap branch [all vertical stacks and at all trap branches] as close to the trap as possible.

(5) Polyethylene pipe and fittings must be continuously supported with a V channel.

(6) A stack [Stacks] shall be rigidly supported at its base [their bases] and at the floor level.

Section 2. Change in Direction. A change [Changes] in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye [wyees, half-wyees] (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend [bends], except that a single sanitary tee may be used in a vertical stack, or a sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees. A double sanitary tee [tees] may be used on a vertical soil, waste and vent line [lines].

Section 3. Prohibited Fittings. A double hub bend and double hub tee or inverted hub shall not be used on a sewer, soil or waste line. The drilling and tapping of a house sewer or house drain, soil, waste or vent pipe, and the use of a saddle hub and band shall be prohibited. A pipe shall be installed without a hub or restriction that reduces the area or capacity of the pipe. [Double hub bends and double hub tees or inverted hubs shall not be used on sewers, soil or waste line. The drilling and tapping of house sewers or house drains, soil, waste or vent pipes, and the use of saddle hubs and bands shall be prohibited. Pipes shall be installed without hubs or restrictions that reduce the area or capacity of the pipe.]

Section 4. Dead Ends. In the installation of a drainage system, a dead end [ends] shall not be used without special permission from the department.

Section 5. Protection of Material. A pipe [Pipes] passing under or through a wall [walls] shall be protected from breakage. A pipe [Pipes] passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing produced and labeled as ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade G or H produced

and labeled as ASTM A-312, polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2665-76, D-1784-75 and F-891, coextruded composite PVC pipe produced and labeled ASTM F-1488, acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2661-90, D-1788-73 or F-628, silicon iron or borosilicate.

(2) A main [All mains] or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, No-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section. Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4		172
5		342
6		576
8		1600
10		2900
12		4600

A water closet [closets] shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

Section 8. Soil, and Vent Stacks. A building in which a plumbing fixture is [plumbing fixtures are] installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof. A soil or waste and vent stack [stacks] shall be as direct as possible and free from sharp bends or turns. The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that [no] more than three (3) water closets shall not discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with [all other sections of] this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may [shall] be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. A soil and waste stack or branch [stacks and branches] shall have correctly faced inlets for fixture connections. Each fixture shall be

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so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet. A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. ~~If [Where]~~ two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with ~~[the other sections of]~~ this administrative regulation.

Section 26. Floor Drain Individual Vent not Required. A manufacturer's floor drain ~~[drains]~~ shall not require an individual vent ~~if [vents when]~~ placed on a waste line for a floor drain ~~[drains only]~~ within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack. An open receptacle ~~[receptacles]~~ may be connected to a floor drain line ~~[lines]~~ without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. A floor drain or service sink ~~[drains and service sinks]~~ installed on the operational floor level of a sewage and water treatment plant facility which discharges ~~[facilities which discharge]~~ into an open sump and is ~~[are]~~ not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. A house drain ~~[drains]~~ shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

Section 29. Indirect Waste Connections. Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipe ~~[pipes]~~ shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with ~~[other sections of]~~ this administrative regulation. The connection ~~[connections]~~ shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. A bar and soda fountain waste, sink or receptacle ~~[wastes, sinks and receptacles]~~ shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building. A food storage compartment drain ~~[drains]~~ shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line. A floor receptor ~~[receptors]~~ or floor sink ~~[sinks]~~ installed specifically for the indirect wastes from a tilting braising pan, tilting kettle, or [pans, tilting kettles and] other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if ~~[when]~~ it discharges into a septic system.

Section 32. Refrigerator Wastes. A refrigerator waste pipe ~~[pipes]~~ shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. A corrosive liquid ~~[liquids]~~ shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with ~~[the other sections of]~~ this administrative regulation and each fixture ~~[all fixtures]~~ shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if ~~[when]~~ a pit has a ventilated cover.

(3) If under certain conditions a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) A fixture branch ~~[branches]~~ exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6) A fixture connection ~~[connections]~~ shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink and two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. Underground piping for acid wastes shall be extra heavy salt glazed vitrified pipe, silicon iron, lead, polyethylene pipe and fittings produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or other materials approved by the department. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. A flat or wet vent ~~[vents]~~ serving a plumbing fixture shall be constructed ~~[only]~~ with special permission from the department if ~~[when]~~ a plumbing system is being remodeled or if an addition is ~~[when additions are]~~ added to an original system; except that a flat vent ~~[vents]~~ in new construction may also be allowed in a commercial building ~~[if [commercial buildings when]]~~ the design of the building prohibits the type of venting required by ~~[other sections of]~~ this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain ~~[drains]~~ shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation.

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Section 11. Size of Storm Systems. The required size of a storm sewer ~~[size of storm sewer]~~ shall be determined on the basis of the total drained area ~~[areas]~~ in horizontal projection in accordance with the following table. A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3		1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM

Number of fixture units on sanitary system									
Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324	
Up to 120	180	105	60	45	30	22	18	15	
121 to 240	160	98	57	43	29	21	17.6	14.7	
241 to 480	120	75	50	39	27	20	16.9	14.3	
481 to 720	75	62	42	35	24	18	15.4	13.2	
721 to 1,080	54	42	33	29	20	15	13.6	12.1	
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4	
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3	
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3	
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4	
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6	
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3	
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2	
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2	
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2	
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1	
Over 61,520	0	0	0	0	0	0	0	2.0	

Number of fixture units on sanitary system									
Drained roof area in square feet	325 to 486	487 to 732	733 to 1,098	1,099 to 1,645	1,646 to 2,467	2,468 to 3,703	3,704 to 5,556	5,557 to 7,700	Over 7,701
325 to 486	486	732	1,098	1,644	2,466	3,702	5,556	7,700	

Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 to 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 to 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 to 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 to 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 to 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 to 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 to 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 to 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 to 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 to 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 to 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

(2) For a building ~~[buildings]~~ constructed after the effective date of this administrative regulation, each plumbing fixture or opening ~~[all plumbing fixtures and openings]~~ connecting to a combination sanitary and ~~[a]~~ storm sewer system shall either be installed above the elevation of the cover of the nearest manhole serving the main or ~~[they]~~ shall discharge through a sewage ejector to the combined sewer system at an elevation high enough to prevent flooding of the building.

Section 13. House Sewer in Undisturbed or Filled Ground. A house sewer ~~[sewers]~~ laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved grillage. A house sewer ~~[sewers]~~ laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall be approved by the department. A support ~~[Supports]~~ in filled ground shall be on a ten (10) foot center ~~[foot-centers]~~ to a solid footing, either undisturbed earth or rock. A house sewer ~~[sewers]~~ constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled Ground. A storm sewer ~~[sewers]~~ laid in undisturbed ground shall not require grillage. A storm sewer ~~[sewers]~~ laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the department. A support ~~[Supports]~~ in filled ground shall be on a ten (10) foot center ~~[foot-centers]~~ to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In a public building ~~[buildings]~~ in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by an approved artificial means and discharged into the house sewer.

Section 16. Drainage Below Sewer Level (Residential). In a home ~~[homes]~~ where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump. The sump pit shall be constructed of either poured or precast concrete, approved fiberglass or polyethylene material with a tight fitting cover. The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray. The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade. The sump pit shall be provided with a tight-fitting concrete cover. On the outside of the building, this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2)

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CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary
APPROVED BY AGENCY: October 31, 1996
FILED WITH LRC: November 15, 1996 at 10 a.m.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Epidemiology (As Amended)

902 KAR 2:060. Immunization schedules.

RELATES TO: KRS 158.035, 211.180, 214.032, 214.034, 214.036

STATUTORY AUTHORITY: KRS 194.050, 211.090, 214.034, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized [reorganizes] the Cabinet for Human Resources, changed [changes] the name of the Department for Health Services to Department for Public Health, and placed [places] the Department for Public Health and all its programs under the Cabinet for Health Services. KRS 211.180 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 immunization schedules by the Cabinet for Health Services. This [Human Resources] administrative regulation establishes [specifies] the [recommended] schedule for mandatory immunization [and is in keeping with the latest scientific information on the topic].

Section 1. [3.] Definitions. [As used in this administrative regulation:]

(1) "Dose" means a measured quantity:

(a) Specified in the package insert provided by the manufacturer; and

(b) Administered at a frequency not less than the shortest interval between doses recommended by the Advisory Committee on Immunization Practices in "General Recommendations on Immunization". [~~as recommended by the Advisory Council on Immunization Practices of the U.S. Public Health Services or the American Academy of Pediatrics, of an immunizing agent, administered at a frequency not less than the shortest interval between doses recommended by the Advisory Council of the U.S. Public Health Service or the American Academy of Pediatrics.~~] Partial, split, half or fractionated quantities are not acceptable for certification.

(2) "DPT" means diphtheria and tetanus toxoids combined with pertussis vaccine;

(3) "DTaP" means diphtheria and tetanus toxoids combined with acellular pertussis vaccine;

(4) "HepB" means hepatitis B vaccine;

(5) "Hib" means haemophilus influenzae type b conjugate vaccine;

(6) "IPV" means inactivated polio virus vaccine;

(7) "MMR" means measles, mumps, and rubella vaccines combined;

(8) [(2)] "OPV" means trivalent oral poliovirus vaccine (Sabin);

(9) [(3)] "Td" means combined tetanus and diphtheria toxoids (adult type).

Section 2. [4.] Schedule for [Required] Immunizations. Except as provided by Section 4 of this administrative regulation, the [recommended] schedule [established by the Cabinet for Health Services] for active immunization of normal infants and children against diphtheria, tetanus, pertussis, poliomyelitis, (rubella) [measles, mumps, (and) rubella, hepatitis B, and haemophilus influenza type b] shall be as follows:

- (1) Zero to two (2) months of age: dose one (1), HepB;
- (2) One (1) to four (4) months of age: dose two (2), HepB;
- (3) Two (2) months of age: dose one (1), DTP or DTaP, Hib, OPV or IPV;
- (4) [(2)] Four (4) months of age: dose two (2), DTP or DTaP, Hib, OPV or IPV;
- (5) [(3)] Six (6) months of age: dose three (3), DTP or DTaP;
- (6) Six (6) to eighteen (18) months of age: dose three (3), HepB, OPV or IPV;
- (7) Twelve (12) to [(4)] fifteen (15) months of age: dose one (1) MMR; dose three (3), Hib [measles, rubella, DTP, OPV];
- (8) Twelve (12) to eighteen (18) months of age: dose four (4), DTP or DTaP;
- (9) Between four (4) years of age and entry to school, preschool programs, day care centers, certified family child care homes, or other licensed facilities which care for children: dose five (5), DTP or DTaP; dose four (4), OPV or IPV; dose two (2), MMR;
- [(5) Before school entry: DTP, OPV;]
- (10) [(6)] Before sixth grade entry: dose two (2), MMR, unless two (2) doses of MMR were previously received [measles, rubella];
- (11) Eleven (11) [(7) Fourteen (14)] to sixteen (16) years of age: Td.

Section 3. [2.] Immunizations Required for Attendance at Day Care Centers, Certified Family Child Care Homes, Other Licensed Facilities which Care for Children, Preschool Programs, School, and when Ten (10) Years have Elapsed from the Last Dose of DTP, DTaP, or Td. [School Entry:] Except as provided by Section 4 of this administrative regulation, the [following schedule (list below)] gives the number of doses required shall be [according to age]: [for school entry:]

- (1) Less than three (3) months of age: none;
- (2) At least three (3) months of age and less than five (5) months of age:
 - (a) One (1) dose of DTP or DTaP;
 - (b) One (1) dose of OPV or IPV;
 - (c) One (1) dose of Hib;
- (3) At least five (5) months of age and less than seven (7) months of age:
 - (a) Two (2) doses of DTP or DTaP or combinations thereof;
 - (b) Two (2) doses of OPV or IPV or combinations thereof;
 - (c) Two (2) doses of Hib;
- (4) At least seven (7) months of age and less than twelve (12) months of age:
 - (a) Three (3) doses of DTP or DTaP or combinations thereof;
 - (b) Two (2) doses of OPV or IPV or combinations thereof;
 - (c) Three (3) doses of Hib;
- (5) At least twelve (12) months of age and less than sixteen (16) months of age:
 - (a) Three (3) doses of DTP or DTaP or combinations thereof;
 - (b) Two (2) doses of OPV or IPV or combinations thereof;
 - (c) Three (3) doses of Hib or two (2) doses at twelve (12) months of age or older of Hib or one (1) dose at fifteen (15) months or older of Hib;
- (6) At least sixteen (16) months of age and less than nineteen (19) months of age:
 - (a) Four (4) doses of DTP or DTaP or combinations thereof;
 - (b) Two (2) doses of OPV or IPV or combinations thereof;
 - (c) Four (4) doses of Hib, except as provided by Section 4(2) of this administrative regulation [including one (1) dose at age twelve (12) months or older, or two (2) doses at age twelve (12) months or older of Hib or one (1) dose at age fifteen (15) months of Hib];
 - (d) One (1) dose of MMR at age twelve (12) months or older;
- (7) At least nineteen (19) months of age and less than forty-nine (49) months of age:
 - (a) Four (4) doses of DTP or DTaP or combinations thereof;

Immunization Program, Cabinet [Department] for Health Services, shall have the authority to alter the immunization schedule if:

1. [when] Indicated because of an [any] unusual epidemiological circumstance in the community; and

2. The alteration has been approved by the cabinet.

(2)(a) A child who has not yet reached the required minimum interval for the only doses remaining for the completion of his immunization schedule required under KRS 214.034 and this administrative regulation may be issued a provisional immunization certificate.

(b) A provisional immunization certificate shall permit a child to attend institutions specified in Section 5(4) of this administrative regulation during the interval established by paragraph (a) of this subsection.

(c) A provisional immunization certificate shall expire on the date the final doses are required to be given. [This certificate shall permit the child to attend schools, preschool programs, day care centers, family child care homes, or other licensed facilities that care for children for a time period sufficient to allow the elapse of the minimum interval between doses necessary for the completion of the immunization schedule. This provisional certificate shall expire at the time the next dose of vaccine is due.] [A school-age child who has begun but not completed the immunization schedule required by KRS 158.035 may be permitted to attend classes for a limited period of time specified by the individual physician or local health department as necessary for the completion of the immunization schedule.]

Section 7 . Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Certificate of Immunization (Epid 230, revised November, 1992)"; and

(b) "General Recommendations on Immunization (January 28, 1994)", Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(2) This material may be inspected, copied, or obtained at the Department for Public Health, 275 East Main Street, Frankfort Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: November 1, 1996

FILED WITH LRC: November 14, 1996 at 11 a.m.

**CABINET FOR HEALTH SERVICES
Office Of Inspector General
(As Amended)**

902 KAR 20:275. Mobile health services.

RELATES TO: KRS 216B.010 through 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 314.011(8), EO 96-862

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 IV 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 IV therapy services and home health services was found deficient;

(2) This administrative regulation includes guidelines to coordinate the relationship between home IV 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 (CT) 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) "IV 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) "IV 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, and assessment or care incidental to initial start-up of IV 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

- 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, except for mammography services, shall be performed only on the order of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8).

(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 of radiation producing and nonradiation producing instrumentation shall occur at least every six (6) months by biomedical service personnel and radiation producing instrumentation shall be recalibrated 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. Echocardiography 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 administrative 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.

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 IV therapy services, shall be performed only on the order of a physician.

1. IV therapy shall only be performed by a registered nurse and shall be limited to nursing services which are required for the initial start-up ~~[and administration]~~ of an IV therapy program.

2. If nursing services are required which exceed the initial start-up of IV 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.

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 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

serving 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.

ADMINISTRATIVE REGISTER - 3005

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

OFFICE OF THE GOVERNOR
Department for Local Government
Division of County and Municipal Accounting
(Amended After Hearing)

109 KAR 7:020. Energy conservation projects.

RELATES TO: KRS 45A.343, 45A.345 to 45A.353, 58.600 to 58.615

STATUTORY AUTHORITY: KRS 58.615

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.351 provides that it shall be the policy of the Commonwealth to maximize the use of energy efficiency measures in the construction, renovation, and maintenance of buildings owned by local public agencies defined in KRS 45A.345(9). This administrative regulation is necessary to establish procedures to be used by cities, counties, urban-county governments, charter county governments, and special districts for conducting and approving guaranteed energy savings contracts and energy conservation revenue bonds.

Section 1. **Definition. "Local government" means a county, urban-county government, charter county government, city or special district.**

Section 2. Approval or Report to State Local Debt Officer Required for Energy Conservation Revenue Bonds. [~~A county, urban-county government, charter county government, city or special district shall:~~]

(1) **A local government shall:**

(a) Receive approval of the state local debt officer pursuant to KRS 58.610(2) prior to issuance of proposed energy conservation revenue bonds in excess of \$500,000; and

(b) [~~(2)~~] Report the issuance of all energy conservation revenue bonds to the state local debt officer pursuant to KRS 58.610(3).

(2) The state local debt officer shall hold a hearing pursuant to KRS 66.310(3) to (7) and make the findings required pursuant to KRS 66.310(3) prior to approval of energy conservation revenue bonds in excess of \$500,000 pursuant to KRS 58.610(2) and subsection (1)(a) of this section.

Section 3. [~~2-~~] Local Governments to Comply with Provisions of KRS Chapter 45A Relating to Guaranteed Energy Savings. Prior to entering into a guaranteed energy savings contract, a **local government** [~~county, urban-county government, charter county government, city or special district~~] shall:

(1) Comply with applicable local government procurement procedures; and

(2) Adopt the provisions of KRS 45A.345, 45A.351, 45A.352, and 45A.353 relating to guaranteed energy savings contracts as required by KRS 45A.343(1).

Section 4. [~~3-~~] Energy Audits and Cost-benefit Analyses for Guaranteed Energy Savings Contracts and Energy Conservation Revenue Bonds to Meet Protocol Requirements. **(1) An energy audit and cost benefit analysis shall be performed to determine** [~~Determining~~] energy savings measurements for **proposed** guaranteed energy savings contracts, **and** energy conservation revenue bonds. [~~]~~

(2) The energy audits and cost-benefit analyses required pursuant to Section 3(1) of this administrative regulation shall comply with the:

(a) [(4)] Data reporting requirements set forth in the Institutional

Conservation Program, Technical Assistance Report issued by the Division of Energy, Natural Resources and Environmental Protection Cabinet incorporated by reference in Section 5 of this administrative regulation; and

(b) [(2)] North America Energy Measurement and Verification Protocol, United States Department of Energy incorporated by reference in Section 5 of this administrative regulation.

Section 5. [~~4-~~] Technical Assistance from Division of Energy. Technical assistance regarding the accuracy of energy savings measurements and calculations in proposed guaranteed energy savings contracts and energy conservation revenue bonds may be requested from The Division of Energy, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601, (502) 564-7192, (800) 282-0868, Fax (502) 564-7484.

Section 6. [~~5-~~] Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) The Institutional Conservation Program Technical Assistance Report, Natural Resources and Environmental Protection Cabinet, Division of Energy, 663 Teton Trail, Frankfort, Kentucky 40601 (November 1996 edition);

(b) The North American Energy Measurement and Verification Protocol, United States Department of Energy (March 1996 edition);

(2) Copies of the documents **incorporated by reference in this section** [~~in subsection (1)(a) and (b) of this section~~] may be inspected, copied or obtained at the Offices of the Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

BOB ARNOLD, Commissioner

APPROVED BY AGENCY: January 3, 1997

FILED WITH LRC: January 6, 1997 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Tom Troth

(1) Type and number of entities affected: Counties, urban county governments, charter counties, cities and special 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: There should be no cost of living and employment costs associated with these programs.

(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: Inapplicable at this time because the notice of intent hearing was cancelled because there was no public comment 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: Local governments may have to develop requests for proposals relating to energy conservation measures. Local governments will need to adopt the relevant provisions of KRS Chapter 45A, if they wish to enter into guaranteed energy savings contracts.

2. Second and subsequent years: Little if any additional reporting or paperwork requirements after initial startup.

(3) Effects on the promulgating administrative body:

of six (6) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

- (a) Be a Kentucky resident; and
- (b) Have ~~been accepted~~ applied for admission to ~~a~~ an educational institution with an approved program of nursing, ~~[in Kentucky;~~
- (c) ~~Have declared nursing as the major course of study; and~~
- (d) ~~Have obtained a Kentucky health facility or Kentucky educational institution as a sponsor.]~~

(2) ~~[Residency shall be determined pursuant to the provisions of 13-KAR-2-045.~~

(3) ~~An applicant shall submit a completed [a] "Nursing Incentive Scholarship Application" by the date specified on the application. [The application shall be received by the board between January 1 and June 1.~~

(4) ~~An applicant shall send or cause to be sent to the board by June 1 an official high school transcript or equivalent (GED) or official transcripts showing postsecondary work completed, whichever is most recent.]~~

(3) ~~(6)] An applicant shall [may] [shall] attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year [or other evidence of financial need].~~

~~[(6) An applicant may apply for scholarship funds for pre-nursing courses only to the extent of the published prerequisites of the college or university in which the applicant is enrolled.]~~

Section 3. The Committee. (1) Members of the committee shall serve for two (2) years ~~[one (1) year]~~ and may be reappointed.

(2) The committee shall meet at least annually by July 15 and more often if necessary to decide on scholarships for the upcoming academic year.

(3) The committee shall serve without compensation but may be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The committee shall [may] consider the following criteria in evaluating applicants and shall award points as designated herein:

(1) Preference categories as specified in KRS 314.025(2) - licensed practical nurses, twenty-five (25) points; registered nurses pursuing graduate nursing education, twenty-five (25) points; financially needy residents, twenty-five (25) points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid. [thirty (30) points maximum, determined as follows:

(a) FAFSA index (or equivalent) under 1000 = thirty (30) points;

(b) FAFSA index (or equivalent) between 1001 and 2000 = twenty-five (25) points;

(c) FAFSA index (or equivalent) between 2000 and 3000 = fifteen (15) points;

(d) FAFSA index (or equivalent) over 3000 = ten (10) points.]

(2) Potential for academic success, as follows:

(a) High school, vocational school, college or university grade point average of three and five-tenths (3.5) to four (4.0) = twenty-five (25) points, three (3) to three and four-tenths (3.4) = twenty (20) points, and two and five-tenths (2.5) to two and nine-tenths (2.9) = fifteen (15) points.

(b) Successful progression in a program of nursing shall be equal to five (5) points for each semester or quarter, to a maximum of ten (10) points.

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of ten (10) points.

- ~~[(1) Prior health care work experience or education;~~
- ~~(2) Previous academic achievement as indicated by transcripts;~~
- ~~(3) Current acceptance as a declared nursing major in an educational institution with an approved program of nursing;~~
- ~~(4) Current admission or enrollment in an approved program of nursing.]~~

Section 5. Amount of Award. (1) The committee shall be notified by the board's fiscal officer as to the current fund balance prior to making awards.

(2) ~~[The committee shall defer awarding a portion of the amount collected in odd-numbered fiscal years to the following fiscal year. The amount of the deferred portion shall be determined as follows: add the number of licensed RNs renewing as of the current year to the number of licensed LPNs who renewed in the previous year. Divide by two (2). Multiply by five (5). Subtract that figure from the amount collected, less administrative costs.~~

(3) The committee shall first make awards to those recipients who received awards in the previous year and remain eligible to receive awards pursuant to Section 7 of this regulation in the current year.

~~[(4) The committee shall divide the remaining funds among the remaining applicants based on KRS 314.025(2), 314.026(3), 314.027(2) and on the criteria considered in Section 4 of this regulation.~~

~~(5)(a) The maximum award granted each year shall be the highest tuition charged per academic year for a full time student in a program of nursing in a public institution at Kentucky enrolled in a comparable program.~~

~~(b) By June 1 of each year, the committee shall determine the:~~

- ~~1. Highest annual tuition rate charged by a practical nursing program in a public institution in Kentucky;~~
- ~~2. Highest annual tuition rate charged by an associate degree registered nursing program in a public institution in Kentucky; and~~
- ~~3. Highest annual tuition rate charged by a prelicensure baccalaureate degree registered nursing program in a public institution in Kentucky; and~~

~~4. Highest annual tuition rate charged by a graduate nursing program in a public institution in Kentucky.~~

~~(c) For students who will not be enrolled for an entire academic year, the award shall be one-half (1/2) the maximum.~~

~~(d) Upon request of the recipient and the sponsor, the committee may award less than the maximum.]~~

Section 6. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the school by the board on behalf of the recipient.

(2) Disbursement shall be made by semester. Disbursement of the second semester's payment shall be contingent on successful academic progression during the first semester upon verification by the educational institution on a "Nursing Incentive Scholarship Fund Verification of Academic Progression" form.

(3) Each educational institution shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient has enrolled in the nursing program ~~[seeheet]~~. The educational institution shall send the certification to the board on the "Certification of Enrollment" form.

Section 7. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award provided successful academic progression through the program is maintained and there is continued maintenance of any preference categories. The recipient shall submit to the board by the date specified on the [June, the following:

~~(a) Verification of successful academic progression from the academic advisor of record on a "Nursing Incentive Scholarship Fund Verification of Academic Progression" form;~~

nurses.

(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: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used as the regulation applies to all affected parties.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.10-100, 40 CFR 51 Subpart I, Appendix S, Section IV, Part 51, Appendix W, 51.166, 52.21, Part 58, Appendix B, 60, 61, 63, 81.318, 81 Subpart D, 42 USC 7401 to 7671q (Clean Air Act) [(42 USC 7401 et seq.)], 4321 to 4370d (National Environmental Policy Act) [(42 USC 4321)]

STATUTORY AUTHORITY: KRS 224.10-100, 40 CFR 51.166, 52.21, 42 USC 7401 to 7671q (Clean Air Act), [(42 USC 7401 et seq.)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation provides for the prevention of significant deterioration of ambient air quality. The provisions of this administrative regulation are not different nor more stringent than the federal regulation, 40 CFR 51.166.

Section 1. Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 51:001. ~~50:040-1~~

(1)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the two (2) year period which precedes the particular date and is representative of normal source operation. The cabinet may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For an emissions unit (other than an electric utility steam generating unit) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(e) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, if the source owner or operator maintains and submits to the cabinet on an annual basis for a period

of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the cabinet if it determines that period to be more representative of normal source postchange operations.

(2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis and shall consider the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

(3) "Allowable emissions" means the emissions rate of a stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in Title 401, KAR Chapters 57, 59, 60, and 63, or 40 CFR 60, 61, and 63;

(b) The applicable state or federally approved regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a state or federally enforceable permit condition, including those with a future compliance date.

(4)(a) "Baseline area" means an intrastate area (and every part of that area designated as attainment or unclassifiable pursuant to 42 USC 7404(d)(1)(A)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act), in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established. Area redesignations under 42 USC 7404(d)(1)(A)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act), cannot intersect or be smaller than the area of impact of a major stationary source or major modification which:

1. Establishes a minor source baseline date; or

2. Is subject to this administrative regulation and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments shall remain in effect and shall apply in determining the amount of available PM_{10} increments, except that this baseline area shall not remain in effect if the cabinet rescinds the corresponding minor source baseline date in accordance with subsection (27)(b) of this section.

(5) "Baseline concentration" means that ambient concentration level which exists in the baseline area when the applicable minor source baseline date is established. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(c) The following shall not be included in the baseline concentration and shall affect the maximum applicable allowable increase:

1. Actual emissions at a major source, which result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(6)(a) "Baseline date" means major source baseline date, defined in subsection (24) of this section, or minor source baseline date, defined in subsection (27) of this section.

(b) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

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source which:

a. The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under a permit condition which was established after January 6, 1975; or

b. The source is approved to use under a permit issued under this administrative regulation or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless the change would be prohibited after January 6, 1975, pursuant to 40 CFR 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to this administrative regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

6. A change in ownership at a stationary source.

7. The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the cabinet, concurring with U.S. EPA, determines that such addition, replacement, or use renders the unit less environmentally beneficial, unless:

a. The cabinet has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of a criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of 42 USC 7401 to 7515 (Title I of the Clean Air Act), if any; and

b. The cabinet determines that the increase will cause or contribute to a violation of any national ambient air quality standard or prevention of significant deterioration (PSD) increment or visibility limitation.

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

10. The reactivation of a very clean coal-fired electric utility steam generating unit.

(24) "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(25)(a) "Major stationary source" means:

1. Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act): fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subparagraph 1 of this paragraph, a stationary source which emits, or has the potential to emit, 250 tons per year or more of an air pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act); or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary

source, if the change would constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(c) For this administrative regulation, the fugitive emissions of a stationary source shall not be included in determining if it is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;

11. Lime plants;

12. Phosphate rock processing plants;

13. Coke oven batteries;

14. Sulfur recovery plants;

15. Carbon black plants (furnace process);

16. Primary lead smelters;

17. Fuel conversion plants;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants;

21. Fossil-fuel boilers (or combination of fossil-fuel boilers) totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; and

27. Any stationary source category which, as of August 7, 1980, is being regulated under 401 KAR Chapters 57, 59, 60, and 63; 40 CFR Parts 60, 61, and 63; or 42 USC 7411 or 7412 (Section 111 or 112 of the Clean Air Act).

(26) "Mandatory Class I federal area" means an area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(27)(a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date shall be:

1. For particulate matter and sulfur dioxide, August 7, 1977; and
2. For nitrogen dioxide, February 8, 1988.

(b) A minor source baseline date established originally for the TSP increments shall remain in effect and shall apply in determining the amount of available PM_{10} increments, except that the cabinet may rescind the minor source baseline date if it can be shown, to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(28) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(29) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of 401 KAR Chapters 50 to 65 and federal air quality control laws and regulations.

(30)(a) "Net emissions increase" means the amount by which the

as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For this administrative regulation, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, (e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel).

(37) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit a pollutant listed in Section 22 of this administrative regulation, a rate of emissions that would equal or exceed a rate given in Section 22 of this administrative regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act), that is not listed in Section 22 of this administrative regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Section 22 of this administrative regulation, "significant" means an emissions rate or net emissions increase associated with a major stationary source or major modification which is to be constructed within ten (10) kilometers of a Class I area and has an impact on that area equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ (twenty-four (24) hour average).

(38) "Stationary source" means a building, structure, facility, or installation which emits or may emit an air pollutant subject to regulation under the 42 USC 7401 to 7671q (Clean Air Act).

(39) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(40) "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

(1)(a) "Major stationary source" means:

1. Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.): fossil fuel fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subparagraph 1 of this paragraph, a stationary source which emits, or has the potential to emit, 250 tons per year or more of an air pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.); or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the changes would constitute a major stationary source by

themselves:

(b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(c) For the purposes of this administrative regulation, the fugitive emissions of a stationary source shall not be included in determining if it is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel fired steam electric plants of more than 250 million BTUs per hour heat input; and
27. Any stationary source category which, as of August 7, 1980, is being regulated under 401 KAR Chapters 57 and 59; 40 CFR Parts 60 and 61; or Section 111 or 112 of the Clean Air Act (42 USC 7401 et seq.).

(2) "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.).

(a) A net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;
2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;
3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
4. Use of an alternative fuel or raw material by a stationary source which:
 - a. The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under a permit condition which was established after January 6, 1975; or
 - b. The source is approved to use under a permit issued under this administrative regulation or under 40 CFR 52.21;
5. An increase in the hours of operation or in the production rate, unless the change would be prohibited after January 6, 1975 pursuant to 40 CFR 52.21; after June 6, 1979, pursuant to 401 KAR 51:016; after September 22, 1982, pursuant to this administrative regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

1. For particulate matter and sulfur dioxide, January 6, 1975; and
2. For nitrogen dioxide, February 8, 1988.

(b) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date shall be:

1. For particulate matter and sulfur dioxide, August 7, 1977; and
2. For nitrogen dioxide, February 8, 1988.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.) for the pollutant on the date of its complete application; and
2. For a major stationary source, the pollutant would be emitted in significant amounts, or, for a major modification, there would be a significant net emissions increase of the pollutant.

(15) "Baseline area" means an intrastate area (and every part of that area) designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established. Area redesignations under Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.) cannot intersect or be smaller than the area of impact of a major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to this administrative regulation and would be constructed in the Commonwealth of Kentucky.

(16) "Allowable emissions" means the emissions rate of a stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in 401 KAR Chapters 57 and 59, or 40 CFR 60 and 61;

(b) The applicable state and federally approved regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a state and federally enforceable permit condition, including those with a future compliance date.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable state implementation plan and any permit requirement established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA approved program incorporated into the state implementation plan, which expressly requires adherence to a permit issued under the program.

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this administrative regulation, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, (e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel).

(19) "Innovative control technology" means a system of air

pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than a control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the two (2) year period which precedes the particular date and is representative of normal source operation. The cabinet may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The cabinet may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For an emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains the information necessary for processing the application.

(23) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit a pollutant listed in Section 22 of this administrative regulation, a rate of emissions that would equal or exceed a rate given in Section 22 of this administrative regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.), that is not listed in Section 22 of this administrative regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Section 22 of this administrative regulation, "significant" means an emissions rate or net emissions increase associated with a major stationary source or major modification which is to be constructed within ten (10) kilometers of a Class I area and have an impact on that area equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ (twenty-four (24) hour average).

(24) "Federal land manager" means, with respect to lands in the United States, the secretary of the department with authority over those lands.

(25) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means an area other than high terrain.

(27) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis and shall consider the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

(28) "Mandatory Class I federal area" means an area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(29) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(30) "Visibility impairment" means a humanly perceptible change

(a) The owner or operator:

1. Obtained the necessary federal, state, and local preconstruction approval effective before September 22, 1982;
2. Commenced construction before September 22, 1982; and
3. Did not discontinue construction for a period of eighteen (18) months or more; or

(b) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at the institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements;

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination of fossil-fuel boilers) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another stationary source category which, as of August 7, 1980, is being regulated under 42 USC 7411 or 7412 (Section 111 or 112 of the Clean Air Act); [~~401 KAR Chapters 57 and 59 or 40 CFR Parts 60 and 61~~]; or

(d) The source or modification is a portable stationary source which has previously received a permit under this administrative regulation; and:

1. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;
2. The emissions from the source would not exceed its allowable emissions;
3. The emissions from the source would not impact a Class I area or an area where an applicable increment is known to be violated; and
4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable state implementation plan before July 31, 1987;

2. Commenced construction within eighteen (18) months after July 31, 1987; and

3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) The source or modification was subject to this administrative regulation with respect to particulate matter requirements, as in effect before July 31, 1987, and the owner or operator submitted an application for a permit under this administrative regulation before that date, and the cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect in this administrative regulation. If not, the requirements of Sections 9 to 17 of this administrative regulation that were in effect before July 31, 1987, shall apply to the source or modification.

(5) Sections 9 to 17 of this administrative regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, for that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) (Section 107(d)(1)(A)(i) [407(d)(1)(A), (B), or (C)] of the Clean Air Act [(42-~~USC 7401 et seq.~~)].

(6) Sections 10, 12 and 14 of this administrative regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modifications:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(7) Sections 10, 12 and 14 of this administrative regulation as they apply to a maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under 42 USC 7401 to 7671g (~~the~~ Clean Air Act [~~42-USC 7401 et seq.~~]), from the modification after the application of best available control technology will be less than fifty (50) tons per year.

(8) The cabinet may exempt a stationary source or modification from the monitoring requirements of Section 12 of this administrative regulation for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area which are less than the amounts given in Section 24 of this administrative regulation; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Section 24 of this administrative regulation, or the pollutant is not listed in Section 24 of this administrative regulation.

(9)(a) At the discretion of the cabinet, the requirements for air quality monitoring of PM_{10} in Section 12 of this administrative regulation may not apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988, and the cabinet subsequently determines that the application as submitted before that date was complete, except for the requirements for monitoring particulate matter specified in Section 12 of this administrative regulation.

(b) The requirements for air quality monitoring of PM_{10} in Section 12 of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 CFR 52.21 or this administrative regulation after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the

ing which the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

(3) Operation of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B, ~~[to 40 CFR 58,]~~ which ~~is [has been]~~ incorporated by reference in Section 21 of this administrative regulation [401 KAR 50:015], during the operation of monitoring stations to satisfy subsections (1) and (2) of this section.

Section 13. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform an analysis or make a determination required under this administrative regulation.

(1) For a major source or major modification to which Sections 9, 11, 13 and 15 of this administrative regulation apply, the information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description of the system of continuous emission reduction planned for the source or modification, emission estimates, and other information necessary to determine that best available control technology will be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact; and

(b) The air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification will affect.

Section 14. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator is not required to provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) Visibility monitoring. The cabinet may require monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by-case basis by the cabinet. Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager. Data obtained from visibility monitoring shall be made available to the cabinet, U.S. EPA, and the federal land manager, upon request.

Section 15. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a proposed major stationary source or major modification the emissions from which may affect the Class I area. The cabinet shall provide notice promptly after receiving the application. The notice shall include a copy of all information relevant to the permit applica-

tion and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct. The notice shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I area. The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determination required under Section 16 of this administrative regulation, and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area have an affirmative responsibility to protect the air quality related values (including visibility) of the lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis. The cabinet shall consider an analysis performed by the federal land manager, provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area. If the cabinet finds that analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 50:035, ~~[Section 4-]~~ either explain that decision or give notice as to where the explanation can be explained.

(4) Denial; impact on air quality related values. The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area as defined in Section 23 of this administrative regulation. If the cabinet concurs with the demonstration then the cabinet shall not issue the permit.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the source or modification will have no adverse impact on the air quality related values of lands located in a Class I area (including visibility), notwithstanding that the change in air quality resulting from emissions from the source or modification will cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with the demonstration and he so certifies, the cabinet may, if the other applicable requirements of this administrative regulation are met, issue the permit with the emission limitations that are necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants specified in Section 25 of this administrative regulation.

(6) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that a variance under this clause will not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if applicable) and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase. If a variance is granted, the cabinet shall issue a permit to the source or modification under the requirements of subsection (8) of this section, if the other applicable requirements of this administrative regulation are met.

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published by the Office of Management and Budget, [available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161, Order No. PB 87-100012.]

2. The manual is available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161; Phone (703) 487-4650.

(b)1. Documents from the Code of Federal Regulations:

a. 40 CFR Part 51, Appendix W: Guideline on Air Quality Models (Revised), (July, 1986), with Supplement A (July, 1987), Supplement B (July, 1993), and Supplement C (August, 1995), as published in the Code of Federal Regulations, July 1, 1995, and as amended by 60 FR 40465 (August 9, 1995).

b. 40 CFR Part 58, Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring, as published in the Code of Federal Regulations, July 1, 1995, and as amended by 60 FR 52315 (October 6, 1995).

2. Copies of the Code of Federal Regulations and the Federal Register may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn.: New Orders, P.O. Box 371954, Pittsburgh PA 15250-7954; Phone (202) 512-1800; FAX (202) 512-2250.

(2) The documents incorporated by reference in subsection (1) of this section are [is] available for public inspection and copying (subject to copyright law) at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane [316 St. Clair Mall], Frankfort, Kentucky 40601-1403, (502) 573-3382 [664-3382];

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105-1507 [41104], (606) 920-2067 [325-8569];

(c) Bowling Green Regional Office, 1508 Western Avenue, Bowling Green, Kentucky 42104, (502) 746-7475 [843-5475];

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022 [439-2394];

(f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700 [311 West Second Street], Owensboro, Kentucky 42303 [42304], (502) 687-7304 [686-3304]; and

(h) [f] Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

Section 22. Significant Net Emissions Rates.

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate matter emissions 15 tpy of PM ₁₀ emissions
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl chloride	1 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy

Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 x 10 ⁻⁶ megagrams per year (Mg/y) (3.5 x 10 ⁻⁶ tpy)
Municipal waste combustor metals (measured as particulate matter)	14 Mg/y (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 Mg/y (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	45 Mg/y (50 tpy)

Section 23. Ambient Air Increments.

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
PM ₁₀ annual arithmetic mean	4
PM ₁₀ 24-hour maximum	8
TSP, Annual geometric mean	5
TSP, 24-hour maximum	10
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen Dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate Matter:	
PM ₁₀ annual arithmetic mean	17
PM ₁₀ 24-hour maximum	30
TSP, Annual geometric mean	19
TSP, 24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen Dioxide:	
Annual arithmetic mean	25

Section 24. Significant Air Quality Impact.

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 ug/m ³	8-hour average
Nitrogen dioxide	14 ug/m ³	annual average
Particulate matter	[10 ug/m ³ of TSP] 24-hour average 10 ug/m ³ of PM ₁₀	24-hour average
Sulfur dioxide	13 ug/m ³	24-hour average
Ozone	No de minimis air quality level is provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds subject to this administrative regulation is required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 ug/m ³	3-month average

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no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises Kentucky's PSD regulation to be compatible with the federal PSD regulation. There is no additional tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The amendments to this administrative regulation are the same as those made by the U.S. EPA to its PSD regulation for the requirements of State Implementation Plans, 40 CFR 51. These amendments were promulgated in the Federal Register July 20, 1993 (58 FR 38816) and August 9, 1995 (60 FR 40465); June 3, 1993 (58 FR 31622); and July 21, 1992 (57 FR 32314). Some minor language changes have also been made to this administrative regulation so that it will conform with the requirements of KRS Chapter 13A.

2. State compliance standards. The state compliance standards are identical to those promulgated by the U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate. The state compliance standards are identical to those promulgated by the U.S. EPA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment to this administrative regulation does not impose stricter standards, or additional or different responsibilities or requirements.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amended After Hearing)

415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund ~~(commission)~~ to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the fund ~~(commission)~~ for reimbursement or payment of the costs of corrective action.

Section 1. Application for Assistance ~~(Agreement)~~. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for ~~(an)~~ assistance ~~(agreement)~~ with the fund ~~(commission)~~.

(2) Application shall be made on the Application for Assistance ~~(Agreement)~~ form dated June 1996 ~~(October 1992)~~, hereby incorporated by reference. This form may be inspected and obtained at the Office of Petroleum Storage Tank Environmental Assurance Fund ~~(Commission)~~, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund ~~(commission)~~ are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet. The necessity for corrective action shall be demonstrated by analytical sample results. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for fund participation.

(3)(a) If the owner or operator meets the requirements of subsection (2) of this section the fund ~~(commission)~~ may approve the Application for ~~(enter into an)~~ Assistance ~~(agreement)~~ and establish the amount to be obligated by the appropriate account ~~(based upon the approved contract)~~.

(b) ~~(a)~~ Reimbursement pursuant to an approved Application for Assistance ~~(agreement)~~ is restricted to documented costs approved by the secretary ~~(commission)~~.

(c) ~~(b)~~ The approved Application for Assistance ~~(agreement)~~ may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the fund ~~(commission)~~.

(4) The fund ~~(commission)~~ may amend the approved Application for Assistance ~~(agreement)~~ upon application by the eligible owner or operator, upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action and that the additional costs are necessary to comply with the written directions and administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the fund ~~(commission)~~.

(5) Payment under the terms of the approved Application for Assistance ~~(agreement)~~ may be made when the eligible owner or operator submits a claim form, and a certification ~~(by the certified contractor)~~ that the costs were consistent with the bid and necessary to comply with the administrative regulations of the cabinet at 401 KAR Chapter 42. The requirement for the use of a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

(6) The fund may request additional information and documentation from the applicant to verify eligibility or account placement.

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied.

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) Claims shall be reviewed by the fund [commission staff] to determine eligibility for payment and compliance with the administrative regulations of the fund [commission].

(2) Requests for payment covering cost incurred by an owner or operator under an approved Application for Assistance [agreement] may be submitted to the fund thirty (30) days following initiation of corrective action required by law. Subsequent requests for payment may be made at thirty (30) day intervals thereafter. ~~if the payment request exceeds \$1,000, until completion of the authorized activities. [Upon request, the executive director may submit interim payments to the commission at more frequent intervals or for amounts below the \$1,000 payment request threshold. Each request shall be reviewed by commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.]~~

(3) All payments shall be subject to final recommendation by the executive director and approval by the secretary or the secretary's designee [of the commission].

Section 7. Payment Procedures. (1)(a) When an owner or operator has submitted a claim for payment by the fund [commission], payment shall be made by a check written to the eligible owner or operator, or to a designated third party ~~[designated in a restricted assistance agreement]~~. A designation made by power of attorney may be revoked at any time by notice to the attorney-in-fact and to the fund.

(b) A request for an interim partial payment shall be accompanied by documentation required by Section 2(6) of this administrative regulation; ~~or~~

(c) A request for final payment shall be accompanied by a closure letter issued by the cabinet; or

(d) A request for one (1) time payment in full shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible Costs. The fund's reimbursement [Payment] for costs of corrective action shall be limited to reasonable and necessary costs, expenses and other obligations incurred for corrective action or site investigation required by law under the provisions of KRS Chapter 224 and administrative regulations pursuant thereto, as the result of motor fuel release into the environment from a petroleum storage tank. [Corrective action includes initial response, initial abatement measures, site check, site investigation, initial characterization and free product removal actions performed in accordance with the requirements of 401 KAR 42:060.] The fund may require the submission of a report of analytical laboratory results to substantiate the need for corrective action and may require other information and documentation needed to determine the reasonableness and necessity of corrective action. For corrective action to be necessary for fund purposes, contamination exceeding the levels for which the cabinet will allow closure must be established by the applicant.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure if a release of motor fuel is detected or upon written direction of the cabinet;

(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

(c) Performance of site checks, and site investigation to assess the extent of contamination caused by a motor fuel release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(d) Preparation of corrective action plans;

(e) Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(f) Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system where a release has occurred at the facility or at the written direction of the cabinet;

(g) Restoration or replacement of a private or public drinking water supply;

(h) Removal, treatment, and disposal of contaminated liquids and soils resulting from corrective action;

(i) The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(j) The costs of implementation of corrective action technologies such as soil venting or bioremediation, and groundwater treatment systems, if accepted by the cabinet for the facility;

(k) Costs for replacing blacktop or concrete if removal was necessary to perform the corrective action;

(l) Attorney fees integral to the performance of site corrective action, such as preparation of off-site access agreements; and

(m) Other costs requested by the applicant and approved by the fund [commission], demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(n) Purchases of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the executive director [commission or their appointed delegate].

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs and earth moving equipment;

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on regulatory regulations;

3. Consultation on fund [Petroleum Storage Tank Environmental Assurance Fund] administrative regulations;

4. Preparation or submittal of fund [commission] documentation; and

5. Any other services determined by the fund [commission] not to be integral to the performance of corrective action.

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan;

(i) Aesthetic improvements to the facility;

(j) Interest on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

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mandate. 40 CFR 280 subpart details the standards and compliance dates.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will impose no different claim procedure from that imposed on a nongovernmental entity.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amended After Hearing)

415 KAR 1:110. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund ~~(commission)~~ to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The fund ~~(commission)~~ shall not pay more than the following amounts for the performance of corrective action by certified contractors, except as provided in subsection (2) of this section. All items in this section are subject to a maximum fifteen (15) percent contractor markup above actual cost, unless specifically excluded. The contractor markup is allowed only for subcontractor or vendor services. The markup is allowed only to the extent that the cost plus the markup do not exceed the maximum cost for that item:

(a) Pavement removal and ~~(removal and)~~ replacement, ~~(not)~~ including labor equipment and material costs:

Asphalt

Removal

Includes the cost of loading:

Asphalt pad, for each 3 inches
of thickness, per square yard ~~(feet)~~ \$2.75 to \$3.25
[yard] ~~_____~~ \$1.30 to \$1.60]

Asphalt curbing, per linear foot \$2.40 to \$2.90
[\$1.25 to \$1.66]

Replacement

Asphalt pad, for each 4 inches
of thickness, per square foot \$3.50 to \$4.25
[yard] ~~_____~~ \$2.70 to \$3.30]

Cost of additional thickness to
be prorated.

Asphalt curb and gutter, per
linear foot \$5.10 to \$6
[\$3.60 to \$4.40]

Concrete

Removal

Includes the cost of loading:

Concrete pad, per square yard
4 inches thick \$2 to \$3
[\$1.70 to \$2]
6 inches thick \$4 to \$5
[\$3.25 to \$3.95]

9 inches thick \$8.20 to \$10

10 inches or more thick \$26 to \$31

With rebar add 15%

Concrete curbing, per linear
foot \$4.50 to \$5.50

Replacement

Concrete, 4 inches thick, per
square foot \$2 to \$2.80

With rebar add 15%

For each additional inch, per
square foot \$0.20 to \$0.30

Transportation ~~(and disposal)~~ of the first
100 total tons of asphalt or concrete,
to disposal facility, per one (1) way
mile, per ton. Mileage must be
documented. If nearest disposal
facility not used, reasonableness
must be documented. \$0.20 to \$0.30

Transportation after the first 100 total
tons of asphalt or concrete, to
disposal facility, per one (1) way mile,
per ton. Mileage must be documented.
If nearest disposal facility not used,
reasonableness must be documented. \$0.15 to \$0.20
[Actual cost plus
maximum 4%
markup, not to
exceed \$28]
Actual cost plus
maximum 8%
markup, not to
exceed \$32.50

Disposal fee, per ton

~~(to disposal facility,
per cubic yard, for each 20 miles—mileage
must be documented; if closest disposal
facility not used, reasonableness of
cost must be justified)~~ \$6.60 to \$8

Disposal fee, per cubic yard, not to
exceed actual cost per unit \$12 to \$25]

(b) ~~(Excavation and)~~ Disposal and replacement of contaminated
soil, ~~(not)~~ including labor and equipment costs:

Excavation and stockpiling or loading
directly into trucks, per ton. Necessity
of stockpiling must be demonstrated
to justify reimbursement. \$3.50 to \$4

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Overnight lodging - must be demonstrated to be necessary

Actual cost, not to exceed \$55 per night
[\$35 to \$70]

Meals - when overnight stay is necessary

Breakfast \$4
Lunch \$5
Supper \$11

~~Long distance telephone calls~~ Actual cost

Soil gas analysis for VOC (equipment charge), per day \$150

(g) (4) Environmental exploration - includes equipment, material and ~~does not include~~ labor costs unless otherwise ~~see~~ stated:

1. Mobilization and demobilization of drilling equipment (includes rig, two (2) man crew, labor for gathering of equipment, tools, travel time and initial off-site steam cleaning):

Auger rig, core rig, or wash rotary rig, per mile, minimum of \$200 \$2 to \$3
Air rotary rig, per mile, minimum of \$350 \$3.50 to \$4

2. Installation of PVC monitoring well, including decontamination of down hole materials and grout or backfill materials. Construction using other materials, such as stainless steel screens may be reimbursed if the alternative construction was ordered by the cabinet. [4 inch diameter per linear foot] [\$20 to \$35]

Two (2) inch diameter well [casing] per linear foot \$14 to \$16

Four (4) inch diameter well [casing] per linear foot \$15 to \$20

Necessity for construction of [using] a four (4) inch diameter well [casing] must be established.

3. Construction of monitoring well surface completion (includes concrete pad, protective casing or manhole, locking cap, etc.) including any labor, equipment, and material costs. If any component listed is not installed, surface completion cost is not allowed. \$250 each

4. Drilling in unconsolidated material ~~(excluding monitoring well)~~ per linear foot ~~[\$5 to \$7]~~ ~~to \$30~~

Hollow stem auger less than five (5)

inch inside diameter \$5 to \$9

Greater than five (5) inch inside diameter \$8 to \$11

Continuous flight augers

Four (4) inch nominal outside diameter \$5 to \$7

Six (6) inch nominal outside diameter \$6 to \$8

For continuous split spoon sample collection add five (5) dollars per linear foot.

For split spoon sample collection at five (5) foot intervals add three (3) ~~two (2)~~ dollars and fifty (50) cents per linear foot.

Random split spoon sampling, per sample \$13 to \$20 ~~17~~

5. Standby time maximum \$150 per day

[Drilling in unconsolidated material for monitoring well constructing per linear foot \$8 to \$11]

For continuous split spoon sample collection add four (4) dollars per linear foot.

For split spoon sample collection at five (5) foot intervals add two (2) dollars per linear foot.

Random split spoon sampling, per sample \$13 to \$17]

6. Drilling in rock (per linear foot) \$18 to \$25 ~~22~~

7. For all drilling costs, for depths greater than sixty (60) feet, add two (2) dollars and forty (40) cents per linear foot.

[Hourly services (rig and two (2) man crew)]

May include drilling, well installation, decontamination, well development, difficult moving, and delay (not related to weather or mechanical breakdown), per hour \$110 to \$130

8. Well abandonment including all material, equipment and labor costs, per linear foot

Overdrilling to depth of well and backfilling with concrete grout, per linear foot \$17 to \$22

Removal of casing to below ground surface and backfilling of casing in place with cement grout, per linear foot \$5 to \$7.50

Two (2) inch diameter casing \$5 to \$7

For each additional two (2) inches in casing diameter, add fifty (50) percent.

9. Preparation and submittal of well records, per well - \$30 to \$40 ~~25 to \$35~~

10. Direct push sampling including personnel, decontamination, materials, supplies, and backfilling of void, per day \$900 to \$1100

Mobilization and demobilization of direct push sampler, including equipment, labor and supplies, per mile \$0.30 to \$0.40

11. Equipment, materials and supplies:

Air compressor, less than 190 CFM, per day \$65 to \$75

Air compressor, 190 CFM or greater, per day \$140 to \$165

Backhoe, trailer and accessories, per hour \$50 to \$55

Concrete saw, per day \$25 to \$35

Concrete saw (push type), per day \$70 to \$80

Conductivity meter, per day \$15 to \$20

Disposal drum, each \$30 to \$35

Explosimeter, per day \$30 to \$35

FID, OVA, per day \$80 to \$95

Generator, per day \$50 to \$55

Grout unit, per day \$45 to \$75

Jackhammer, per day \$50 to \$75

~~[\$20 to \$25]~~

PID/HNu, per day \$60 to \$75

Power auger, per day \$40 to \$50

Self-contained steam cleaning unit, per day \$100 to \$125

Steam cleaner, per day \$50 to \$75

[Self-contained steam cleaning unit, per day \$100 to \$125]

Grout unit, per day \$45 to \$75

Survey equipment, per day \$30 to \$35

Trackhoe, per day \$80 to \$100

Water level indicator, per day \$10 to \$12

Water trailer (500 gal.), per day \$50 to \$75

Water truck (800 ~~1000~~ gallon capacity or greater), per day \$125 to \$175

Copies, per page \$0.05

Faxes, per page \$1.25

[Materials]

Well materials, decontamination supplies, health and safety supplies, grout, well casing and screen, filter pack, well covers, etc. Actual cost + 15%

12. ~~11~~ The fund will only reimburse for one (1) environmental professional to assist during drilling activities in visual inspection of samples, logging of boreholes or monitoring wells or other task.

13. Mobilization and demobilization of heavy equipment including backhoe, trackhoe and dump trucks, including labor, per event - \$200

(1) Personnel shall be categorized according to the applicable type of personnel described in Section 1 of this administrative regulation and the appropriate rate applied;

(2) Costs shall be itemized to comply with the cost items listed in Section 1 of this administrative regulation;

(3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;

(4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by the [commission] staff.

Section 4. Certification of Contractor Costs. (1)(a) The fund [commission] may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks.

(b) The fund [commission] shall establish the date by which the proposals are to [shall] be submitted [in its request for proposals].

(2) The fund [commission] shall specify in the notice of the request for proposals the information to be submitted by the individual or company. At a minimum, the information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals shall be submitted to the fund [commission];

(3) The fund [commission] shall review all proposals received after the date established [by the commission] for submittal of proposals. Proposals are to be submitted for the purpose of assisting the fund [commission] in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the fund [commission], since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) The [Commission] staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the fund [commission] verifies that the individual or company complies with the requirements of subsection (4) of this section, the

individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request. The list of approved contractors shall be sent to all fund applicants and owners or operators participating in the fund.

(6) If the fund [commission] verifies a proposal, the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the fund [commission] that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the fund [commission] by an owner or operator for the costs of corrective action performed by an approved contractor shall be reviewed by the [commission] staff to determine that the costs were necessary.

Section 5. ~~[(1) "Bid Proposal Form (August, 1993)" is incorporated by reference-~~

~~(2) This form may be obtained, inspected, or copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky, (502) 564-5981, 8 a.m. to 4:30 p.m., ET, Monday through Friday.~~

~~Section 6.- The provisions of this administrative regulation shall apply to all cost incurred at facilities where the tank system is removed or closed in place on or after the effective date of this administrative regulation. [to be enforced beginning January 1, 1994.]~~

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: January 8, 1997

FILED WITH LRC: January 9, 1997 at noon

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for the corrective action cost resulting from a release into the environment. Amendments to reflect price adjustments in the industry will result in a higher percentage of total cost being returned to the owner or operator.

2. Continuing costs or savings: Tank owners or operators will continue to experience a higher rate of reimbursement associated with payment of corrective action.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96

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(2) The Transportation Cabinet [~~or its contractor~~] shall secure instructors and classroom locations for both of the state traffic schools.

(3) [~~The Transportation Cabinet's contractor shall notify the Transportation Cabinet of the name, address, Social Security or operator's license number of all persons successfully completing either of the state traffic schools. The notification shall include the date of completion and whether it was the graduated driver licensing education or the traffic offender state traffic school.~~]

(4) The Transportation Cabinet [~~or its contractor~~] shall conduct at least two (2) new driver state traffic schools in every county every calendar year.

(4) (a) A person under the age of eighteen (18) years who obtained an operator's license prior to October 1, 1996 shall not be required to attend one (1) of the KRS 186.410(4) driver education courses.

(b) If a person under the age of eighteen (18) years who obtained an operator's license prior to October 1, 1996 chooses to do so, he shall be allowed to attend a new driver state traffic school free of charge.

Section 2. High School Driver Education Course. If a high school in Kentucky offers a driver education course for credit to its students, the school shall notify the Transportation Cabinet of each student who receives credit for successfully completing the course. The notice shall contain the following information:

- (1) Student's name;
- (2) Student's Social security or operator's license number;
- (3) School district;
- (4) Name of high school;
- (5) Copy of the certification of course completion and credit given;
- (6) Date of course completion; and
- (7) Name and telephone number of person at school to contact.

Section 3. KRS Chapter 332 Licensed Driver Training Schools.

(1) A driver training school licensed under KRS Chapter 332 may apply to the Transportation Cabinet for approval to conduct a driver training program pursuant to KRS 186.410 if it:

(a)1. [(4)] Has been licensed by the Kentucky State Police for the prior two (2) calendar years; or

2. Is operated by a person who has a driver education teaching endorsement from one (1) of Kentucky's public universities and who has taught driver education pursuant to that endorsement for a minimum of two (2) years; or

3. Is operated by a person who has taught driver education at a KRS Chapter 332 approved school for a minimum of five (5) years.

(b) [(2)] Has at least twenty (20) hours of office hours each week routinely staffed by a person familiar with the school's curriculum and requirements;

(c) Uses a curriculum which meets the requirements of Section 4(6) of this administrative regulation; [(3) Agrees to purchase and follow the curriculum established by the Transportation Cabinet;] and

(d) [(4)] Agrees to only use instructors in the KRS 186.410 classes who have been approved and trained by the Transportation Cabinet [~~or the cabinet's contractor~~].

(2) The applicant shall submit the following to the Transportation Cabinet:

(a) A detailed copy of the curriculum used, including a copy of all handouts and audio or video material;

(b) Resume of each instructor proposed to teach the course;

(c) Business address, telephone number, and office hours;

(d) Copy of the KRS Chapter 332 certificate issued by the Kentucky State Police; and

(e) \$500 fee to pay for the initial evaluation of the application.

(3) A school which has been approved to participate in the program may request that a student who began a driver education course at the school after September 30, 1996 and who completed the course by December 31, 1996, be given credit for compliance with the requirements of KRS 186.410.

Section 4. Class Requirements. (1) Each class offered pursuant to KRS 186.410(4)(b) or (c) shall be limited to a maximum of twenty-five (25) students.

(2) The classes offered pursuant to KRS 186.410(4)(b) or (c) shall contain a minimum of four (4) hours of classroom highway safety training which shall include administrative activities related to the class.

(3)(a) A Transportation Cabinet approved preclass and postclass test shall be administered to all students and the results tabulated for each class taught.

(b) The results shall be submitted to the Transportation Cabinet with the attendance roster required by subsection (4) of this section.

(4) At least two (2) weeks prior to each class to be taught under the provisions of this administrative regulation, the school shall notify the Transportation Cabinet of the following:

(a) Date, time, and location of the scheduled class; and

(b) Instructor scheduled to teach the class.

(5) The school shall notify the Transportation Cabinet of each student who successfully completes the course. The notice shall contain the following information:

(a) Student's name;

(b) Student's Social Security or operator's license number;

(c) Name of school;

(d) Date of course completion;

(e) Course instructor; and

(f) Name and telephone number of person at school to contact.

(6) [(4)] The curriculum [~~Transportation Cabinet approved curriculum shall be~~] taught to each class. [~~The curriculum~~] shall consist of the following sections:

(a) The dangers of alcohol and [~~;~~] drugs which shall last for a minimum of forty-five (45) minutes and include:

1. Information about Kentucky's "Under 21" license and implied consent law;

2. Types of substances which impair driving ability;

3. Blood alcohol content and the presumptive levels established in KRS 189A.010(2);

4. Legal, monetary, and social sanctions or penalties of a conviction of violation of KRS 189A.010(1);

5. Restricted criteria for obtaining a hardship license pursuant to KRS 189A.410;

6. Psychological and physiological effects of alcohol consumption;

7. Other country's penalties for operating a motor vehicle under the influence of alcohol; and

8. National and state statistics related to operating a motor vehicle and alcohol or drug consumption. [~~excessive speed;~~]

(b) Defensive and perceptive driving which shall last for a minimum of forty-five (45) minutes and include:

1. Traits of good drivers;

2. Traits of safe drivers;

3. Mental skills needed for safe driving;

4. The "Scan Identify Predict Decide Execute" (SIPDE) approach to perceptive driving;

5. Driving emergencies such as brake or tire failure, skidding, stuck accelerator, or running off the roadway; and

6. Crash-producing locations or situations such as intersections, hydroplaning, railroad crossings, many vehicle types in the traffic mix, and pedestrian traffic.

(c) Seatbelt usage which shall last for at least thirty (30)

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from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation itself should have minimal economic impact since the Transportation Cabinet was required by HB 400 passed in 1996 to implement this program. The program once implemented should improve highway safety and therefore result in some savings to the traveling public.

(b) Kentucky: The administrative regulation itself should have minimal economic impact since the Transportation Cabinet was required by HB 400 passed in 1996 to implement this program. The program once implemented should improve highway safety and therefore result in some savings to the traveling public.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet reversed its earlier stand and is allowing the KSP-approved schools to set the curriculum offered if it is approved by the Transportation Cabinet based on the comments raised at the public hearing.

(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 administrative regulation itself should have minimal impact since the Transportation Cabinet was required by HB 400 passed in 1996 to implement this program. The program once implemented should improve highway safety and therefore result in a positive effect in the health of the traveling public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented in this format, the Transportation Cabinet does not believe that there would be as much positive benefit to the traveling public as is anticipated from the implementation of this administrative regulation.

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Instructors in the program who are employed by one of the KRS Chapter 322 approved driver education schools will have to attend an annual training session. The training session will be conducted by the Transportation Cabinet and Eastern Kentucky University. The fee for the training will be \$100 for each session.

(11) TIERING: Is tiering applied? No. The Transportation Cabinet firmly believes that all students should be offered the same basic program.

CABINET FOR HEALTH SERVICES Office of Inspector General (Amended After Hearing)

900 KAR 2:060. Hearings concerning transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)

STATUTORY AUTHORITY: KRS Chapter 13B, 216.515, 216.525, 216.557, 216.560, 216.567, 42 CFR 431.200 to 431.246, 483.12, 483.204(b), EO 96-862

NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in place a fair and impartial decision-making process for appeals related to involuntary transfer and discharge. This administrative regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This administrative regulation **differs from the federal regulation because it also** sets forth the hearing process for appeals related to residents' transfer and discharge rights **in long-term care facilities as defined**

in KRS 216.510(1) and 216.535(1). ~~[under Kentucky's Nursing Home Reform statutes and administrative regulations.]~~ 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) "Cabinet" means Cabinet for Health Services.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(3) ~~[(2)]~~ "Hearing officer" is defined in KRS 13B.010(7). ~~[means the person designated by the cabinet to conduct a hearing and make a decision regarding any appealed transfer or discharge.]~~

(4) ~~[(3)]~~ "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

Section 2. Hearing Procedure. (1) ~~[In accordance with 900 KAR 2:050, Section 3(5).]~~ A resident has fifteen (15) days from receipt of the facility's notice of intent to transfer or discharge the resident to notify the cabinet in writing of his intent to appeal.

(2) Upon receipt of the notice of appeal ~~[in accordance with 900 KAR 2:050 or 900 KAR 2:020, Section 2(1) and (2)]~~, the secretary of the cabinet shall designate ~~[appoint]~~ a hearing officer and a hearing shall occur as soon as practicable. ~~[within thirty (30) days.]~~

(3) ~~[(2)]~~ Notice of hearing shall be served on ~~[mailed to]~~ the facility and resident not less than twenty (20) ~~[ten (10)]~~ days prior to the commencement of the hearing. The notice of hearing shall contain the reasons, time, and place of the hearing, and shall comply with KRS 13B.050(3). The notice of hearing shall be served ~~[mailed]~~ by certified mail, return receipt requested, or by personal service, to the facility and the resident.

(4) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. A written prehearing order shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090. The resident may be represented in accordance with 42 CFR 431.206(b)(3).

~~[(3) The facility and the resident may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.]~~

(6) ~~[(4)]~~ All testimony at the hearing shall be mechanically recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript. Requests for a court reporter for transcription shall be forwarded to the hearing officer at least ten (10) days prior to the hearing date.

~~[(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.]~~

~~[(6)(a) The hearing officer shall review the:~~

~~1. Cabinet's determination that the resident's rights were violated; and~~

~~2. Fines imposed by the cabinet.~~

~~(b) The hearing officer shall base his review of the cabinet's determination and fines on the:~~

~~1. Facts of the case; and~~

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CABINET FOR HEALTH SERVICES Department for Health Services (Amended After Hearing)

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

RELATES TO: KRS 216.2920 to 216.2929

STATUTORY AUTHORITY: KRS 216.2901, 216.2925, [Ky. Acts ch. 374,] 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 216.2925 and 216.2901 [1996 Ky. Acts ch. 374,] mandate the Cabinet for Health Services to promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality and outcomes of health care services provided in the Commonwealth. This administrative regulation sets forth the data elements, forms, and timetables the cabinet requires to carry out this mandate.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode. Excluded from this definition are inpatient services a hospital may provide in swing, dual licensed, nursing facility, skilled, intermediate or personal care beds, hospice, and major ambulatory procedures notwithstanding that these may occur in hospitals.

(3) ~~["Major ambulatory procedure" means the provision to an ambulatory patient of any ambulatory surgery, any cardiac catheterization, or any patient service using lithotripsy, magnetic resonance imaging or megavoltage radiation by linear accelerator or cobalt 60. Major ambulatory procedures may be related or unrelated to hospitalizations, may involve the use of either fixed or mobile medical equipment, and may occur in a physician office, a clinic, a hospital emergency, ambulatory or outpatient department by any name, or any other noninpatient situation or location where a major ambulatory procedure is provided.~~

(4) "Selected ambulatory surgery" means the following specific surgeries:

Dilation and curettage	Myringotomy with or without ventilation tubes
Hernia repair	Colonoscopy
Gastroscopy	Cystoscopy with or without retrograde urography
Bronchoscopy	Tubal ligation
Vasectomy	Cataract surgery
Laser surgery (eye)	Arthroscopy
Angioplasty	Septoplasty
Hemorrhoid surgery	Lymph node biopsy
Colposcopy with or without conization	Breast biopsy
Laparoscopic cholecystectomy	Carpal tunnel release
Arteriogram with or without angioplasty	Tonsillectomy

(4) ~~(6)~~ "UB-92" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and

ambulatory encounters, as incorporated by reference in Section 9 of this administrative regulation.

(5) ~~(6)~~ "HCFA-1500" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1500, approved by the American Medical Association Council on Medical Service and commonly used to bill for ambulatory patient encounters, as incorporated by reference in Section 9 of this administrative regulation.

(6) ~~(7)~~ "Coding and transmission specifications" means the technical directives the cabinet issues concerning technical and technological matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and HCFA-1500 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(7) ~~(8)~~ "Record" means the documentation of a hospitalization or major ambulatory procedure in the format of a UB-92 or HCFA-1500 regardless whether constituted as a paper form or on a computer readable electronic medium.

(8) ~~(9)~~ "Agent" means any entity with which the cabinet may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the cabinet to collect, edit or analyze data from providers.

(9) ~~(10)~~ "Provider" means a hospital, ambulatory facility, physician office, clinic or other entity of any nature providing hospitalizations or major ambulatory procedures as defined in this administrative regulation.

Section 2. Data Collection. (1) Hospitalization records. Beginning January 1, 1995, hospitals shall document on a UB-92 record each hospitalization they provide, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(2) ~~[Major]~~ Ambulatory surgeries ~~[procedure]~~ and mammography records.

(a) Beginning January 1, 1995, ambulatory facilities and hospitals providing ~~[major]~~ ambulatory surgeries ~~[procedures]~~ or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the cabinet, every ~~[major]~~ ambulatory surgery ~~[procedure]~~ and mammogram they provide, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(b) Beginning July 1, 1995, physician offices, clinics and other entities of any nature providing major ambulatory surgeries ~~[procedures]~~ or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the cabinet, the major ambulatory procedures and mammograms they provide, except that reporting of surgeries shall be limited to selected ambulatory surgeries as defined in this administrative regulation, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(3) Data collection on all patients. Providers shall submit all required data on every patient as provided in this administrative regulation, regardless whether a bill is to be generated or the services are to remain unbilled.

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the cabinet or its agent as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless whether the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the cabinet or its agent before a patient is discharged or before the record is sufficiently final that it could be used for billing.

(2) Submission responsibility.

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back-up person changes during the year the name of the replacing person shall be reported immediately to the cabinet.

Section 7. Required Data Elements. (1) UB-92 data. Providers shall ensure that each copy of UB-92 data submitted to the cabinet contains at least the following data elements as provided for on the UB-92 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications.

Field #	Data Element Label
[2]	* Ethnicity
3	* Provider Assigned Patient Control Number
4	* Type of Bill (inpatient, outpatient or other)
5	* Federal Tax Number or Employer Identification Number (EIN)
6	* Statement Covers Period
11	Patient Birth Weight (state-reserved field)
13	* Patient City and Zip Code
14	* Patient Birth date
15	* Patient Sex
16	Patient Marital Status
17	* Admission/Start of Care Date
18	Admission Hour
19	* Type of Admission
20	* Source of Admission
[21]	Discharge Hour
22	* Patient Status (at end of service or discharge)
23	* Provider Assigned Medical Record Number
32-35	Occurrence Codes & Dates
[36]	Occurrence Span Codes & Dates
39-41	Value Codes and Amounts
42	* Revenue Codes/Groups
46	Units of Service
47	* Total Charges by Revenue Code Category
50	* Payor Identification - <u>Payor Name</u>
[56]	KenPAC Authorization (Provider) Number
67	* Principal Diagnosis Code
68-75	Secondary and Other Diagnosis Codes
[76]	* Admitting Diagnosis Code
77	External Cause of Injury Code (E-code)
[78a]	Unusual Occurrence: Readmission
[78b]	Unusual Occurrence: Nosocomial Infection
79	* Procedure Coding Method Used
80	Principal Procedure Code & Date
81	Secondary and Other Procedure Codes & Date
82	* Attending Physician Unique Physician Identification Number (UPIN) or alternate number
83	Other Physician UPIN or alternate number

(2) HCFA-1500 data. Providers shall ensure that each copy of HCFA-1500 data submitted to the cabinet contains at least the following data elements as provided for on the HCFA-1500 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications.

Field #	Data Element Label
1	* Payor Identification
3	* Patient Birth date and Patient Sex
5	* Patient City and Zip Code
8	Patient Marital Status
10a	Patient Condition Related to Employment
10b	Patient Condition Related to Auto Accident
10c	Patient Condition Related to Other Accident

14	* Date of Current Illness, Injury, or Pregnancy
15	First Date of Previous Same/Similar Illness
17a	* Referring/Ordering Physician UPIN or alternate number
18	Hospitalization Dates Related to Current Services
19	* Ethnicity
20	Outside Lab Use & Charges
21	* Diagnosis or Nature of Illness or Injury
24a	* Date(s) of Each Procedure/Service/Supply
24b	* Place of Service Code
24d	* CPT/HCPCS Code for Each Procedure/Service/Supply
24e	Diagnosis Code
24f	* Dollar Charges for Each Procedure/Service/Supply
24g	* Number of Days or Units
25	* Provider's (Physician/Supplier) Federal Tax Identification Number (EIN)
26	* Provider (Physician/Supplier)-assigned Patient Account Number
28	* Total Charges for Services

Section 8. Incorporations by Reference. (1) As defined in Section 1 of this administrative regulation, Form UB-92 and Form HCFA-1500 are incorporated by reference.

(2) These forms may be inspected or copied at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky, 40601, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: January 3, 1997

FILED WITH LRC: January 3, 1997 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Kendell, Branch Manager

(1) Type and number of entities affected: This administrative regulation will affect hospitals, freestanding or mobile facilities providing major surgical and ambulatory procedures, and physicians providing major ambulatory procedures in their offices.

(2) Direct and indirect costs or savings to those affected: This administrative regulation has, as amended, some changes which will reduce compliance costs for providers.

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

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

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

1. First year following implementation: there are no additional compliance, reporting or paperwork requirements. This amendment reduces requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect costs or savings:

1. First year: When the Health Policy Board was abolished, appropriated funds were transferred to the cabinet to cover the costs of this function.

2. Continuing costs or savings: cost of staff and computer system will continue.

3. Additional factors increasing or decreasing costs: Quantity of data received and nature and quantity of reports produced will affect

safety belt.

(8) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services. ["Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.]

(9) "Registered, certified or registry-eligible dietitian" means a person who is certified in accordance with KRS Chapter 310. ["Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.]

(10) "Registered records administrator" means a person who is certified as a registered records administrator by the American Medical Record Association. ["Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.]

(11) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(12) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(13) [(12)] "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

[(13)] "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.]

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and administrative regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental

meetings (where appropriate), shall attend or be represented at the meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. These reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person~~(s)~~ or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person~~(s)~~ or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care

environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

2. Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines.

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous by technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location~~(s)~~ for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process, and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. Medications or treatments shall not be given without a written order signed by a physician, or dentist, when applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8) [1996 Ky. Acts ch. 342], or therapeutically-certified optometrists as authorized in KRS 320.240(14) [1996 Ky. Acts ch. 376]. Telephone orders for medications shall be given only to a licensed practical or registered nurse or a pharmacist and signed by the physician, dentist, advanced registered nurse practitioner or therapeutically-certified optometrist [medical staff member] within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. Patient restraints or protective devices, other than bed rails, shall not be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) registered, certified or registry-eligible dietician either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes

in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws, and the order shall contain a concise statement of the reason for the service or [f] examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration or [f] rehabilitation service. If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration or [f] rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws.

(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient

provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department or [f] service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person~~(s)~~ transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

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the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure administrative regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: December 20, 1996

FILED WITH LRC: January 2, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 107 licensed acute care hospitals.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

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

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 263a.

2. State compliance standards. 902 KAR 20:016 - Hospital operation and services; 902 KAR 20:009 - Hospital facility specifications.

3. Minimum or uniform standards contained in the federal mandate. Laboratory proficiency testing and quality control provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA), PL 100-578.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards are imposed.

CABINET FOR HEALTH SERVICES

Office of Inspector General

(Amended After Hearing)

902 KAR 20:180. Psychiatric hospitals; operation and services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990[(1), (2)]
STATUTORY AUTHORITY: KRS 216B.042, 216B.105,
314.011(8), 314.042(8), 320.240(14) [~~1996 Ky. Acts ch. 342, 376~~], EO
96-862 [~~216B.106~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042
and 216B.105 [~~and 216B.106~~] mandate that the Kentucky Cabinet for
Health Services [~~Human Resources~~] regulate health facilities and

(b) In addition to the requirements of 902 KAR 20:016, Section 3(11)(d) the medical record shall contain:

1. Appropriate court orders ~~and~~ for consent of patient, appropriate family members or guardians for admission, evaluation, and treatment;
2. A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;
3. Results of the psychiatric evaluation;
4. A complete social history;
5. An individualized comprehensive treatment plan;
6. Progress notes, dated and signed by physician, nurse, social worker, psychologist, or other appropriate individuals involved in treatment of patient. Progress notes shall document all services and treatments provided and the patient's progress in response to such services and treatments;
7. A record of the patient's weight;
8. Special clinical justification for the use of special treatment procedures specified in Section 5(3) of this administrative regulation;
9. A discharge summary which includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or after care as well as a brief summary of the patient's condition on discharge;
10. If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and
11. When an autopsy is performed, a provisional anatomic diagnosis shall be included in the patient's record within seventy-two (72) hours, with the complete summary and pathology report, including cause of death, recorded within three (3) months.

Section 5. Patient Management. (1) Assessment. The hospital shall be responsible for conducting a complete assessment of each patient.

(a) A provisional or admitting diagnosis, which includes the diagnosis of physical diseases, if applicable, as well as the psychiatric diagnosis, shall be made on each patient at the time of admission.

(b) A physical examination of each patient shall be completed and appropriate laboratory tests shall be initiated within twenty-four (24) hours after admission. A physician shall be responsible for assessing each patient's physical health. ~~[A physician shall be responsible for assessing each patient's physical health.]~~

(c) A psychiatric evaluation for each patient shall be completed within seventy-two (72) hours of admission. It shall include a medical history; a record of mental status; details regarding onset of illness and circumstances leading to admission; a description of attitudes and behavior; an estimate of intellectual functioning, memory functioning, and orientation; and an inventory of the patient's assets in a descriptive, not interpretative, fashion.

(d) A social assessment of each patient shall be recorded.

(e) An activities assessment of each patient shall be prepared and shall include information relating to the patient's current skills, talents, aptitudes, and interest.

(f) When appropriate, nutritional, vocational, and legal assessments shall be conducted. The legal assessment shall be used to determine the extent to which the patient's legal status will influence progress in treatment.

(2) Treatment plans. Each patient shall have a written individualized treatment plan that is based on assessments of his~~her~~ clinical needs and approved by the patient's attending physician. Overall development and implementation of the treatment plan shall be assigned to appropriate members of the professional staff.

(a) Within seventy-two (72) hours following admission, a designated member of the professional staff shall develop an initial treatment plan that is based on at least an assessment of the patient's presenting problems, physical health, emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team within ten (10) days for any patient remaining in treatment beyond the initial evaluation. It shall be based on a comprehensive assessment of the patient's needs and include a substantiated diagnosis and the short-term and long-range treatment needs and address the specific treatment modalities required to meet the patient's needs.

1. The treatment plan shall include referrals for services not provided directly by the facility.

2. The treatment plan shall contain specific and measurable goals for the patient to achieve.

3. The treatment plan shall describe the services, activities, and programs to be provided to the patient, and shall specify staff members assigned to work with the patient and also the time and ~~[a]~~ frequency for each treatment procedure.

4. The treatment plan shall specify criteria to be met for termination of treatment.

5. The patient shall participate to the maximum extent feasible in the development of his~~her~~ treatment plan, and such participation shall be documented in the patient's record.

6. A specific plan for involving the patient's family or significant others shall be included in the treatment plan when indicated.

7. The treatment plan shall be reviewed and updated through multidisciplinary case conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(3) Special treatment procedures.

(a) Special documentation shall be included in the patient's medical record concerning the use of restraints, seclusion and other special treatment procedures which may have abuse potential or be life threatening.

(b) The documentation shall include a physician's or advanced registered nurse practitioner's as authorized in KRS 314.011(8) and 314.042(8) written order, justification for the use of the procedure, the required consent forms, a description of any procedures employed to protect the patient's safety and rights, and a description of the procedure used.

(c) The use of physical restraints and seclusion shall be governed by the following:

1. Restraint or seclusion shall be used only to prevent a patient from injuring himself or others, or to prevent serious disruption of the therapeutic program;

2. A written, time-limited order from a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8) shall be required for the use of restraint or seclusion;

3. The head of the medical staff shall give written approval when restraint or seclusion is utilized for longer than twenty-four (24) hours;

4. PRN orders shall not be used to authorize the use of restraint or seclusion;

5. The head of the medical staff or his designee shall review daily all uses of restraint or seclusion and investigate unusual or possibly unwarranted patterns of utilization;

6. Restraint or seclusion shall not be used in a manner that causes undue physical discomfort, harm, or pain to the patient; ~~and~~

7. Appropriate attention shall be paid every fifteen (15) minutes to a patient in restraint or seclusion, especially in regard to regular meals, bathing, and use of the toilet; and staff shall document in the patient's record that such attention was given to the patient; and

8. In no case shall a locking restraint be used.

Section 6. Provision of Services. (1) Psychiatric and general medical services.

(a) Psychiatric services shall be under the supervision of a clinical director, service chief, or equivalent, who is qualified to provide the

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with sources outside the hospital.

(8) Dietary services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(3), pertaining to the provision of dietary services, plus the additional requirements contained in this subsection.

(a) Dietary service personnel who have personal contact with the patients shall be made aware that emotional factors may cause patients to change their food habits and shall inform appropriate members of the professional staff of any change.

(b) Meals shall be provided in central dining areas for ambulatory patients.

(9) Radiology services. If radiology services are provided within the facility, the hospital shall comply with the requirements of 902 KAR 20:016, Section 4(6) concerning the provision of such services. If they are not provided within the facility, the hospital shall have arrangements with an outside source, which shall be outlined in a written plan, for the provision of radiology services. The outside radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

(10) Other services. If surgery, anesthesia, physical therapy or outpatient services are provided within the facility, the hospital shall comply with the applicable sections of 902 KAR 20:016.

(11) Chemical dependency treatment services. Psychiatric hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and designate the location and number of beds to be used for this purpose.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: December 20, 1996

FILED WITH LRC: January 2, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently thirteen (13) licensed psychiatric hospitals.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

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

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR HEALTH SERVICES

Office of Inspector General

(Amended After Hearing)

902 KAR 20:320. Psychiatric residential treatment facility operation and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.450 to 216B.459, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, ~~[216B.106]~~ 216B.450 to 216B.459, 314.011(8), 314.042(8), 320.240(14), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042, 216B.105 ~~[216B.106]~~ and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Health Services ~~[Human Resources]~~ regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in psychiatric residential treatment facilities. 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) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.

(2) "Direct-care staff" means residential or child-care workers who directly supervise residents.

(3) "Freestanding" means a completely detached ~~[and separate]~~ building ~~[street access, telephone service, dining, and street address]~~.

(4) "Full-time equivalent (FTE)" for this administrative regulation means one (1) employee working thirty-seven and one-half (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and one-half (37.5)

rules or policies and procedures to guide the relationships between itself, the administrative staff, the direct-care staff, the professional staff, and the community. The bylaws, rules or policies and procedures shall define the means by which the administrative, direct-care, and professional staffs cooperatively function, participate in the development of policies concerning program management and resident care, and report to the governing body. The bylaws, rules or policies and procedures shall be reviewed at least every two (2) years and revised as necessary; and

(f) Approving appointments to the professional staff and granting or revising clinical privileges upon the documented recommendation of the clinical director.

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) When a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 5. Program Director. (1) The program director shall be employed by the governing body and shall be responsible for the day-to-day management and ongoing direction of the facility's program. In the event of the program director's absence, he shall designate a person who shall be responsible for the day-to-day management of the facility.

(2)(a) The program director shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems.

(b) Minimum qualifications shall be those defined as professional staff in Section 1 of this administrative regulation, or at least a master's degree in education with appropriate licenses.

(c) The program director shall have two (2) years experience in services to children or adolescents including administrative responsibility in an organization for children and adolescents; three (3) professional references; two (2) personal references; and a police record check.

(d) If there is a prior crime conviction or pleas of guilty pursuant to KRS 17.165 or a Class A felony, the applicant shall not be employed.

(3) The program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Hiring and direction of personnel;

(c) Assuring that sufficient staff meeting minimum standards under appropriate supervision are on duty to meet the needs of the residents at all times;

(d) Approving purchases and payroll;

(e) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(f) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(g) Preparation of reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(h) Preparation of a written manual that defines policies and procedures which is regularly revised and updated; and

(i) Assuring that all written facility policies, plans, and procedures are followed.

(4) The program director shall attend and maintain documentation of attendance and participation of staff in continuing education programs.

Section 6. Administration and Operation. (1) Written plan.

(a) The governing body shall formulate and specify the facility's goals and objectives and describe its programs in a written plan so that the facility's performance can be measured.

(b) A copy of the written plan shall be given to all professional staff and to the program director.

(c) The written plan shall be reviewed at least annually and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(d) The written plan shall include the following:

1. An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

2. A service philosophy with clearly defined assumptions and values;

3. Estimates of the clinical needs of the children and adolescents in the area served by the facility;

4. The services provided by the facility in response to needs;

5. The population served, including age groups and other relevant characteristics of the resident population;

6. The intake or admission process, including how the initial contact is made with resident and the family or significant others;

7. The assessment and evaluation procedures provided by the facility;

8. The methods used to deliver services to meet the identified clinical needs of the residents served;

9. The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

10. The methods used to create a home-like environment for all residents;

11. The methods, means and linkages by which the facility will involve all residents in community activities, organization, and events;

12. The treatment planning process and the periodic review of therapy;

13. The discharge and aftercare planning processes;

14. The organizational relationships of each of the facility's therapeutic programs, including channels of staff communication, responsibility, and authority, as well as supervisory relationships;

15. How all professional services will be supervised by qualified, experienced personnel;

16. How all members of the professional and direct-care staff who have been assigned specific treatment responsibilities are qualified by training or experience and demonstrated competence and have appropriate clinical privileges; or are supervised by professional staff members who are qualified by experience to supervise such treatment;

17. How the facility will be linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Social Services offices and facilities, and school systems in the facility's service area; and

18. The means by which the facility provides, or makes arrangements for the provision of:

a. Emergency services and crisis stabilization;

b. Discharge and aftercare planning, that promotes continuity of care; and

c. Education and vocational services, whether provided by the facility or by agreement. Educational services to be provided by local education agency or a private agency, at a minimum, shall be arranged for sixty (60) days prior to the need for the service to be provided.

(2) Professional staff.

(a) The facility shall employ sufficient appropriately qualified professional staff to meet the treatment needs of residents and the goals and objectives of the facility.

(d) Volunteers shall not be used in place of required staff.

(e) Volunteers shall be oriented to the facility's goals and services and given appropriate clinical background regarding the facility's residents.

(7) Part-time employees. Part-time employees shall meet minimum qualifications of full-time staff and shall not be utilized to the extent that continuity in resident care is disrupted by frequent shift changes or changes in personnel from day-to-day.

(8) Staff development.

(a) Appropriate staff development programs shall be provided for administrative, professional, direct-care, and support staff under the supervision and direction of the program director or designee. Responsibility for any part of the staff development program may be delegated to appropriately qualified individuals.

(b) The participation of the program director and professional, direct-care, and support staff in staff development programs shall be documented.

(c) Professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with twenty (20) hours per year of in-service training by the facility.

(d) Library services shall be made available to meet the professional and technical needs of the facility staff. A facility which does not maintain a professional library shall have arrangements with a library or institution for use of its professional library.

(e) The facility shall communicate and collaborate, as appropriate, with national, state, and local mental health professional organizations in planning and providing ongoing training.

(f) The program director shall require that each staff member working directly with residents demonstrate basic knowledge in the following areas:

1. Child and adolescent growth and development;
2. Therapeutic principles and modalities used in the facility;
3. Building and maintaining a positive therapeutic milieu on the living unit;
4. Techniques of group and child management; and
5. Detection and reporting of child abuse and neglect.

(9) Employment practices.

(a) The facility shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The facility shall maintain job descriptions approved by the governing body for all positions specifying the qualifications, duties, and supervisory relationship of the position. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.

(e) The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees. The governing body shall establish a mechanism for notifying employees of changes in the policies and procedures.

(f) Information on the following shall be included in the policies and procedures:

1. Employee benefits;
2. Recruitment;
3. Promotion;
4. Training and staff development;
5. Employee grievances;
6. Safety and employee injuries;

7. Relationships with employee organizations;

8. Disciplinary systems;

9. Suspension and termination mechanisms;

10. Rules of conduct;

11. Lines of authority;

12. Performance appraisals;

13. Wages, hours and salary administration; and

14. Equal employment opportunity and, when required, affirmative action policies.

(g) The personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h) The policies and procedures shall require appropriate criminal history and police record checks for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

(i) The policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j) A personnel record shall be kept on each staff member and shall contain the following items:

1. Application for employment;
2. Written references and a record of verbal references;
3. Verification of all training and experience and of licensure, certification, registration, or renewals;
4. Wage and salary information, including all adjustments;
5. Performance appraisals;
6. Counseling actions;
7. Disciplinary actions;
8. Commendations;
9. Employee incident reports; and
10. Initial and subsequent health clearances.

(k) The policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job performance and shall be written. The criteria used to evaluate job performance shall be objective.

Section 7. Resident Rights. (1) The facility shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's access to treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's participation in planning for treatment;

(f) The nature of care, procedures, and treatment that he shall receive;

(g) The risks, side effects, and benefits of all medications and treatment procedures used; and

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident

statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(5) The facility shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

- (a) The name of the person, agency, or organization to which the information is to be disclosed;
- (b) The specific information to be disclosed;
- (c) The purpose of disclosure; and
- (d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) The facility shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) The facility shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the governing body and shall:

- (a) Assign responsibility for the monitoring and evaluation activities;
- (b) Delineate scope of care provided by the facility;
- (c) Identify the aspects of care that the facility provides;
- (d) Identify indicators (and appropriate clinical criteria) that can be used to monitor these aspects of care;
- (e) Establish thresholds for the indicators at which further evaluation of the care is triggered;
- (f) Collect and organize the data for each indicator;
- (g) Evaluate the care when the thresholds are reached in order to identify problems or opportunities to improve care;
- (h) Take actions to correct identified problems or to improve care;
- (i) Assess the effectiveness of the actions and document the improvement in care; and
- (j) Communicate relevant information to other individuals, departments, or services and to the facility-wide quality assurance program.

(3) The facility shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) The facility shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

- (a) Types of admission (crisis stabilization, long-term treatment);
- (b) Age and sex of accepted;
- (c) Criteria that preclude admission;
- (d) Clinical needs and problems typically addressed by the facility's programs and services;
- (e) Criteria for discharge; and
- (f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.

(3) A facility may only admit children with an emotional disability as defined in KRS 200.503(1) or a severe emotional disability as defined in KRS 200.503(2) (this does not preclude the facility from admitting a child with multiple diagnoses) who meet its written admis-

sion criteria and for whom the facility finds:

(a) Less-restrictive treatment resources accessible and available in the resident's community will not meet his treatment needs;

(b) Proper treatment of the resident's psychiatric condition requires care and treatment under the direction of a psychiatrist within a psychiatric residential treatment facility;

(c) Proper treatment of the resident's psychiatric condition requires twenty-four (24) hour care in a facility which provides comprehensive and structured therapeutic mental health treatment in a less structured environment than an inpatient hospital; and

(d) Care and treatment in a psychiatric residential treatment facility can reasonably be expected to improve the resident's condition or prevent further regression so that residential treatment facility services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of admission if treatment can be expected to effect a positive change in prognosis.

(4) Residents admitted to the facility shall have obtained age six (6), but not attained age eighteen (18). Residents may remain in care until age twenty-one (21) if admitted by their 18th birthday. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit.

(5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted.

Section 11. Resident Management. (1) Intake.

(a) The facility shall have written policies and procedures approved by the governing body for the intake process which addresses at a minimum the following:

- 1. Referral, records, and statistical data to be kept regarding applicants for residence;
- 2. Criteria for determining the eligibility of individuals for admission;
- 3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and
- 4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall include an initial assessment of the resident performed by the professional staff. The results of the assessment shall be explained to the parent or guardian or custodian if appropriate, and to the resident. As a condition at admission, the assessment shall conclude that:

- 1. The treatment required by the resident is appropriate to the intensity and restrictions of care provided by the facility; and
- 2. Alternatives for less intensive and restrictive treatment are not available or accessible to the resident.

(c) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Temporary treatment plan including the proposed initial level of intervention with the resident, the health and safety needs, the education and activity plan, and legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(d) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new

9. The treatment plan shall be reviewed and updated through multidisciplinary team conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter.

10. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it, and approved by the clinical director.

(4) Progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:

1. Documentation of implementation of the treatment plan;
2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and
3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, when available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his treatment plan shall be regularly recorded in the resident record.

(5) Discharge planning. The facility shall have written policies and procedures for discharge of residents.

(a) Discharge planning shall begin at admission and be documented in the resident's record. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan. This plan shall be maintained in the resident's record and reviewed and updated with the master treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for aftercare service(s), and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency ~~(four)~~ copies of the resident's records and discharge summary.

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that such placement reasonably meets the needs of the resident; and

4. Provide a written statement explaining the reasons for discharge to the receiving agency.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge

summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

(6) The facility shall request periodic follow-up reports from each agency providing services to the resident in accordance with the aftercare plan, and shall be responsible for documenting the outcome of the aftercare plan as possible.

Section 12. Services. The facility shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident.

(1) Mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 11 of this administrative regulation.

(b) The mental health services available through the residential treatment facility shall include the services listed below. These mental health services shall be provided directly by the residential treatment facility:

1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2. Planned verbal therapies including formal individual, family, and group therapies. These therapies shall be provided on site. These therapies include psychotherapy and other face-to-face verbal contacts between staff and the resident which are planned to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit. Verbal contacts that are incidental to other activities are excluded from this service.

3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself and to function effectively in community settings. Task and skill training activities include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Physical health services.

(a) The physical health services available through the residential treatment facility shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 11 of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule

ment of Education (~~KDE~~) and is approved by the KDE to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program must be specially accredited and approved by the Kentucky Department of Education (~~KDE~~) and be approved by the KDE to provide special education services to students with disabilities.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. In any case, education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the residential treatment facility.

(b) When the education services are not provided directly by the facility, there shall be a written agreement between the provider of education services and the facility. The provider shall be a state education department-approved program. The written agreement shall, at a minimum, address:

1. Qualifications of staff providing services;

2. Participation of educational and vocational staff in the treatment planning process;

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's master treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 USC 1400.

(e) The facility shall ensure that education services are developed and implemented in conjunction with the master treatment plan and meet the following requirements:

1. The resident's teacher shall be a member of the multidisciplinary team, when possible.

2. Each resident's master treatment plan shall include formal academic goals for remediation and continuing education.

3. Each resident eligible for special education services to the handicapped shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized treatment plan (~~ITP~~) developed by the local school district. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The program director or designee shall request an invitation to attend all individualized treatment plan (~~ITP~~) meetings. If allowed, the program director or designee shall attend all individualized treatment plan (~~ITP~~) meetings.

4. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for children with disabilities pursuant to 20 USC 1400 shall be developed with the opportunity for input from both parties.

(f) The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Activity services.

(a) The recreational therapist shall prepare a daily schedule of planned recreational activities for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities including physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) The recreational therapist shall direct, consult with, and train staff responsible for leading the scheduled activities.

(c) The recreational therapist shall evaluate the effectiveness of the activity services.

(d) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(e) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. The facility shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion and holding which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself or others or to prevent serious disruption of the therapeutic environment.

(2) Special treatment procedures shall not be used as punishment or as a convenience of staff.

(3) Special treatment procedures may be used only by trained, clinically-privileged staff.

(4) The facility shall have a written plan approved by the governing body for the use of special treatment procedures which at a minimum meet the following requirements:

(a) Any use of special treatment procedures requires clinical justification;

(b) A rationale and the clinical indications for the use of special treatment procedures shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective; and

(d) The plan shall specify the length of time the special treatment procedure may be utilized.

(5) Restraint or seclusion may be ordered or carried out only after the physician who is authorizing the use of the procedure has conducted a clinical assessment or has consulted with a member of the clinical staff who has conducted a clinical assessment of the resident.

(6) Each written order for restraint or seclusion shall be time limited and shall not exceed twenty-four (24) hours. No PRN orders for restraint or seclusion may be written.

(7) Restraint or seclusion may be utilized in an emergency by trained, clinically-privileged staff. The emergency implementation of restraint or seclusion shall not exceed thirty (30) minutes at which time a physician staff member's oral order is required if use of the

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No effect.

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

(c) If detrimental effect would result, explain detrimental effect: This proposed administrative regulation should make it easier for psychiatric residential treatment services to be provided in a cost effective manner. The accessibility of these services to the adolescent population of the Commonwealth would not be enhanced without the proposed amendments.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

~~financial assistance or applicant disputes the~~ factual accuracy of information contained in the authority's notification of adverse action or the response to a request for clarification pursuant to Section 3 of this administrative regulation, he may ~~[submit certified documentation and such other information as the authority may require, and]~~ request in writing a review of the adverse action and any response to a request for clarification ~~[redetermination]~~. This request for an initial administrative review of the adverse action may be submitted at any time, but shall not result in a suspension of any action by the authority pertaining to the petitioner during the review, except that the authority shall not report information to a credit bureau or assess collection costs during the review on an insured student loan if the petitioner submits a written request for an initial administrative review with relevant documentation attached within sixty (60) days of the date that the authority sends a notice of default by the petitioner on an insured student loan upon payment by the authority of an insurance claim to the holder of the insured student loan. If the delegated employee conducting the initial administrative review believes that the information available to the authority indicates a discrepancy and warrants steps to resolve the dispute, activities related to the adverse action may be suspended at the discretion of the delegated employee. ~~[In the event that the recipient of financial assistance or applicant disputes the application of rules and administrative regulations or discretionary determinations by the authority to particular facts, the recipient of financial assistance or applicant may request a review of the decision by the executive director. If the findings warrant, the executive director may uphold the findings of the officer or may find in favor of the recipient of financial assistance or applicant.]~~

(b) The request for initial administrative review of the adverse action shall specify the factual basis on which the adverse action is disputed and any legal or equitable defense the petitioner may have against recovery of a debt to the authority. The petitioner shall submit with the request for review all documentation the petitioner believes supports his position and shall submit any additional documentation that the authority may deem relevant and require. The petitioner may supplement the written request for review and the documentation within ten (10) working days of the date the request is received by the authority. The authority shall not be required to consider a request for review that is not in writing or is not supplemented by supporting documentation that has been requested in writing by the authority.

(c) The authority's delegated employee conducting the review shall consider any documentation submitted by the petitioner, any documentation of the authority, and information from any other source that the delegated employee may deem relevant. The documentation considered shall be made available to the petitioner upon written request. Upon request of the petitioner at the time of submitting the written request for review and clarification of why the authority cannot adequately resolve the issues raised by the petitioner by review of the documentary evidence, the petitioner or any other witness called by the petitioner or the authority with relevant factual information may appear in person or by telephone to present additional facts, if the delegated employee conducting the review determines, in his discretion, that the issues to be resolved require a determination of credibility or veracity. The petitioner's request to appear in person or by telephone shall include identification of any other individuals that the petitioner wishes to have testify, identification of the specific issues regarding which the individuals are prepared to provide additional information, and an explanation of the reasons why each individual's testimony is necessary to resolve the issues. The documentation considered and the delegated employee's summary of any in-person or telephonic testimony shall constitute the entire record of the administrative review, and shall be deemed conclusive as to all issues in dispute.

(d) The delegated employee conducting the review shall notify the petitioner in writing of the results of the administrative review, stating the essential facts and the applicable laws and administrative

regulations upon which the conclusion is based. The notice shall also indicate that the record of the administrative review and the written conclusions by the delegated employee shall be provided to the executive director or his designee for a redetermination upon request of the petitioner.

(2) Review by executive director.

(a) A review by the executive director or his designee of the results of the initial administrative review shall consider the record of the initial administrative review; applicable laws, administrative regulations, and any federal directives; and any consultation with authority personnel that he may deem necessary. A request for review by the executive director shall not result in a suspension of any action by the authority pertaining to the petitioner during the review, except that if the executive director or his designee conducting the review believes that the information available to the authority warrants steps to resolve the dispute, activities related to the adverse action may be suspended at the discretion of the executive director or his designee. If the findings warrant, the executive director or his designee may uphold the adverse action or result of the request for review or may reverse or modify the adverse action or the result of the request for review in whole or in part. The executive director or his designee may, at any time, negotiate a mutually agreeable resolution of the dispute if in his discretion, the circumstances warrant a settlement.

(b) ~~[(2)]~~ Time frame. The review by the executive director shall be requested in writing within thirty (30) ~~[sixty (60)]~~ days ~~[of notification]~~ of the date of the notice described in subsection (1)(d) of this section ~~[reason(s) for any adverse action]~~.

~~[(3)]~~ Documentation. Prior to a determination by the executive director, the recipient of financial assistance or applicant shall submit any and all documentation and information as he reasonably believes supports his position, and shall submit all information and documentation that the authority may reasonably require. The documentation and information shall be deemed conclusive evidence as to all matters in dispute, and shall be binding against all parties.

(c) ~~[(4)]~~ Notice. The written decision of the executive director or his designee ~~[recipient of financial assistance or applicant]~~ shall be sent to the petitioner, with a notice that ~~[provided with notice of the decision of the executive director, which]~~ shall inform the petitioner ~~[recipient of financial assistance or applicant]~~ of the right to request a hearing pursuant to KRS Chapter 13B within thirty (30) ~~[within ten (40)]~~ days on all issues raised by the petitioner in the request for review ~~[contained therein]~~. Service of the notice of the decision shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, if sent by U.S. first class mail, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice may otherwise be evidenced by affidavit of an individual executing personal service or a postal delivery receipt.

Section 5. ~~[3-]~~ Request for Hearing. (1)(a) If ~~[in the event of]~~ an adverse action is upheld ~~[decision]~~ by the executive director or his designee, the petitioner ~~[recipient of financial assistance or applicant]~~ may request a hearing pursuant to KRS Chapter 13B. A request for a hearing shall not result in a suspension of any action by the authority pertaining to the petitioner.

(b) The request for a hearing shall be served on the authority within thirty (30) ~~[ten (40)]~~ days after receipt of notice of the executive director's ~~[adverse]~~ decision. ~~[Service of the notice of the executive director's decision shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, if sent by U.S. first class mail, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice may otherwise be evidenced by affidavit of an individual executing personal service or a postal delivery receipt.]~~

(2) Upon receipt of a timely request for a hearing, the authority shall, in accordance with the procedures prescribed in KRS Chapter

from the Kentucky Higher Education Assistance Authority. The changes are intended to clarify that the appeal process may be used by an applicant for student aid (i.e., someone denied aid for a particular factual reason such as income, school attended, religious major, etc.). The process may also be used by someone who has already received student aid, including endorsers on loans, who is indebted to the authority and is disputing certain decisions or actions to recover the debt. Accordingly, the amendments potentially affect thousands of students who might dispute a decision or action of the Higher Education Assistance Authority. However, realistically, very few of those potentially affected ever dispute an adverse action. Only 3 students have formally appealed decisions during the past 10 years.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received following publication of the Notice of Intent to Promulgate this administrative regulation. The amendments merely clarify certain procedural steps in disputing an adverse action by the Kentucky Higher Education Assistance Authority pertaining to the awarding or recovery of student financial assistance funds. Consequently, no direct or indirect costs or savings regarding the cost of living or employment would result from implementation of these amendments.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received following publication of the Notice of Intent to Promulgate this administrative regulation. The amendments merely clarify certain procedural steps in disputing an adverse action by the Kentucky Higher Education Assistance Authority pertaining to the awarding or recovery of student financial assistance funds. Consequently, no direct or indirect costs or savings regarding the cost of doing business would result from implementation of these amendments.

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

1. First year following implementation The amendments merely clarify certain procedural steps in disputing an adverse action by the Kentucky Higher Education Assistance Authority pertaining to the awarding or recovery of student financial assistance funds. There are no new compliance, reporting or paperwork requirements imposed by the amendments to this administrative regulation.

2. Second and subsequent years: Same as #1 above.

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The amendments merely clarify certain procedural steps in disputing an adverse action by the Kentucky Higher Education Assistance Authority pertaining to the awarding or recovery of student financial assistance funds. Consequently, no direct or indirect costs or savings regarding the promulgating body would result from implementation of these amendments. Historically, so few hearings have been conducted that the financial impact of conducting the hearings is negligible to the promulgating body.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: The amendments are intended to provide comprehensive fact finding and informal dispute resolution in order to avoid the necessity for the more costly formal hearing procedure involving additional costs of a hearing officer and court reporter.

(b) Reporting and paperwork requirements: The amendments merely clarify certain procedural steps in disputing an adverse action by the Kentucky Higher Education Assistance Authority pertaining to the awarding or recovery of student financial assistance funds. There are no new reporting or paperwork requirements imposed by the amendments to this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: The amendments merely clarify certain procedural steps in disputing an adverse action by the Kentucky Higher Education Assistance Authority pertaining to the awarding or recovery of student financial assistance funds. There are no anticipated effects in either the receipt or expenditure of state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency receipts will be used for implementing this administrative regulation. If a student appeals an adverse action involving an insured student loan, then federally restricted reserve funds may be used by the agency to conduct the hearing and prehearing processes. No General Fund money will be used for this purpose.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested and no comments were received following publication of the Notice of Intent to Promulgate this administrative regulation. The amendments merely clarify certain procedural steps in disputing an adverse action by the Kentucky Higher Education Assistance Authority pertaining to the awarding or recovery of student financial assistance funds. Consequently, no economic impact would result from implementation of these amendments. The ultimate decision in a hearing of a dispute by an applicant or recipient of student aid could uphold the authority's decision to deny aid or action to recover a debt. However, the small number of hearings experienced by the agency indicate that any economic impact resulting from such an outcome would be extremely negligible.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendments are intended to clarify and make more efficient for the student and the Kentucky Higher Education Assistance Authority the processes of fact finding, informal resolution and conducting a hearing involving a dispute by an applicant or recipient of student aid from the Kentucky Higher Education Assistance Authority. The process for conducting a hearing itself is governed by KRS Chapter 13B. No alternative processes were feasible.

(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 amendments have no impact on public health or environment.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments:

(11) Tiering: Is tiering applied? No. If no, explain why tiering was or was not used. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal

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5313	Education Administration Program Consultant I	12 months
5314	Education Administration Program Consultant II	12 months
5315	Education Administration Program Manager I	12 months
5316	Education Administration Program Manager II	12 months
5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant I	12 months
5342	Education Health/P.E. Program Consultant II	12 months
5343	Education Reading Program Consultant I	12 months
5344	Education Reading Program Consultant II	12 months
5345	Education Social Studies Program Consultant I	12 months
5346	Education Social Studies Program Consultant II	12 months
5347	Education Science Program Consultant I	12 months
5348	Education Science Program Consultant II	12 months
5349	Education Language Arts Program Consultant I	12 months
5350	Education Language Arts Program Consultant II	12 months
5351	Education Math Program Consultant I	12 months
5352	Education Math Program Consultant II	12 months
5353	Education Primary Program Consultant I	12 months
5354	Education Primary Program Consultant II	12 months
5355	Education Vocational Program Consultant I	12 months
5356	Education Vocational Program Consultant II	12 months

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional

probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Secretary [Commissioner] of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in service shall be reinstated with status. An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

PETE B. OWENS, Chairman

APPROVED BY AGENCY: December 13, 1996

FILED WITH LRC: January 13, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1997, at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 14, 1997, five days prior to the scheduled hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: R. Hanson Williams, Executive Director, Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Telephone: (502) 564-7830.

REGULATORY IMPACT ANALYSIS

Contact Person: R. Hanson Williams

(1) Type and number of entities affected: This regulation affects all state agencies having probationary periods in excess of 6 months. The proposed amendment increases the probationary period from 6 months to 12 months for the classifications of Facility Security Officer, Facility Officer II, Facility Officer Sergeant, Facility Security Lieutenant, and Public Accounts Auditor Trainee.

(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. Cost of living and employment not affected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments received. Cost of doing business not affected.

(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 does not result in increased reporting, paperwork or cost.

2. Second and subsequent years: None

1. First year following implementation: There should be a decrease in the amount of paperwork required for the purchase or leasing of copy machines and through a reduction in steps for the procurement of real property, and due to the increase in scope and dollar limitation for the state procurement card.

2 Second and subsequent years: In following years, the same decrease in paperwork should be realized.

(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 and reduce the paperwork required for state agencies to lease or buy copy machines and through a reduction in steps for the procurement of real property. This change allows the Divisions of Accounts, Real Properties and Purchases to dedicate more time to major projects. The cost savings that will accrue will result from a better use of state personnel and a reduction in paperwork.

2. Continuing costs or savings: The Divisions of Purchases, Real Properties 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 Divisions of Accounts and Purchases use their time more efficiently for research into major procurement projects. Costs related to property procurements could decrease as the Division of Real Properties uses its time more efficiently.

(b) Reporting and paperwork requirements: By increasing the increasing the scope and dollar limit of the state procurement card, the Divisions of Accounts and Purchases will reduce their personnel costs and paperwork requirements. The Division of Real Properties will reduce their personnel costs and paperwork requirements for the procurement of real property, and reduce the number of secretary's orders necessary for that procurement.

(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:

(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 does not allow for the more efficient procedures under the proposed changes.

(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, the Division of Real Properties and the Division of Accounts, 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.

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:215. Contact hours, recordkeeping and reporting requirements for renewal of licensure.

RELATES TO: KRS 314.011(12), 314.073, 314.991(1) to (3)

STATUTORY AUTHORITY: KRS 314.073, 314.131(1), (2), 314.991(1) to (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 provide that the board shall establish continuing education requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing education for nurses.

Section 1. Definition. "Earning period" means November 1 through October 31 of a current licensure period.

Section 2. (1) A licensee shall complete thirty (30) contact hours of continuing education activities from an approved provider during the earning period.

(2) A minimum of two (2) contact hours of the thirty (30) hours shall be an HIV/AIDS education course approved by the Cabinet for Health Services ~~(Human Resources)~~ pursuant to 902 KAR 2:160.

(3)(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) A licensee who attends continuing education activities, whether as a teacher, participant or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(4) A licensee shall determine whether a continuing education activity is offered by an approved provider.

(5) For advanced registered nurse practitioners, a minimum of five (5) contact hours of the thirty (30) hours shall be in pharmacology.

Section 3. The following categories of programs shall not qualify as approved continuing education activities:

(1) Course content included in prelicensure nursing programs, except for licensed practical nurses enrolled in prelicensure registered nurse programs;

(2) Business meetings or committee meetings of organizations; and

(3) In-service and orientation to specific institutional policies and practices.

Section 4. (1)(a) A licensee shall maintain records to substantiate earned contact hours.

(b) Records shall include a certificate furnished by the provider.

(c) Records shall be retained for at least five (5) years following the earning period in which the contact hours were earned.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative

- (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? Tiering is not applicable.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)**

201 KAR 20:220. Provider approval.

RELATES TO: KRS 314.011(11), 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: Only those contact hours earned in programs conducted by approved providers shall satisfy the requirements for relicensure. This administrative regulation contains the substance of 201 KAR 20:205 and 201 KAR 20:210.

Section 1. (1) A provider shall submit an:

- (a) "Application for Provider Approval"; and
- (b) Application fee as set forth in 201 KAR 20:240.

(2) An applicant may establish compliance by submitting evidence of approval by an organization listed in the board's "List of Approved Organizations".

(3)(a) An applicant may request that an organization be added to the "List of Approved Organizations".

(b) An organization shall be included in the "List of Approved Organizations" if the board determines that its standards are comparable to the standards established by the provisions of this administrative regulation.

(4) If an application is approved, the board shall issue a provider number to the applicant.

(5) Provider approval shall initially expire:

- (a) For a health care agency, on June 30 of the next even-numbered year;
- (b) For a nonhealth care agency, on June 30 of the next uneven-numbered year.

(6) On or before March 30 of the year in which an approval period expires, an approved provider shall submit a:

- (a) "Request for Renewal"; and
- (b) Fee as set forth in 201 KAR 20:240.

(7) Renewal shall be for two (2) years.

(8) The participants' evaluation summary for any continuing education activity which was rated as unsatisfactory by twenty (20) percent or more of the participants shall be submitted with the renewal application.

(9)(a) Participants shall be provided with essential information for review prior to registration. This information shall include:

- 1. Learning objectives;
- 2. Content overview;
- 3. Presenter;
- 4. Number of contact hours;
- 5. Fee; and
- 6. Requirements, for successful completion.

(10) Published information about continuing education activities offered by providers approved by the board shall include the:

- (a) Provider number; and
- (b) Following statement: "Kentucky Board of Nursing approval of an individual nursing continuing education provider does not constitute endorsement of program content."

(11) A provider shall notify the board in writing within one (1)

month of any changes in its administration, such as nurse administrator, mailing address, telephone number or other relevant information.

(12) A provider shall designate and publish the number of hours of any portion of an offering dedicated to pharmacology.

Section 2. (1) The board may review a provider's continuing education activities or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider[notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4)(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time specified in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 3. Providers shall comply with the following standards:

(1) Continuing education activities shall support the promotion of quality continuing education that will:

- (a) Enhance the quality of care provided by nurses; and
- (b) Contribute directly to the competence of a nurse.

(2) The content of nursing continuing education shall be designed to:

- (a) Present current theoretical knowledge to enhance and expand nursing skills; and
- (b) Promote the development, or change in attitudes, necessary to make competent judgments and decisions in nursing.

(3) The educational content shall flow from, and support achievement of, learning objectives that promote safe, effective nursing practice.

(4) Objectives for continuing education activities shall be:

- (a) Related to nursing practice and interventions;
- (b) Stated in clearly defined expected learner outcomes; and
- (c) Consistent with needs assessment data.

(5) The continuing education activity shall reflect cooperative planning between the nurse administrator, faculty and content experts.

(6) The content for each activity shall be documented in provider files as follows:

(a) An agenda delineating the organization of the content, such as presentation schedule, presenters, topics, meals, breaks.

(b) Topical outline and corresponding time frames sufficient to appraise relevance and value of the educational activity to safe, effective nursing practice.

(7) Identified teaching methods shall be consistent with the content and learning objectives, and shall reflect the use of adult learning principles.

(8) Faculty for continuing education activities shall demonstrate content knowledge and expertise, and shall be actively involved in planning their presentations.

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment and supplies to ensure quality teaching-learning in a comfortable environment that is accessible to the target audience.

(11) Records of continuing education activities shall be maintained for a period of five (5) years, including the following:

- (a) Title, date and site of the activity;

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applicants for renewal of licenses meet minimum standards set forth by the board as necessary for safe practice. To provide consistency in procedures.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

- (1) Hold a valid and current license issued by the board;
- (2) Submit completed application form to board office, postmarked no later than the last day of the licensure period;
- (3) Submit current fee;
- (4) Have met continuing education contact hour requirements, if applicable;
- (5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;
- (6) Submit certified copies of ~~(Report)~~ any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on licenses in other jurisdictions;
- (7) Have paid all monies due to the board; and
- (8) Submit copy of an official name change document (court order, marriage certificate, divorce decree), if applicable.

Section 2. Applicants for current inactive licenses and those who are renewing for the first time an original Kentucky license issued by examination or endorsement are exempt from meeting continuing education contact hour requirements.

Section 3. (1) Applicants for renewal of current active registered nurse licensure shall earn thirty (30) contact hours of approved continuing education during the period of November 1 through October 31 of the second succeeding year for renewal of registered nurse licenses expiring on October 31 of a current licensure period. Two (2) of the thirty (30) contact hours shall be in HIV/AIDS education approved by the Cabinet for Human Resources.

(2) Applicants for renewal of current active licensed practical nurse licensure shall earn thirty (30) contact hours of approved continuing education during the period of November 1 through October 31 of the second succeeding year for renewal of licensed practical nurse licenses expiring on October 31 of a current licensure period. Two (2) of the thirty (30) contact hours shall be in HIV/AIDS education approved by the Cabinet for Health Services ~~(Human Resources)~~.

Section 4. (1) The licensure period for current active and inactive registered nurse licenses shall be for a biennial period of November 1 through October 31 of even years.

(2) The licensure period for current active and inactive licensed practical nurse licenses shall be for a biennial period of November 1 through October 31 of uneven years.

Section 5. Valid and current licenses issued by the board may be renewed on either an active or inactive status.

LINDA J. THOMAS, President

APPROVED BY AGENCY: October 18, 1996

FILED WITH LRC: January 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on February 24, 1997 at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 14, 1997, 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. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Licensees with disciplinary action in other states. Number unknown.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

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

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

1. First year following implementation: N/A

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: Unchanged

(4) Assessment of anticipated effect on state and local revenues: None

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applicable.

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Amendment)

201 KAR 20:370. Applications for licensure and registration.

RELATES TO: KRS 314.041, 314.051, 314.071

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: To assure that

(b) Reporting and paperwork requirements: No change.

(4) Assessment of anticipated effect on state and local revenues: None

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

(b) Kentucky: Unknown

(7) Assessment of alternative methods; reasons why alternatives were rejected: As concerns the provisions on criminal convictions, the board concludes that the method accepted was in the best interests of the public.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is inappropriate since the regulation applies to all those similarly situated.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)**

401 KAR 8:030. Water treatment plants; water distribution systems; certification of operators.

RELATES TO: KRS Chapters 223, 224

STATUTORY AUTHORITY: KRS 223.160 to 223.220, 224.10-100, 224.10-110[; 42 USCA 300f, 300g, 300j; 40 CFR 141.2, as amended at 54 Federal Register 27526 and 27562 (1989)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.160-223.220 establishes a board of certification and authorizes the cabinet to establish a program requiring certification of water system operators. KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use and for the certification of water plant operators. [The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising the primary enforcement responsibility.] This administrative regulation establishes standards for classification of water treatment plants and water distribution systems; qualifications of applicants; examination procedures; duties of the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators; and provisions relating to the issuance and renewal of certificates; disciplinary actions; and other provisions necessary for the certification of operators. The Safe Drinking Water Act Amendments of 1996, enacted August 6, 1996 (PL 104-182), include a provision for the certification of operators of public water

systems. The regulations to implement the federal law are required no later than thirty (30) months after enactment of the federal law. Therefore, there are no federal regulations and this administrative regulation is not more stringent than the federal law or regulation.

Section 1. General Provisions. (1)(a) Each public water system shall ensure that each component of the system is operated according to the provisions of KRS Chapters 223 and 224 and the administrative regulations of this chapter.

(b) ~~[Direct responsible charge.]~~ Each public water system shall operate its water treatment plant and water distribution system [be operated] under the supervision of a certified operator who is in [direct] responsible charge of the system. Certified operators are not required for semipublic water systems.

(c) All [The] certified operators in [direct] responsible charge shall hold a valid certificate in a class equal to or higher than that required for the system under his supervision. A [The] certified operator [in direct responsible charge] may be an individual who has been assigned [sole] responsibility for the operational procedures performed at the plant [operation of the system], or may be a person who is supervising [has been delegated the direct responsibility to supervise] others in the performance of operational procedures at the plant. [their duties in operating the system. The certified operator in direct responsible charge shall be physically on the premises of the water treatment facility or otherwise performing system-related duties within the system during the shifts for which the operator is responsible, except as provided in subsection (2) of this section. System related duties include but are not limited to attending local government meetings, having parts repaired, purchasing supplies and maintenance of distribution system appurtenances.]

(2) Staffing requirements.

(a) [Shifts.

~~(a) Water treatment systems. Public water systems shall employ a certified operator in direct responsible charge as specified in subparagraphs 1 through 4 of this paragraph;~~

~~1. Class I. Operational procedures performed at Class IA-D or IB-D water treatment systems shall be conducted under the supervision of, or by, a certified operator.~~

~~2. Class II.~~

~~a. Operational procedures performed at Class IIA water treatment systems serving a population less than 500 shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA certified water treatment plant operator. Class IIA water treatment systems serving a population equal to or greater than 500 and less than 3,000 shall be staffed with a Class IIA, IIIA or IVA certified water treatment plant operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA certified water treatment plant operator.~~

~~b. Operational procedures performed at Class IIB-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIIA, IIIB or IVA certified operator.~~

~~c. Operational procedures performed at Class IIC-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIC-D, III or IV certified operator.~~

~~3. Class III.~~

~~a. Class IIIA water treatment systems shall be staffed with a Class IIIA or IVA certified water treatment plant operator in direct responsible charge of shifts where water is treated.~~

~~b. Class IIIB and IIIC water treatment systems shall be staffed by a Class III or IVA certified water treatment plant operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class III or IVA certified water treatment plant operator.~~

~~4. Class IV. Class IVA water treatment systems shall be staffed with a Class IVA certified water treatment plant operator in direct~~

within thirty (30) calendar days of certified operator employment changes.

(b) Certified operators shall notify the cabinet within thirty (30) calendar days of employment or mailing address changes. Employment change information shall include the name and identification number of the public water system, the effective date of the change, and whether the operator is assuming or relinquishing responsibility for the plant or system. [Staffing compliance schedule. Class III and IV public water systems subject to the on-site staffing requirements of subsection (2) of this section shall comply with the staffing requirements by January 1, 1993.]

Section 2. Duties of the Board. In carrying out its responsibilities and with consideration given to the minimum standards and guidelines of the ABC, the board may:

(1) Examine the qualifications of applicants and recommend qualified applicants to the cabinet for certification;

(2) Review and approve substitutions for education and experience requirements;

(3) Review and assist the cabinet in the preparation of examinations;

(4) Review and provide comments to the cabinet on proposed drinking water operator certification administrative regulations;

(5) Review and provide comments to the cabinet on proposed training courses and seminars designed to provide continuing education to certified operators;

(6) Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with the applicable laws and administrative regulations of the Commonwealth;

(7) Review the certification administrative regulations of states which are seeking reciprocity with the Commonwealth; and

(8) Review and provide comments to the cabinet on proposed fees for training and certification of operators.

Section 3. Application and Examinations for Certification. (1) Application. An individual desiring to be certified shall file an application with the cabinet and pay the applicable fee specified in 401 KAR 8:050, Section 3. Application shall be made on a form provided by the cabinet and incorporated by reference in Section 9 of this administrative regulation. Application[s] shall not be filed with the cabinet until the individual has met the minimum qualifications required in this administrative regulation.

(2) Examinations. The board and cabinet shall be jointly responsible for preparation of the examinations which shall be used in determining knowledge, ability and judgment of the applicants. The cabinet shall administer written exams unless the cabinet and board grant a waiver to allow an oral exam. Oral exams may be administered to applicants who meet the minimum qualifications outlined in Section 8 of this administrative regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of at least seventy (70) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant.

(3) Scheduling examinations. Examinations shall be conducted at least semiannually at places and times set by the cabinet. The cabinet shall provide advance announcement of these examinations.

(4) Examination content. The cabinet will prepare examinations to address the basic differences in the duties and responsibilities of certified operators, treatment processes, [types of facilities,] drinking water standards, surface and groundwater source characteristics and other pertinent matters.

(5) Applicant's conduct. Applicants found cheating shall be subject to disciplinary action including, but not limited to, a final score of zero on the examination, denial of future applications for certification, or the provisions of Section 5 of this administrative regulation.

(6) Confidentiality of examinations. Examination questions are

confidential. Any person who copies questions, removes all or part of any examination, or reveals all or part of any examination for unauthorized use may be denied certification, be subjected to the sanctions identified in Section 5 of this administrative regulation, or be liable for civil and criminal penalties pursuant to KRS 223.991 or 224.99-010.

(7) Qualified applicants, other than those specified in subsection (5) or (6) of this section, who fail to pass an examination may register to take the examination at a regularly scheduled examination date.

Section 4. Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this administrative regulation and upon recommendation of the board, the cabinet shall issue a certificate to the applicant designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency. ~~[If information related to the operator's employment or mailing address changes from the application filed for certification, the certified operator shall provide written notification to the division within thirty (30) days. If a certified operator becomes permanently incapacitated while employed by a water treatment plant or distribution system, the employer shall notify the division.]~~

(2) Duration and renewal of certificates.

(a) Certificates for all certified operator classes, except the limited classification as identified in Section 6(5) ~~[(4)]~~ of this administrative regulation, shall be issued with a common expiration date of June 30 of even-numbered years, and shall remain valid until that date ~~[valid for up to two (2) years after each renewal]~~, unless suspended or revoked for cause. Certificates issued between January 1 and June 30 of an even-numbered year will be issued to include the next two (2) year renewal period. ~~[or replaced by one of a higher and similar classification.]~~

(b) Certificates shall expire on June 30 of even-numbered years if not renewed. Operators with expired certificates shall not be in responsible charge of a public water system.

(c) Renewals. Certificates may be renewed without examination, if the certified operator is in good standing; upon completion of the required, board-approved continuing education hours outlined in subsection (7) of this section and upon submittal of a complete renewal application and applicable fees specified in 401 KAR 8:050, Section 3. Operators desiring renewal shall apply on a form provided by the cabinet and incorporated by reference in Section 9 of this administrative regulation by June 30 of even-numbered years. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator is in good standing and has complied with all the renewal requirements of this subsection and subsection (7) of this section by June 30 of the renewal year. Certificates continued under this paragraph remain fully effective and enforceable.

(d) ~~[(b)]~~ Limited certificates shall expire on June 30 of each year. The cabinet may renew the limited certificate upon receipt of the renewal application if the certified operator has complied with all requirements for proper operation of the facility under his responsible charge and has submitted a written application and applicable fees specified in 401 KAR 8:050, Section 3.

(3) Certification for a higher classification. Certified operators who desire to become certified in a higher classification shall satisfactorily complete the requirements of Sections 3 and 8 of this administrative regulation for the higher classification ~~[before submitting a new application. Experience earned under a limited certificate shall not count toward fulfillment of qualifications for other classifications].~~

(4) Certificates shall be valid only while the holder uses reasonable care, judgment, and application of his knowledge in the performance of his duties. Certificates shall not be issued or valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) Termination of a certificate.

on the severity, duration, and number of the violations. The sanctions may include, but are not limited to:

(a) Probation for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certificate for a specified period of time, not to exceed one (1) year, during which the certificate shall be considered void;

(c) Temporary or permanent revocation of the operator's certification (temporary revocations shall not be less than one (1) year or more than four (4) years in duration); or

(d) Civil or criminal penalties against the operator.

(3) ~~(2)~~ Initial review procedures. Written complaints received by the board or cabinet on a certified operator, unless duplicitous or frivolous, shall be reviewed at the next regularly scheduled board meeting. If the charges warrant further investigation, the certified operator may be advised to appear before the board to discuss the charges levied. Upon completion of the review, the board shall make a recommendation to the cabinet regarding the operator's certification status. The board may recommend that no action be taken or that the cabinet impose a sanction identified in subsection (2) ~~(4)~~ of this section, or any other action.

(4) ~~(3)~~ Cabinet action. The cabinet shall review the evidence presented and the board's recommendations. Upon completion of the review, the cabinet will initiate the recommended action or notify the board as to why an alternative action was taken. The certified operator and his employer shall be advised by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply. A certified operator whose certificate has been suspended or revoked shall not perform responsible charge operator duties during the period that the disciplinary action remains in effect. If a certification is permanently revoked, the operator shall be ineligible for future certification as a water treatment plant or distribution system operator. Experience gained during a suspension or temporary or permanent revocation shall not be included toward meeting the requirements of Section 8 of this administrative regulation. An action taken by the cabinet pursuant to this administrative regulation shall not preclude the cabinet from pursuing additional civil or criminal action.

(5) ~~(4)~~ Sanction review and removal. During the operator's probation, suspension, or temporary revocation, the board and cabinet will monitor the operator's work activities. At the end of the sanction period, the board will recommend to the cabinet whether the sanction should be lifted or whether additional action is necessary against the certified operator.

(6) ~~(5)~~ Appeal procedures. An operator who considers himself aggrieved by the disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 6. Classification of Water Treatment Plants and Water Distribution Systems. The classification system is structured with four (4) classes of water treatment plants, Class I, II, III, or IV, which includes two (2) subclasses of treatment types, A or B, and four (4) classes of water distribution systems, Class I, II, III, or IV. Class IV is the highest class and subclass A is the highest subclass. Combined treatment and distribution classifications also exist for Class I and II systems: Class IA-D, IB-D, and IIB-D. The class structure relates to and corresponds with the operator classifications outlined in Section 7 of this administrative regulation. Operators with separate treatment and distribution certifications may supervise a facility with a combined classification if the certifications are equal to or higher than the system classification.

(1) Public water system classifications ~~Classification~~ shall be established in accordance with the classes listed in subsections (2) and (3) ~~(subsection (2))~~ of this section. However, the cabinet may make changes in system classifications in accordance with needs created by particular complexities of a public water system by reason of special features of design, or by reason of a source of supply that

has characteristics that may make operation more difficult than normal, or a combination of these conditions. Due notice of a change shall be given to the owner of the public water system.

(2) Water treatment plants or systems shall be classified as one (1) of four (4) classes, based on the cabinet-assigned design capacity for finished water production that the treatment plant is able to produce in twenty-four (24) continuous hours of production, taking all limiting factors into consideration, and the treatment process employed. Public water systems with more than one (1) treatment plant shall have each treatment plant classified in accordance with this section, and each plant shall be operated in accordance with Section 1 of this administrative regulation.

(a) The treatment plant classifications and designated capacities shall be:

1. Class I: all treatment plants which have an assigned design capacity of less than 50,000 gallons of water per day;

2. Class II: all treatment plants which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day;

3. Class III: all treatment plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons per day; and

4. Class IV: all treatment plants which have an assigned design capacity of 3,000,000 or more gallons of water per day.

(b) Each class shall be subdivided according to the type of treatment used by the plant. The subclasses shall be:

1. A: water treatment plants which use gravity filtration, except slow sand filtration as described in 401 KAR 8:150, as a part of their treatment scheme; and

2. B: water treatment plants which use treatment processes other than gravity filtration. This includes the use of slow sand filtration as described in 401 KAR 8:150 for Class I and II water treatment plants.

(c) Combination treatment and distribution system classifications. Class IA-D, IB-D, and IIB-D systems shall be classified as combined treatment and distribution systems.

(3) Water treatment plant or system classifications.

(a) Class I.

1. Class IA-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using gravity filtration, except for slow sand filtration, as a part of their treatment scheme and are responsible for the distribution of treated water. [Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.]

2. Class IB-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for distribution of treated water. [Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.]

(b) Class II:

1. Class IIA. Plants which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme. [physical and chemical treatment, including disinfection, and serving a population less than 3,000.]

2. Class IIB-D. Systems which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for the distribution of treated water. [Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.]

3. Class IIC-D. Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than

system, with one (1) year of that experience being in a Class IIID or IVD distribution system.

(4) Substitutions.

(a) If applicable, education may be substituted for a portion of the required experience, as specified below:

1. No substitution for Class I.

2. Successful completion of one (1) year of college work (~~limited to curricula in environmental engineering, environmental technology or related scientific fields~~) may be considered as equivalent to one (1) year of experience, limited to one (1) year for Class II, two (2) years for Class III, and two (2) years for Class IV.

3. Education applied to the experience requirement shall not be applied to the educational requirement or used as continuing education hours toward certification renewal.

(b) If applicable, the cabinet may authorize experience to be substituted for education requirements as specified below:

1. One (1) year experience in active operation of a water system at a Class II level or above shall be considered equivalent to one (1) year of college. Four (4) years of experience may be substituted for the requirement of a college degree by a high school graduate or recipient of a GED.

2. One (1) year of board-approved experience may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school diploma or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and may be requested to appear before the board.

3. Experience applied to education requirements shall not be applied to the experience requirement.

(c) Substitutions of related experience for treatment plant and distribution experience.

1. Experience gained in distribution system operation may be credited toward fulfillment of the treatment plant experience requirement as follows: two (2) years of distribution experience [~~in a related field~~] may be considered equivalent to one (1) year of treatment experience.

2. Experience gained in drinking water treatment plant operation may be credited toward fulfillment of the distribution system experience requirements as follows: one (1) year of drinking water treatment experience [~~in a related field~~] may be considered equivalent to one (1) year of distribution experience.

3. Partial credit, as determined by the board, may be given for operating experience in maintenance, laboratories, other work of drinking water treatment or distribution systems and allied trades.

(d) Substitutions for formal education may be as follows: training earned at [~~credits for~~] board-approved operator training schools, seminars, and technical courses may be substituted for high school and college requirements upon approval of the board. One (1) year of college work shall equal thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board-approved courses shall equal one (1) training credit, and forty-five (45) training credits shall equal eighteen (18) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) classroom [~~training credit~~] hours.

Section 9. Documents Incorporated by Reference. The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) "Drinking Water or Wastewater Operator Certification Application", "DEP 6047 (8/96)", available from the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, Frankfort, Kentucky [~~January 1992~~].

(2) "Application for Certificate Renewal", "DEP 6007 (8/96)", available from the Kentucky Natural Resources and Environmental

Protection Cabinet, Division of Water, Frankfort, Kentucky [~~January 1992~~].

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: January 8, 1997

FILED WITH LRC: January 8, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for February 24, 1997, at 1:30 p.m. (eastern time), in Room G-2 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by February 14, 1997, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on February 24, 1997. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before February 17, 1997, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes the program for the certification of water treatment plant and water distribution system operators. The regulation is being amended to change the basis for the classification of water treatment plants and to allow facilities an extension of time to meet staffing requirements if certain conditions are met. The amendments to this regulation will affect approximately 770 public water systems, and 3,029 certified operators of those public water systems. This amendment will also affect all future applicants for certification. Approximately 300 new applicants test for drinking water treatment or distribution certifications annually. The cabinet requested input from various impacted groups during the development of this regulation, including representatives of the Rural Water Association, Kentucky Water and Wastewater Operators Association, Kentucky Board of Certification of Drinking Water Treatment and Distribution System Operators, Kentucky Board of Wastewater System Operators, American Water Works Association, and Kentucky League of Cities.

(2) Direct and indirect costs or savings on the affected entities: The most significant revision to this regulation changes the classification of public water treatment plants from a population/treatment techniques based system to one based on the treatment plant's design capacity and filters utilized for treatment. Every effort has been made to avoid disruption of the current classification system, however, some facility classifications may change. Of the 770 public water systems, approximately 104 systems will be reclassified to a lower level and 57 systems will receive a higher classification. Those receiving a higher classification may request approval of a provisional staffing plan which will allow up to a two year extension for securing

cabinet to advise the system during the plans review of the type and number of operators required for the facility. Use of the design capacity and only one aspect of the treatment process will prevent systems from receiving a new classification due to a water line extension and a chemical change within the treatment process. This method was selected to alleviate sudden facility class changes and allow classification changes to be identified during the facility planning stage.

(8) Assessment of expected benefits of the administrative regulation: Training and testing operators helps assure a high quality of drinking water for customers of public water systems and protects public health. Certified operators can also extend the life of the water system through proper operation and maintenance. The reclassification of water treatment plants from a population based system to one based on design capacity and filter type will prevent systems from suddenly being moved into a higher class due to population growth with no change in their treatment process.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A well-trained and competent group of public water system operators helps assure public water system consumers of a high quality, healthful product. Sound infrastructure is also necessary to support economic development initiatives. Public water systems which are not operated properly can result in numerous problems for the consumers of water. These can range from the discoloration of clothes washed in improperly treated water, to gastrointestinal illness, and in extreme cases, death. Inexperienced operators can also operate a facility in a manner which increases the day-to-day cost of operation (i.e., electrical and chemical costs) and/or reduce the life of the facility.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No, not directly as a result of implementing this regulation, although improperly treated water affects the public's health, see above.

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

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes, tiering is applied. Different operator classifications require varying levels of education and experience for certification. Also, the plant classifications are tiered to reflect the design capacity of the treatment plant, the complexity of the treatment process, and the water source. The facility classification also establishes the operator coverage required taking into consideration the number of hours drinking water is treated. Depending on storage capacity, a higher class facility may be required to employ more operators than a smaller system to maintain coverage.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems. It requires such systems to have their water treatment plant and/or distribution system operated by properly certified operators.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendments to this administrative regulation generally provide cost savings and regulatory relief to systems which are not in compliance with the regulatory staffing requirement, however some systems may experience cost increases in that the facility classifications may change to higher levels. The costs saved or increased will depend on many factors including the geographic area of the state in which the facility is located, facility classification, and hours of water treatment. However, to ease the impact of the increases on those Class II or higher systems whose classifications are increased, the cabinet has also proposed the provisional certification (see below) to allow qualified systems time to obtain new operators or train and certify their existing operators. It should be noted, however, that the overall effect of the classification changes will result in the need for 41 fewer certified operators. As an example, Class IIIA and IVA water treatment plants which represent the largest, full chemical treatment plants, are required to have a properly certified operator on-site when water is being treated. Assuming that a system does not have any properly certified operators and treats water 24 hours per day, seven days a week, the system would need five operators working 40 hours to maintain shift and backup coverage. Assuming that five operators must be hired at an annual salary of \$21,000, the base cost to a local government would be \$105,000. Class IIA facilities require operator coverage of the daytime shift which requires two operators at a cost of \$42,000 if water is treated seven days a week. Class IA-D, IB-D, IIB-D, IIIB, and IVB systems which serve smaller populations and/or physically treat the water require an operator to be in responsible charge of the system but not necessarily on-site, all day, everyday. This allows for a part-time operator as long as water quality standards of 401 KAR Chapter 8 are maintained.

Revenues (+/-): None

Expenditures (+/-): Public water systems are already required to have properly certified operators. If the system does not have sufficient staff or will be changed to a higher classification, additional operators may need to be certified and/or employed. The regulation allows for approval of a provisional staffing plan, however, which will allow facilities which are currently in compliance with drinking water standards up to two years to secure the appropriate staff.

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act Amendments of 1996, enacted August 6, 1996 (PL 104-182), include a provision for the certification of operators of public water systems. The regulations to implement this section are required no later than 30 months after enactment of the law. Therefore, although there is a federal statute (42 USC 300g-8), presently there is no federal regulation relating to the certification of operators.

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

ADMINISTRATIVE REGISTER - 3089

25.11	Victim Notification	28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
27-01-01	Probation and Parole Procedures	28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
27-02-01	Duties of Probation and Parole Officers	28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
27-03-01	Workload Formula Supervisor/Staff Ratio	28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
27-05-01	Testimony, Court Demeanor and Availability of Legal Services	28-02-01	Expedient Release Program
27-06-01	Availability of Supervision Services	28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
27-06-02	Equal Access to Services	28-04-01	Furlough Verifications
27-07-01	Cooperation with Law Enforcement Agencies	28-05-01	Out-of-state Investigations.
27-08-01	Use of Force		
27-09-01	Kentucky Community Resources Directory		
27-11-01	Intensive Supervision		
27-12-01	Supervision: Case Classification		
27-12-02	Risk Assessment		
27-12-03	Initial Interview		
27-12-04	Conditions of Regular Supervision/Request for Modification		
27-12-05	Releasee's Report		
27-12-06	Grievance Procedures for Offenders		
27-12-07	Employment, Education/Vocational Referral		
27-12-08	Supervision Plan		
27-12-09	Casebook		
27-12-10	Guidelines for Monitoring Supervision Fee		
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority		
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)		
27-12-13	Community Service Work		
27-12-14	Client Travel Restrictions		
27-13-01	Drug and Alcohol Testing of Offenders		
27-13-02	Alcohol Detection		
27-14-01	Interstate Compact Transfers		
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation		
27-15-01	Supervision Report; Violations, Unusual Incidents		
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence		
27-17-01	Absconder Procedures		
27-18-01	Probation and Parole Issuance of Detainer/Warrant		
27-19-01	Preliminary Revocation Hearing		
27-20-01	Division of Probation and Parole Controlled Intake Program		
27-20-02	Prisoner Intake Notification		
27-20-03	Prisoner Status Change		
27-21-01	Apprehension and Transportation of Probation and Parole Violators		
27-22-01	Fugitive Unit - Apprehensions		
27-22-02	Fugitive Unit - Transportation of Fugitives		
27-23-01	In-state Transfer		
27-24-01	Closing Supervision Report		
27-24-02	Reinstatement of Clients to Active Supervision		
27-25-01	Application for Final Discharge from Parole		
27-26-01	Assistance to Former Clients and Dischargees		
27-27-01	Restoration of Civil Rights		
27-28-01	Firearms/Explosives: Application for Relief from Disability		
27-29-01	Parole Review Dates Modification		
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)		
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)		
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)		
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)		
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)		

DOUG SAPP, Commissioner

APPROVED BY AGENCY: January 10, 1997

FILED WITH LRC: January 14, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on February 21, 1997 at 9 a.m. in the State Office Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by February 13, 1997, 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. 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: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, telephone number (502) 564-2024, facsimile number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities

- (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.

JUSTICE CABINET
Department of State Police
(Amendment)

502 KAR 45:035. Application and selection process.

RELATES TO: KRS 16.040, 16.050(7), 16.080(1)

STATUTORY AUTHORITY: KRS 16.040, 16.050(7), 16.080(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040, [and] 16.050(7) and 16.080(1) grant [provide that] the Commissioner of the Kentucky State Police the authority to establish criteria for the appointment of department officers. [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 establishes eligibility requirements for applicants and the application form to be submitted by applicants. [requires applicants to complete a written application form.]

Section 1. Eligibility requirements for applicant. (1) An applicant shall meet the requirements established by KRS 16.040(2)(b), (c) and (d).

(2) An applicant shall be at least twenty-one (21) years of age.

(3) An applicant shall possess a valid driver's license against which not more than six (6) demerit points have been assessed. [Applications shall be made on forms prescribed by the commissioner and provided by the department. The Application for Employment form was adopted May 1, 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. Application. (1) An applicant shall complete "Kentucky State Police - Cadet Trooper Application for Employment" form.

(2) An applicant shall type or print legibly in ink the information requested on the "Kentucky State Police - Cadet Trooper Application for Employment" form. [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.]

Section 3. Documents Submitted with Application. An applicant shall attach the following documents with his application:

(1) Birth certificate;

(2) A certified copy of college or university transcripts, if applicable;

(3) If an applicant has had at least two (2) years' experience in law enforcement, a notarized letter from his law enforcement employer, stating:

(a) Whether the applicant was a full-time, sworn officer;

(b) The period during which the applicant was employed; and

(c) High school diploma or GED certificate.

(4) If an applicant has had at least two (2) years' active duty experience in the military, a copy of the applicant's:

(a) DD214, or a notarized letter from the applicant's commanding officer verifying the applicant's length of service; and

(b) High school diploma or GED certificate.

Section 4. Filing of Application. (1) An applicant may mail or submit his application to the Kentucky State Police Recruitment Office, 919 Versailles Road, Frankfort, Kentucky 40601.

(2) An applicant may make an appointment to submit his application at the nearest state police post or driver testing station in Louisville or Lexington.

(3) When an application is filed, an applicant shall choose a date and time to report for the written examination from the list of examinations furnished by the department pursuant to 502 KAR 45:045.

(4) An applicant shall not reapply for a twelve (12) month period following the date upon which the applicant first took the written examination if the applicant is not selected to participate in any phase of the selection process established by 502 KAR Chapter 45.

Section 5. Incorporation by Reference. (1) "Kentucky State Police - Cadet Trooper Application for Employment", is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of State Police, Recruitment Office, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: January 15, 1997

FILED WITH LRC: January 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on February 24, 1997, at 9 a.m., in Room 108 at the Department of State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 14, 1997, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jean Ann Gabbard, Personnel Director, Department of Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300, FAX: (502) 573-1636.

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.

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.

**JUSTICE CABINET
Department of State Police
(Amendment)**

502 KAR 45:055. Oral interview.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

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 the oral interview component of the examination.

Section 1. (1) An appropriate number of applicants who have

completed the CBTT shall be eligible to participate in the oral interview component of the selection process. Oral interviews shall be conducted by oral interview panels appointed by the commissioner, who shall determine the number of applicants to be interviewed. The commissioner shall determine the number of applicants to be interviewed based upon the number of available vacant funded positions and the projected attrition rates as candidates advance through the selection process. Applicants shall be selected for interviews in rank order as determined by their combined scores on the written examination and the CBTT. The commissioner may deviate from the rank order of score only when necessary to correct a manifest imbalance in the representation of minorities or women in the pool of qualified applicants, and there exists a manifest imbalance of minorities or women in the department.

(2) Each oral interview panel shall consist of three (3) members, at least one (1) of whom shall be a female or a member of a minority group, and at least one (1) of which shall be a sworn officer. To ensure fairness and consistency, panel members shall receive training related to interview methodology and equal employment opportunity law.

(3) Members of the oral interview panels shall disclose each instance in which they are personally acquainted with an applicant to be interviewed or with any member of the applicant's immediate family, and that applicant shall be interviewed by another panel.

Section 2. (1) Each interview shall be structured so that all applicants are asked the same initial questions and rated in the same manner, although panel members may ask supplementary questions if they deem it necessary.

(2) Each applicant interviewed shall be scored in each of five (5) categories by each panel member. The categories shall be:

(a) Maturity, emotional stability and ego strength;

(b) Conscientiousness and persistence;

(c) Social boldness and venturesomeness;

(d) Self-assuredness; and

(e) Self-discipline.

For each category, the applicant shall be scored on a range from zero to six (6), with six (6) being the highest score and zero being the lowest score.

(3) The oral interview score shall constitute sixty (60) ~~forty (40)~~ percent of the overall score. As soon as practicable after the oral interview, 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 by consenting to a background investigation.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: January 15, 1997

FILED WITH LRC: January 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on February 24, 1997, at 9 a.m., in Room 108 at the Department of State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 14, 1997, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jean Ann Gabbard, Personnel Director, Department of Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300, FAX: (502) 573-1636.

ADMINISTRATIVE REGISTER - 3095

tive regulation shall be held on February 24, 1997, at 9 a.m., in Room 108 at the Department of State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 14, 1997, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jean Ann Gabbard, Personnel Director, Department of Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300, FAX: (502) 573-1636.

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 potential 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.

JUSTICE CABINET Department of State Police (Amendment)

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

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040

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: January 15, 1997

FILED WITH LRC: January 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on February 24, 1997, at 9 a.m., in Room 108 at the Department of State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 14, 1997, 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 cancelled. This hearing is open to the public. Any person who wishes

(2) The normal work day for school-based employees shall coincide with the appropriate school schedule as recommended by the principal and approved by the regional executive director of the respective school operation.

(3) The appointing authority may require employees to work hours and work days other than normal including but not limited to inclement weather schedules if it is in the best interest of the agency.

(4) Employees who work within schools, regions, or divisions which require more than one (1) shift or seven (7) days a week operation may be assigned from one (10) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. Employees shall be given as much advance notice as possible when schedules are changed. The employee is required to give reasonable notice in advance of absence from a work station.

Section 3. Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour for hour basis. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) Compensatory time shall be granted for those working in full-time positions only and who perform duties and responsibilities pertaining only to this full-time position.

(3) Upon separation from state service, employees shall be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(4) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off during the following times:

(a) Spring break.

(b) Christmas break except on the four (4) official holidays normally given to state employees.

(5) All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(6) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 4. Annual Leave. (1) Full-time employees in the certified and equivalent personnel system except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work. A teacher employed to teach ten and one-half (10 1/2) months shall only accrue leave during the actual school term, unless he is approved to work extended employment.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave shall be credited on the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted.

(c) Former employees who have been reinstated and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from a violation of KRS 151B.090. Only those months for which the employee earned annual leave shall be counted in computing months of total service.

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum accumulation of annual leave and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that authorized for these purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(6) Taking annual leave.

(a) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the fiscal ~~calendar~~ year, up to at least the amount of time he earned that year.

(b) School-based employees shall take time off and be on some form of official leave status with the exception of paid state holidays during the following times:

1. Spring break.

2. Christmas break ~~[except on the four (4) official holidays normally given to state employees]~~.

(c) In cases of emergency, the supervisor may request an employee to work during the above times without loss of annual leave.

(d) A teacher employed to teach ten and one-half months (10 1/2) months may take annual leave outside the ten and one-half (10 1/2) months, provided that there is not enough opportunity to take annual leave during the ten and one-half (10 1/2) month employment year as determined by the school principal or school director and the regional director.

~~(7) [Employees are charged with annual leave for absence only on days they would otherwise work and receive pay or on designated school closure days.]~~

~~(8) [Employees shall be allowed up to two (2) professional leave days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.]~~

~~(9) [Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.]~~

~~(10) [An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.]~~

~~(11) [Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10)~~

is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) The Department for Adult and Technical Education shall continue to pay the state's contribution toward health and life insurance benefits between June 15 and August 1 for employees whose normal work year consists of ten and one-half (10 1/2) months.

(e) Any employee who leaves the certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated sick leave.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon reentrance and placed to their credit.

(12) In cases of absence due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 6. Sick Leave Sharing Procedures. (1) An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

(2) Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the Commissioner and shall include:

- (a) The name of the donor.
- (b) The agency or office in which the donor is employed.
- (c) The position number of the donor.
- (d) The social security number of the donor.
- (e) The name of the employee to which leave is being donated.
- (f) The agency or office in which the donee is employed.

(g) The donee position number.

(h) The donee Social Security Number.

(i) The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

(j) Certification by the donor that this donation is given without expectation or promise for any purpose other than that authorized by this administrative regulation.

(3) The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(4) A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this administrative regulation.

(5) An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

(6) Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

(a) Employee name.

(b) Position number.

(c) Social Security number.

(d) Employee title.

(e) The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

(f) Signature of the requestor or his personal representative.

(7) The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(8) The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(9) At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(10) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(11) No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.

(12) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(13) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(14) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be used retroactively except to cover the period between the first day sick leave would have been granted and the date of approval by the appointing authority.

(15) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(16) Donated sick leave shall be used on consecutive days except as provided by Section 5(7)(e) of this administrative regulation. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the agency if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family and medical leave under this administrative regulation.

2. Other circumstances beyond the employee's control. These circumstances include but are not limited to when a parent, spouse, or child has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(c) An employee on family and medical leave shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(8) At the conclusion of the family and medical leave, an employee shall be restored to the same position that the employee held before going on leave, or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.]

Section 8. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 9. Military Leave: Training Duty and Military Duty. (1) Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and this absence shall not be charged to leave.

(a) Absence in excess of this amount will be charged as annual leave, compensatory leave, or leave without pay.

(b) The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 10. Voting Leave. All employees who are eligible and

registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 11. Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are deemed to be in the best interest of the state. All employees granted this leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The Commissioner of Adult and Technical Education may grant a sabbatical leave of absence without pay when requested by a continuing status employee for a period not to exceed twelve (12) months for attendance at a college, university, vocational, business school or any other business and industrial training program for the purpose of retraining due to changing technology. If retraining occurs at a Kentucky Technical institution, the employee shall be exempt from tuition. Employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave, or if there is no similar position available, the first opening for a similar position for which the employee is qualified. Employees shall not be guaranteed the identical position held at the time of beginning leave.

(5) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If the investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B, shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

ADMINISTRATIVE REGISTER - 3103

authorizes the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations relating to the extent and duration of the Kentucky Tech System school term, use of school days, and extended employment.

Section 1. Postsecondary schools shall have a regular school year of four (4) terms or quarters with no less than 200 teaching days. A school calendar shall be prepared and distributed annually to students and staff.

Section 2. Postsecondary schools may provide a three (3) week intersession in addition to the regular school year.

Section 3. All postsecondary schools shall close five (5) days during the spring for a break for staff and students in the school. Staff shall be on some form of official leave during this time. The school director may approve an employee to be on work status for security reasons or for extenuating circumstances. If spring break occurs on a date designated for an official statewide conference or an approved staff development activity, the employee may be on official work status without loss of leave.

Section 4. Instructors and administrators employed in full-time postsecondary programs shall be employed twelve (12) months. Leave time shall be utilized when students are not in school or when there is no scheduled in-service. No instructor shall be prohibited from the opportunity to use leave time equal to the amount accrued during a given year.

Section 5. The regular work year for secondary teachers ~~(instructors)~~ in area centers and state vocational technical schools shall be determined by each principal with approval of the regional director ~~[August 1 through June 15]~~. During this work year, secondary students shall begin classes based on the participating school district schedules. ~~[No area center shall be closed when secondary school students need to be served for the participating school districts.]~~ Employees required to work on official holidays in order to serve students shall be granted compensatory time. If school districts close due to inclement weather, area centers will also be closed unless directed otherwise by the principal or school director. If a state operated school is closed as a result of unforeseen occurrences, including but not limited to, inclement weather, lack of services, or safety factors, staff shall not report to work and shall be on some form of official leave. [staff in the area centers or state schools shall report to work as usual or take official leave unless a state of emergency is declared by the Governor or the appointing authority.]

Section 6. Extended Employment. [Effective July 1, 1991, secondary instructors in state vocational/technical schools or area vocational education centers may be employed up to six (6) weeks beyond the ten and one-half (10.5) month calendar year (August 1 through June 15) for specified activities which cannot be carried out routinely during the year and which include at least three (3) weeks of planned direct student contact. The maximum extended time for an instructor without three (3) weeks of planned direct student contact shall be three (3) weeks. Extended instructional summer options are to be planned jointly by the instructor and school principal or director.]

(1) Extended employment activities shall conform to the following conditions:

(a) Up to six (6) weeks may be approved for supervision of students in specific classroom instruction. Before approval is granted for extended time, an instructional plan for the summer teaching activities shall be approved by the central office. This plan shall include purpose, classes to be taught, time schedule, and inclusive dates.

(b) Up to one (1) week may be approved for required state technical update and school in-service.

(c) Up to two (2) weeks may be approved for staff/industry exchange and other educational approved programs. The commissioner may request secondary instructors to perform other essential services for which extended employment shall be provided. These special requests shall be handled on an individual basis.

(2) All secondary instructors in state vocational/technical schools or area vocational education centers shall make an official request for extended employment to the regional executive director by April 15 and, by May 30 of each year, shall receive written notification of approved extended days.

Section 7. ~~[Effective July 1, 1991,]~~ The instructors employed ten and one-half (10 1/2) months may request that their salaries be paid in twenty-four (24) paychecks. The last two (2) paychecks will be adjusted if necessary to reflect any salary variance due to changes in work schedules.

Section 8. All schools including area centers, state vocational technical schools, and regional offices shall be officially closed to employees and students on the official holidays designated for Christmas and New Year's as well as the days in between. The employees shall be on some form of official leave status with the exception of the four identified paid holidays. The regional executive director may require an employee to work for safety or security reasons.

Section 9. Effective July 1, 1997, extended employment shall be eliminated except for specific activities approved by the State Board for Adult and Technical Education. Applications for extended employment shall be received by the Secretary of the State Board for Adult and Technical Education on or before April 15th in order to be considered for approval.

J. LARRY STINSON, Chairman

RODNEY CAIN, Secretary

APPROVED BY AGENCY: January 9, 1997

FILED WITH LRC: January 15, 1997 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1997, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 2nd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by February 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: The 361 state secondary vocational school personnel who are employed on a 10 1/2 month school year.

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

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

be granted compensatory leave on an hour-for-hour basis subject to the provisions of the Fair Labor Standards Act and the Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(3) All unclassified employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(4) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 4. Annual Leave. (1) Full-time employees in the unclassified service except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave shall be credited on the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted.

(c) Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS Chapter 151B, Section 16. Only those months for which the employee earned annual leave shall be counted in computing months of total service.

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority be charged against annual leave.

(6) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(7) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(8) Employees shall be allowed sufficient leave days as determined by the commissioner for the purpose of continuing staff development; i.e., participation in professional organization workshops and meetings without loss of pay.

(9) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in subsection (5) of this section.

(14) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(15) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 5. Sick Leave. (1) Employee in the unclassified system, except per diem, and part-time employees shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave on the first day of the month following the month in which the sick leave is earned.

(2) Sick leave credits: full-time and former employees.

(a) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick

- (c) The position number of the donor.
- (d) The Social Security number of the donor.
- (e) The name of the employee to which leave is being donated.
- (f) The agency or office in which the donee is employed.
- (g) The donee position number.
- (h) The donee Social Security number.
- (i) The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.
- (j) Certification by the donor that such donation is given without expectation or promise for any purpose other than that authorized by this administrative regulation.
- (3) The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.
- (4) A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this administrative regulation.
- (5) An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.
- (6) Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:
 - (a) Employee name.
 - (b) Position number.
 - (c) Social Security number.
 - (d) Employee title.
 - (e) The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.
 - (f) Signature of the requestor or his personal representative.
- (7) The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.
- (8) The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.
- (9) At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.
- (10) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.
- (11) No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.
- (12) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.
- (13) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.
- (14) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be used retroactively except to cover the period between the first day sick leave would have been granted and the date of approval by the appointing authority.
- (15) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(16) Donated sick leave shall be used on consecutive days except as provided by Section 5(7)(e) of this administrative regulation. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(17) When the recipient of donated leave returns to work, resigns, retires, or otherwise terminates from state employment, unused donated leave shall be restored to the donors, in chronological order of receipt of the donation forms, unless the recipient provides medical evidence that he or a member of his immediate family will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(18) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the donor's sick leave has been transferred to the recipient, such leave shall not be available for use by the recipient.

(19) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

Section 7. Family and Medical Leave. All leave utilized pursuant to Sections 4 and 5 of this administrative regulation that qualify as family and medical leave in accordance with the Family and Medical Leave Act, 29 USC 2601, et seq., and the federal regulations promulgated pursuant thereto, 29 CFR Part 825, shall be designated by the appointing authority as family and medical leave. ~~(1) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family and medical leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family and medical leave without pay. Unused family and medical leave shall not be carried over from year to year.~~

~~(2) Calculating a week of family and medical leave.~~

~~(a) A week of family and medical leave is the amount of time an employee normally works each week.~~

~~(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family and medical leave shall be used for calculating the employee's normal workweek.~~

~~(c) If there has been a permanent or long term change in the employee's schedule (for reasons other than family and medical leave), the hours worked under the new schedule shall be used for calculating the employee's normal workweek.~~

~~(3) The appointing authority shall grant family and medical leave upon the receipt of a completed application from an employee. The appointing authority shall require the employee to use accumulated sick, annual and compensatory leave prior to granting unpaid family and medical leave, except that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family and medical leave shall be reduced by the amount of paid or unpaid leave used. A completed application consists of the request form and the medical certification required by subsection (6) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable.~~

~~(4) Family and medical leave shall be granted:~~

~~(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child. The appointing authority shall require a couple in the employ of the same agency to limit the total amount of family and medical leave to twelve (12) weeks where leave is sought in connection with the birth, adoption, or placement of a foster child or to care for a sick parent;~~

~~(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;~~

~~(c) To an employee to care for the employee's spouse, parent, or~~

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ry leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 10. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 11. Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted such leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are deemed to be in the best interest of the state. All employees granted such leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing that he is being placed on leave without pay and of the reasons therefor. If this investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of this leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the 15th day

of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 12. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

J. LARRY STINSON, Chairman

RODNEY CAIN, Secretary

APPROVED BY AGENCY: January 9, 1997

FILED WITH LRC: January 15, 1997 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1997, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 2nd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by February 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: The 11 unclassified service employees governed by the KRS Chapter 151B personnel 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. 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: Minimal increase in cost for processing separate annual leave checks for those few employees who did not have opportunity enough to take annual leave earned during the current fiscal year.

2. Second and subsequent years: Same as above

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: 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: General fund.

(6) To the extent available from the public comments received,

Center (CDPCRC) shall designate a review officer who has not been involved in the action or inaction of the center that is being appealed for review.

(2) The administrative review shall be held within fifteen (15) working days of receipt of the request. Reasonable time extensions may be made for good cause if agreed upon by both parties.

(3) When practicable, the review shall be at a time and place convenient to the applicant or eligible individual requesting the review, and the individual shall be notified in writing as to the time and place of the review and the right to be represented at the review by counsel or a designated advocate.

(4)(a) The Director of Program Services shall send a written report of the findings and grounds for the decision ~~[shall be sent]~~ to the applicant or eligible individual within ten (10) working days of the day on which the review was completed.

(b) The written report shall state [that]:

1. That ~~(The department shall be bound by the decision;~~

2. ~~If the applicant or eligible individual is dissatisfied with the decision, a formal hearing may be requested within thirty (30) days after the receipt of administrative review decision;~~

3. ~~The request for a formal hearing shall be made by contacting the Director of Program Services of the department;~~

4. ~~The name and address of the Director of Program Services;~~

5. That the hearing shall be held pursuant to KRS Chapter 13B.

6. ~~The formal hearing shall be held within forty five (45) days of receipt of the hearing request;~~

7. ~~Reasonable time extensions may be made for good cause by the commissioner or hearing officer;~~

8. ~~Additional evidence, information, and witnesses may be presented by the applicant or eligible individual or, if appropriate, by the parent, guardian, or other representative;~~

9. ~~The applicant or eligible individual may be represented by counsel or other appropriate advocate;~~

10. ~~The applicant or client may examine all witnesses and other relevant sources of information and evidence;~~

Section 6. [Procedures for Impartial Hearings.] (1) The hearing officer shall be selected by the applicant or eligible individual with a disability from the pool of approved and trained hearing officers maintained by the department.

(2) The department shall send a list of hearing officers to the applicant or eligible individual within five (5) working days from receipt of the hearing request.

(3) The applicant or eligible individual shall notify the department of the selected hearing officer within five (5) working days of receipt of the list.

(4) The notification from the applicant or eligible individual shall include an issue statement for the hearing and shall identify any accommodations required by the hearing (e.g., accessible formats for print materials or a sign language interpreter).

(5) The designated hearing officer may be disqualified by the department representative for a reasonable cause such as, personal knowledge or involvement with the case or the applicant or eligible individual or a financial interest which would compromise the objectivity of the decision.

(6) If the commissioner determines that reasonable cause supports disqualification, the applicant or eligible individual shall be contacted to select another hearing officer.

(7) If the selected hearing officer agrees to conduct the hearing, the hearing officer shall be responsible for communication with each party concerning the hearing. If the applicant or eligible individual obtains legal counsel, communication with counsel shall constitute notice to the individual.

(8)(a) The hearing officer shall send written notification of the scheduled hearing to the applicant or eligible individual and the department representative.

(b) The notification shall include:

1. The names, official titles, mailing addresses, and phone numbers of all parties to the hearing, including the department representative and counsel for the applicant or eligible individual, if any;

2. The date, time, and place of the hearing;

3. The issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

4. The applicant's or eligible individual's right to legal counsel;

5. The parties' right to inspect any documentary or tangible evidence to be used at the hearing or any relevant records in the possession of the department; and

6. A statement that if any party fails to attend or participate as required at any stage of the hearing process, a default judgment and recommended order against that party may be entered.

(9)(a) With reasonable notice, the hearing officer may conduct a prehearing conference to:

1. Clarify issues;

2. Explore settlement possibilities; or

3. Rule on pending motions or other matters that will promote the orderly and prompt conduct of the hearing.

(b) Prior to the hearing, the hearing officer shall issue a prehearing order incorporating matters determined at the prehearing conference.

(10) At least five (5) calendar days prior to the hearing:

(a) All documents which will be presented as evidence shall be disclosed between the parties; and

(b) A list of witnesses to be called to testify during the hearing shall be submitted to the hearing officer by each party with a copy submitted to the other party.

(11)(a) A hearing officer may approve a request from either party to take the deposition of an unavailable witness.

(b) If both parties agree, a hearing officer may approve the introduction of video tape depositions as evidence, in lieu of a witness's appearance at the hearing.

(12) The hearing officer shall not communicate off the record with any party to the hearing or other person who has a direct or indirect interest in the outcome of the hearing concerning any substantive issue while the proceeding is pending. Ex parte communication concerning procedural or scheduling questions may be permissible to expedite the proceeding.

Section 7. Conduct of the Hearing. (1) The hearing officer shall:

(a) Preside over the hearing;

(b) Make decisions and rule on matters concerning the hearing; and

(c) Insure order and decorum at the hearing.

(2) The applicant or eligible individual shall designate whether the hearing will be open or closed.

(3) The rules of civil procedure do not apply.

(4) The department shall present its case first, examine witnesses and submit documentation subject to cross examination. The applicant or eligible individual shall then present, examine witnesses and submit documentation subject to cross examination.

(5) Each party shall provide three (3) copies of any exhibit to be introduced into evidence.

(6) The hearing officer shall exclude any evidence that has not been disclosed to the opposing party at least five (5) days before the hearing. Parties may agree to enter undisclosed evidence which does not present an unfair surprise. The hearing officer may enter rebuttal evidence in the record.

(7) Judicial notice shall be taken of governing laws, administrative regulations, and the department's state plan.

(8) The tape recording of all testimony, motions, and objection in the hearing shall constitute the formal record of the hearing unless extraordinary circumstances justify preparation of a transcript at the request of the hearing officer or the applicant or eligible individual or

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(a) Necessity of proposed regulation if in conflict;
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and pursuant to KRS Chapter 13B.

(11) TIERING: Is tiering applied? No. The federal law requires that all applicants and eligible individuals for vocational rehabilitation services be afforded an opportunity for settlement and appeal. This administrative regulation identifies the procedures for those administrative settlements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361.

2. State compliance standards. This administrative regulation establishes procedures for dispute resolutions pursuant to the federal mandate and KRS Chapter 13B.

3. Minimum or uniform standards contained in federal mandate. State agencies are required to adopt policies and procedures necessary to assure applicants and eligible individuals an administrative avenue for resolving disputes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements.

WORKFORCE DEVELOPMENT CABINET Department for the Blind (Amendment)

782 KAR 1:040. Appeal procedures.

RELATES TO: KRS 163.450 to 163.470, 29 USC 701 et seq., 34 CFR Part 361

STATUTORY AUTHORITY: KRS 163.470, 29 USC 701 et seq., 34 CFR Part 361.48

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish procedures so that any applicant for or client of vocational rehabilitation services who is dissatisfied with determinations made by staff of the department concerning the furnishing or denial of services may request a timely review of those determinations.

Section 1. Definitions. (1) "Applicant" means an individual who submits an application for vocational rehabilitation services.

(2) "Agency" or "department" means the Department for the Blind, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Commissioner" means the Commissioner of the Department for the Blind.

(4) "Eligible individual" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(5) "Impartial hearing officer" means an individual who:

(a) is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of

higher education;

(b) Is not a member of the Department for the Blind Advisory Council;

(c) Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(d) Has knowledge of the delivery of vocational rehabilitation services, the federal and state laws and regulations governing the provision of vocational rehabilitation services;

(e) Has training with respect to the performance of official duties; and

(f) Has no personal or financial interest that would be in conflict with the objectivity of the individual.

Section 2. Right of Appeal and Information. (1) An applicant or eligible applicant who is dissatisfied with any action by the department concerning the furnishing or denial of services shall have the right to appeal that action. All applicants or eligible individuals shall be informed of entitlements available under this section, including the names and addresses of department individuals with whom an appeal may be filed. The request for appeal shall be made in writing by telephone or by recording.

(2) Unless the eligible individual, or an authorized representative of the individual, so requests, pending a final determination of a requested hearing or other final resolution, the department shall not institute a suspension, reduction, or termination of services being provided under the individualized written rehabilitation program unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the eligible individual.

(3) The department shall advise all applicants and eligible individuals of the existence of the Client Assistance Program of the Workforce Development Cabinet, the services provided by the program, and how to contact the program.

(4) The department shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or eligible individual who appeals an action concerning the furnishing or denial of services.

Section 3. Choice of Appeal Procedures and Time Frames. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, of agency action or inaction, an applicant or eligible individual may appeal.

(2) Applicants or eligible individuals may choose:

(a) An administrative review conducted by an agency staff member not involved in the agency action; or

(b) A formal hearing conducted by an impartial hearing officer.

(3) If an administrative review is chosen and the applicant or eligible individual is dissatisfied with the resolution, a hearing may be requested within thirty (30) days after the receipt of administrative review decision. ~~(The hearing shall be held within forty five (45) days of receipt of the hearing request. Reasonable time extensions may be made for good cause by the commissioner or hearing officer.)~~

Section 4. Administrative Review. (1) If an applicant or eligible individual is dissatisfied with an action regarding the furnishing or denial of services, the applicant or eligible individual may request an administrative review by contacting the Director of Client Services of the department.

(2) The following procedures shall be followed in an administrative review:

(a) The Director of Client Services or designee of the Director of Client Services shall conduct the administrative review;

(b) The administrative review shall be held within fifteen (15) working days of receipt of the request. Reasonable time extensions may be made for good cause by commissioner or hearing officer;

~~(c) (The review shall be held at a time and place convenient to the applicant or eligible individual requesting the review;~~

~~(d) The applicant or eligible individual shall be notified in writing of:~~

~~Section 7. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the commissioner the written recommended order within thirty (30) days from the completion of the hearing unless both parties agree to a reasonable time extension.~~

~~(2) The recommended order shall be based exclusively on the evidence on the record, making findings of fact and recommendations.~~

~~(3) Within twenty (20) days of the mailing of the decision, the commissioner shall notify the applicant or eligible individual of the intent to review the recommended order in whole or in part.~~

~~(4) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:~~

~~(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion or otherwise unreasonable.~~

~~(b) Whether the hearing officer's decision was supported by facts in the record and applicable federal and state laws and regulations.~~

~~(5) If the commissioner elects to review the decision, the applicant or eligible individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.~~

~~(6) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a review of the record evidence, the hearing officer's written recommended order, and any additional relevant written documentation submitted by the applicant or eligible individual.~~

~~(7) The commissioner shall not overturn or modify a decision of an impartial hearing officer, or part of a decision, that supports the position of the applicant or eligible individual unless the commissioner concludes, on the basis of clear and convincing evidence, that the decision of the independent hearing officer is clearly erroneous on the basis of being contrary to federal or state law or regulation.~~

~~(8) A final decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the recommended order of the hearing officer. The commissioner may grant a reasonable time extension in order for the applicant or eligible individual to submit additional evidence relevant to the final decision.~~

~~(9) The commissioner's final decision shall state the findings and the grounds for the decision.~~

~~(10) The commissioner shall not delegate responsibility to make a final decision to any administrator or employee of the department.~~

~~(11) The decision of the commissioner shall be the final state agency action.~~

~~(12) The commissioner shall provide a copy of the final decision to both parties.]~~

DENISE PLACIDO, Commissioner
RODNEY CAIN, Secretary

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: January 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 21, 1997 at 10 a.m. Eastern Time at the Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242. However this hearing will be canceled unless interested persons notify the following office in writing by February 13, 1997, of their desire to appear and testify at the hearing: Jeanne Pherson, Department for the Blind, Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242, (502) 327-6010 or (800) 346-2115, (502) 327-9991 (FAX). The Department for the Blind does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter

or other auxiliary aid or service is needed, contact Jeanne Pherson at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: Jeanne Pherson

(1) Type and number of entities affected: All applicants for vocational rehabilitation services from the Department for the Blind.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will be contingent upon number of appeals received but these reporting and paperwork requirements currently exist.

(4) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds under the federal Rehabilitation Act of 1973, as amended, will be used for implementation and enforcement.

(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: No alternative methods were considered. Counsel has advised that the material is designated by KRS Chapter 13A and federal law and regulation as regulatory in nature with specific requirements imposed by the Rehabilitation Act Amendments of 1992, and KRS Chapter 13B.

(8) Assessment of expected benefits:

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

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

(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: There is no statute, regulation or policy which is in conflict, overlaps, or duplicates this regulation which enumerates settlement procedures to be conducted for applicants and individuals eligible for vocational rehabilitation services from the department as prescribed by the Rehabilitation Act Amendments of 1992.

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

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

(10) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and pursuant to KRS Chapter 13B.

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and maintained eligibility to the Kentucky Standardbred Development Fund.

Section 13. [42-] Each race shall be a one (1) mile dash.

Section 14. Post positions for the final, consolation, and elimination races shall be an open draw.

Section 15. There shall be no more than nine (9) starters per final race on a mile track and no more than eight (8) horses on a one-half (1/2) mile track. If more than nine (9) horses for a mile track or (8) eight horses for a one-half (1/2) mile track declare in, eliminations shall be held the week before the final race. All horses shall be on the gate for the final race. ~~[43. The race will split if more than eleven (11) declare to start. No division shall contain more than nine (9) horses. In the case of a split the event will be raced as follows: The nominating, sustaining, stallion and starting fees shall be added to the purse and each division shall race for an equal part of that purse.]~~

Section 16. There shall be a \$500 starting fee for each horse declared to race. This starting fee shall be payable to the racing association at the time of declaration. Purses for the final races and the consolation races shall consist of nominating fees, sustaining fees, stallion fees, and added money from the Commonwealth of Kentucky. These monies shall be divided eighty (80) percent for the final race and twenty (20) percent for the consolation race in each sex and gait division. All money shall go to the final race if there is not a consolation race in that sex and gait division. Elimination races shall be raced for the \$500 starting fee. No further payments are required to start.

Section 17. The total number of horses entered shall determine the number of elimination races that shall be required. The number of horses entered to require elimination races to be split into divisions shall be as follows:

(1) One (1) mile track:

(a) Nine (9) horses entered or less - no elimination race(s) shall be required.

(b) Ten (10) to twelve (12) horses entered - one (1) elimination race.

(c) Thirteen (13) to eighteen (18) horses entered - two (2) elimination races.

(d) Nineteen (19) to twenty-seven (27) horses entered - three (3) elimination races.

(e) Twenty-eight (28) to thirty-six (36) horses entered - four (4) elimination races.

(f) Thirty-seven (37) to forty-five (45) horses entered - five (5) elimination races.

(g) Forty-six (46) to fifty-four (54) horses entered - six (6) elimination races.

(2) One-half (1/2) mile track:

(a) Eight (8) horses entered or less - no elimination race(s) shall be required.

(b) Nine (9) to ten (10) horses entered - one (1) elimination race.

(c) Eleven (11) to sixteen (16) horses entered - two (2) elimination races.

(d) Seventeen (17) to twenty-four (24) horses entered - three (3) elimination races.

(e) Twenty-five (25) to thirty-two (32) horses entered - four (4) elimination races.

(f) Thirty-three (33) to forty (40) horses entered - five (5) elimination races.

(g) Forty-one (41) to forty-eight (48) horses entered - six (6) elimination races.

Section 18. Starters for the final races, when eliminations are required, shall be as follows:

(1) One (1) mile track:

(a) Two (2) elimination races - the first four (4) horses from each race and one (1) horse drawn from the fifth place finishers.

(b) Three (3) elimination races - the first three (3) horses from each race.

(c) Four (4) elimination races - the first two (2) horses from each race and one (1) horse drawn from the third place finishers.

(d) Five (5) elimination races - the winners from each race and four (4) horses drawn from the second place finishers.

(e) Six (6) elimination races - the winners from each race and three (3) horses drawn from the second place finishers.

(2) One-half (1/2) mile track:

(a) Two (2) elimination races - the first four (4) finishers from each race.

(b) Three (3) elimination races - the first two (2) horses in each race and two (2) horses drawn from the third place finishers.

(c) Four (4) elimination races - the first two (2) horses from each race.

(d) Five (5) elimination races - the winners from each race and three (3) horses drawn from the second place finishers.

(e) Six (6) elimination races - the winners from all six (6) races and two (2) horses drawn from the second place finishers.

Section 19. There shall be no consolation race(s) if less than fifteen (15) horses declare in to the stake on a one (1) mile track and less than fourteen (14) horses declare in to the stake on a one-half (1/2) mile track. All monies shall be added to the final race.

Section 20. [44-] Gait must be specified by the first two (2) year old payment. Change of gait may be made at the time of declaration at the track, but sustaining payments remain in the funds of the original gait specified. No horse may race on both gaits in the same year.

Section 21. [45-] A race shall be raced in separate divisions as follows:

(1) Colt/gelding/ridgeling division; and

(2) Filly divisions.

~~[Section 16. Declaration fees shall be added to the purse and will be made payable to the racing association at the time of declaration.]~~

Section 22. [47-] (1) The purses for all races shall be distributed on the following percentage basis:

(a) 50-25-12-8-5: five (5) starters or more;

(b) 55-25-12-8 ~~[50-25-15-10]~~: four (4) starters;

(c) 55-30-15 ~~[60-30-10]~~: three (3) starters;

(d) 65-35; two (2) starters;

(e) 100: one (1) starter.

(2) ~~[The nominating, sustaining, stallion, supplemental and starting fees shall be added to the purse and each division shall race for an equal part of that purse.]~~ This will apply at each of the Kentucky pari-mutuel tracks.

Section 23. [48-] Should circumstances prevent the racing of any event, if the race is not drawn, all stake payments shall be refunded to the eligible horses ~~[added monies will be equally divided among horses eligible]~~ for the uncontested event at the time the event is cancelled ~~[of declaring off]~~. These eligible horses shall include only the horses that made the three (3) required payments as described in 811 KAR 1:215, Section 30. The added monies provided by the Commonwealth of Kentucky shall roll over into the following year to be distributed evenly between the races of each age, sex, and gait. In the event the race is drawn, the monies shall ~~[will]~~ be equally divided among the horses entered to start. This shall ~~[will]~~ include stake payments, declaration fees, and purses provided by the Kentucky Standardbred Development Fund, and added monies

trative regulative. 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: Mr. Calvert Bratton, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, (606) 246-2040 Phone, (606) 246-2039 Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Calvert Bratton

(1) Type and number of entities affected: This would affect individuals in Kentucky who own standardbred stallions. It would also affect individuals who own Kentucky sired standardbred yearlings, 2-year olds, and 3-year olds. During the 1996 breeding season there were 27 stallions, 462 yearlings, 94 two-year olds, and 120 three-year olds nominated to the program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are 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. There are 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: Stallions breeding 25 or more mares during a breeding season shall pay one full stud fee to nominate to the program for that year. Yearling payments and sustaining payments for 2 and 3 year olds will double. There will be an increase in paperwork to deal with the annual stallion registration fee following the gait of the stallion. Additional paperwork will depend on the number of horses nominated.

2. Second and subsequent years: Will depend on the number of horses nominated to the program.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no changes that affect the Kentucky Racing Commission.

2. Continuing costs or savings: There are none.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: There will be an increase in paperwork to deal with the new section that states the annual stallion registration fee shall follow the gait of the stallion. Additional paperwork will depend on the number of horses nominated to the program.

(4) Assessment of anticipated effect on state and local revenues: This change will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All nominating and sustaining increases will be paid by the owners of the horses.

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

(a) Geographical area in which administrative regulation will be implemented: There are none.

(b) Kentucky: There are none.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are 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: There are none.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be none.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments:

(11) Tiering: Is tiering applied? Tiering was not applied. Not everyone in the standardbred industry will be affected, only those who participate in the Kentucky Standardbred Development Fund Program.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Epidemiology (Amendment)

902 KAR 2:020. Disease surveillance. [~~Reportable diseases.~~]

RELATES TO: KRS 211.180, 214.010, 333.130

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources, established and created the Cabinet for Health Services, changed the name of the Department for Health Services to Department for Public Health, and placed the Department for Public Health and all its programs under the Cabinet for Health Services. KRS 211.180 mandates the Cabinet for Human Resources to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards as may be controlled. This administrative regulation is being promulgated to require notification to the local health department and the Department for Public Health, of diseases and conditions of public health importance. This notification facilitates rapid public health action to control diseases, and permits an accurate assessment of the health status of the Commonwealth. (This administrative regulation is being promulgated to achieve uniform reporting of selected diseases.)

Section 1. Definitions. (1) "Priority notification" means notification as required in Sections 2 and 4 of this administrative regulation shall be made within one (1) business day.

(2) "Routine notification" means notification as required in Sections 2 and 5 of this administrative regulation shall be made within five (5) business days.

(3) "Urgent notification" means notification as required in Sections 2 and 3 of this administrative regulation shall be made immediately in a time period not greater than twenty-four (24) hours, except as provided by Section 3(2) of this administrative regulation.

Section 2. Notification Standards. (1) Notification shall be given by a health professional licensed under KRS Chapters 311 through 314, and a health facility licensed under KRS Chapter 216B, when that professional makes a probable diagnosis of a disease listed in Sections 3, 4 or 5 of this administrative regulation, and is either defined in "Case Definitions for Public Health Surveillance" or by reasonable suspicion of the diagnosis.

(2) A single report by a hospital of a condition diagnosed by a test result from the hospital laboratory shall meet the requirements of subsections (1) and (5) of this section.

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Section 7. Laboratory Surveillance. (1) In addition to making the reports as specified in Sections 2 through 5 of this administrative regulation, laboratories licensed under KRS Chapter 333 shall report on a weekly basis, the following laboratory results, in line-listed or other mutually acceptable format, to the Department for Public Health.

(2) Reports shall contain the name, birth date, county of residence, and specific laboratory information pertinent to the result.

(3) The following diseases shall be reported in accordance with subsections (1) and (2) of this section.

- (a) Salmonella isolates;
- (b) Campylobacter isolates;
- (c) Cryptosporidium oocysts;
- (d) Influenza virus isolates.

(4) Upon request by the Department for Public Health, a clinical laboratory within a hospital licensed under KRS Chapter 216B, or a laboratory licensed under KRS Chapter 333 shall report numbers of isolates and information regarding the antimicrobial resistance patterns of the isolates. The report shall be made at intervals agreed upon between the laboratory and the department for the following:

- (a) Streptococcus pneumoniae;
- (b) Staphylococcus aureus;
- (c) Enterococcus species; or
- (d) Other organism specified in a request which includes a justification of the public health importance of the organism.

Section 8. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) Health professionals licensed under KRS Chapters 311 through 314, health facilities licensed under KRS Chapter 216B, and laboratories licensed under KRS Chapter 333, shall report:

- (a) A positive serologic test result for HIV infection;
- (b) An absolute CD-4 cell test result of less than 200 cells per cubic millimeter, or a relative CD4+ percentage of less than fourteen (14) percent of total lymphocytes; or
- (c) Other test results which the Centers for Disease Control and Prevention (CDC) determine to constitute a diagnosis of AIDS when combined with a positive HIV antibody test; or
- (d) A diagnosis of AIDS as defined by CDC.

(2) HIV infection and AIDS diagnoses shall be reported within seven (7) business days and, whenever possible, on the "Adult HIV/AIDS Confidential Case Report form" or the "Pediatric HIV/AIDS Confidential Case Report form". These forms are available from the HIV/AIDS Program, Department for Public Health.

(a) Reports for residents of Jefferson, Henry, Oldham, Bullitt, Shelby, Spencer, and Trimble Counties shall be submitted to the HIV/AIDS Surveillance Program of the Jefferson County Health Department.

(b) Reports for residents of all other Kentucky counties shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, or as directed by the HIV/AIDS project coordinator.

(3) Reports of CD4+ cell test results, regardless of county of residence, shall be reported on a monthly basis to the HIV/AIDS Program of the Department for Public Health or as directed by the HIV/AIDS surveillance coordinator.

(4) Reports for persons with HIV infection without a diagnosis of AIDS shall be identified by the initials of the patient's first and last name and shall include:

- (a) Date of birth;
- (b) Gender;
- (c) Race;
- (d) Risk factor, as identified by CDC, if known;
- (e) County of residence;
- (f) Name of facility submitting the report;
- (g) Date and type of tests performed;
- (h) Results of tuberculosis testing, if available;
- (i) Identifying and locating information for the person's spouse, if

applicable.

(5) Reports of AIDS cases shall include the patient's full name and the information in subsection (4)(a) through (h) of this section; and

- (a) The patient's complete address;
- (b) CD4+ cell count, if known;
- (c) Opportunistic infections diagnosed;
- (d) Date of onset of illness.

(6) Reports of AIDS shall be made whether or not the patient has been previously reported as having HIV infection. If the patient has not been previously reported as having HIV infection, the AIDS report shall also serve as the report of HIV infection.

(7) Reports of all CD4+ test results shall include the patient's name and:

- (a) Date of birth;
- (b) Gender;
- (c) Name of health professional ordering the test;
- (d) Date the test was performed or ordered;
- (e) The absolute cell count or relative percentage.

Section 9. Reporting of Communicable Diseases in Animals. (1) Every veterinarian licensed under KRS Chapter 321, upon arriving at a probable diagnosis in an animal of a condition known to be communicable to humans, shall report the occurrence within one (1) business day to:

- (a) The local health department in which the animal is located; or
- (b) If the local health department cannot be reached, the Department for Public Health.

(2) Upon the confirmation of a laboratory test result which indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a clinical laboratory licensed under KRS Chapter 333 shall, within one (1) business day, report the result to:

- (a) The local health department serving the jurisdiction in which the animal is located; or
- (b) To the Department for Public Health.
- (3) The local health department:
 - (a) Shall investigate the report and carry out public measures appropriate to the condition;
 - (b) Shall notify the Department for Public Health of the occurrence, in writing, within five (5) business days; and
 - (c) May seek assistance from the Department for Public Health.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference in this administrative regulation:

- (a) "Morbidity and Mortality Weekly Report; Case Definitions for Public Health Surveillance", MMWR, October 19, 1990, Volume 39, Number RR-13, published by the Epidemiology Program Office, Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia;
- (b) "Adult HIV/AIDS Confidential Case Report (CDC 50.42A, Revised July, 1993)"; and
- (c) "Pediatric HIV/AIDS Confidential Case Report form (CDC 50.42B, Revised March, 1995)".

(2) Material incorporated by reference may be reviewed, copied, or obtained at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky, 40621. [Reportable Diseases. Time of Reporting. Because of their public health significance, the following diseases and occurrences are declared to be reportable within the time period specified below. All cases shall be reported:

(1) Diseases to be reported within twenty four (24) hours. The following diseases and occurrences shall be reported individually within twenty four (24) hours of arriving at a probable diagnosis:

- (a) Animal bites;
- (b) Anthrax;
- (c) Botulism (other than infant);
- (d) Campylobacteriosis;

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Department for Health Services.]

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: January 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1997 at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by February 13, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. 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: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, Telephone: (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 health care providers licensed under KRS Chapters 311 through 314 laboratories licensed under KRS Chapter 333; health facilities licensed under KRS Chapter 216B; and local health departments.

(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 Notice of Intent public hearing was requested. 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: No Notice of Intent public hearing was requested. 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 no increase in the paperwork or cost to affected entities. The addition to the list of diseases will be offset by the deletions. There may be a decrease in the paperwork and cost to reporting sources since rather than uniform reporting by all sources for all diseases, different surveillance methods will be used, i.e., sentinel surveillance or lab only.

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: See (2)(c)1 above.

2. Continuing cost or savings: See (2)(c)1 above.

3. Additional factors increasing or decreasing costs: See (2)(c)1 above.

(b) Reporting and paperwork requirements: No increase to the cabinet.

(4) Assessment of anticipated effect on state and local revenues: There will be no impact on state and local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund dollars are available to carry out the cabinet's responsibility to control diseases in the Commonwealth, a part of which is disease surveillance.

(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 Notice of Intent public hearing was requested and no comments were received.

(b) Kentucky: see 6(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 211.180 requires the cabinet to establish a program to control disease and to adopt administrative regulations to carry this out.

(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 systematic collection, tabulation, analysis and dissemination of data to determine the incidence and prevalence of disease among the citizenry provide public health practitioners the basis for planning prevention and control programs, i.e. need for immunizations or the control of a food or water borne disease outbreak.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See 8(a) above.

(c) If detrimental effect would result, explain detrimental effect: See 8(a) above.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict, overlap, or duplication is known to exist.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because all entities are regulated in the same manner.

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used.) No. KRS Chapter 315 requires the board to adopt qualifications and identify tasks. KRS Chapter 315 sets forth the distinction between the classes as the degree of supervision that a pharmacist may exercise with regard to a delegated task.

**GENERAL GOVERNMENT CABINET
Kentucky Board Of Pharmacy
(New Administrative Regulation)**

201 KAR 2:220. Collaborative care agreements.

RELATES TO: KRS 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the development and maintenance of collaborative care agreements between an individual pharmacist and an individual practitioner.

Section 1. A collaborative care agreement between an individual pharmacist and an individual practitioner shall meet the following requirements:

(1) The agreement shall be in writing, signed and dated by the individual practitioner and the individual pharmacist;

(2) The agreement shall provide for notification to the patient of the existence of the agreement and the extent of the authority conferred by the individual practitioner upon the individual pharmacist;

(3) The agreement shall provide for notification by the individual practitioner or the individual pharmacist to the patient of termination of the agreement;

(4) The agreement shall provide for written notification by the individual practitioner and individual pharmacist of termination of the agreement and shall include a provision establishing the method by which the agreement may be terminated;

(5) The agreement shall provide for the incorporation by reference of the specific method (e.g., protocols, criteria, standing orders) by which the individual practitioner authorizes the individual pharmacist to perform a service permitted by KRS 315.010(4); and

(6) The fully executed agreement shall be maintained at the pharmacist's practice site.

Section 2. Every pharmacist who establishes a collaborative care agreement with an individual practitioner shall maintain individual, patient-specific pharmaceutical care records. Patient-specific pharmaceutical care records at a minimum shall contain:

(1) The full name of the patient;

(2) The address and telephone number of the patient;

(3) The patient's contact for emergency notification;

(4) The patient's date of birth, weight, height and gender;

(5) The patient's current prescription regimen;

(6) The patient's current nonprescription regimen;

(7) The patient's current practitioners of record;

(8) The patient's medical history: known disease states, known allergies, idiosyncracies, reactions and conditions relating to prescription and nonprescription regimens, prior prescription and nonprescription regimen;

(9) The collaborative care agreement;

(10) The protocol, criteria, standing orders or other method of documentation of the authorized services;

(11) Lab tests ordered and results, where appropriate;

(12) The method(s) for assessing patient outcomes, where appropriate;

(13) The pharmacist's notes documenting what specific counseling information was provided to the patient or care giver;

(14) The pharmacist's notes of contacts between the pharmacist and the practitioner concerning the care and course of therapy of the patient; and

(15) Documentation of adherence to 201 KAR 2:210, Section 4, Prospective drug use review.

Section 3. Patient-specific pharmaceutical care records shall be maintained for not less than five (5) years. Patient-specific pharmaceutical care records shall be confidential information as defined by KRS 315.010(6). Unauthorized disclosure of patient-specific pharmaceutical care records shall constitute unprofessional conduct as defined by KRS 315.121(2)(b) and shall subject the pharmacist to disciplinary action by the board.

MICHAEL B. WYANT, President

APPROVED BY AGENCY: January 8, 1997

FILED WITH LRC: January 15, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 1:30 p.m. on February 25, 1997, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 1997, five (5) 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1027 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: Only those pharmacists who choose to enter into a collaborative care agreement.

(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 for the:

1. First year following implementation: Minimal, the regulation would require the pharmacist to maintain a contractual agreement and document aspects of the pharmacist's delivery of pharmaceutical care that should currently be documented as compliance with the board's regulations concerning patient counseling.

2. Second and subsequent years: Minimal, the regulation would require the pharmacist to maintain a contractual agreement and document aspects of the pharmacist's delivery of pharmaceutical care that should currently be documented as compliance with the board's regulations concerning patient counseling.

public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on February 21, 1997, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 239, Fax Number: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: The department does not know all of the associations that were offering group health insurance as of January 30, 1996. There are 54 associations that have applied to offer group health insurance. The department has obtained the names of 92 associations who had insurance programs as of January 30, 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: The public comments do not mention an effect on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The public comments state that the regulation is burdensome and would be costly to associations. However, no specific cost was given.

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

1. First year following implementation: Each association that offers group health insurance to its members must file the certain data regarding membership and enrollment in health plan as well as other information. The first report is due January 15, 1997. The associations will then report quarterly.

2. Second and subsequent years: Associations will continue to file quarterly updates.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department does not anticipate any additional cost or savings.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: The amount of data received.

(b) Reporting and paperwork requirements: The department will have to review all of the data collection forms to determine if we have received all of the requested information. The department will compile the data from each filing.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: One public comment stated that the regulation was to be unduly burdensome because of cost and manpower. There were

no specific comments with regard to the economic impact.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Associations are a vital part of the health insurance market. If this administrative regulation were not enacted, the department would not be able to evaluate that part of the health insurance market.

(8) Assessment of expected benefits: The department will be able to better understand and evaluate the health insurance market in Kentucky.

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

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

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

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

(11) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied equally to all associations offering group health insurance.

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (New Administrative Regulation)

908 KAR 2:100. Kentucky Early Intervention Program definitions.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulation pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Definitions. (1) "Assessment" means activities completed to develop a service plan for an eligible child and his family;

(2) "Assistive technology device" means any item, piece of equipment, or product system that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan;

(3) "Child find" means as defined in KRS 200.654(3);

(4) "Developmental quotient" or "DQ" means a specific designation described in and determined using the examiners manual of a norm referenced test. It is not an extrapolated score based on a screening test;

(5) "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families;

(6) "Disciplines" means those professionals recognized by First Steps to practice in early intervention services;

implemented: Not applicable to this regulation.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(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 by this regulation.

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

(c) If detrimental effect would result, explain detrimental effect: No effect from this regulation.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing definitions.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year

the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (New Administrative Regulation)

908 KAR 2:110. Kentucky Early Intervention Program point of entry.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the point of entry provisions pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Point of Entry. (1) The point of entry (POE) staff shall coordinate child-find efforts with local education agencies.

(2) The POE staff shall develop a child-find activity plan to be conducted in each district that includes:

(a) Completing a minimum of two (2) face-to-face contacts per month to potential referral sources in the district to explain First Steps services.

(b) Utilizing the materials developed by the Interagency Coordinating Council Public Awareness Committee by making them available to the community upon request in cooperation with the district technical assistance team and the district early intervention committee (DEIC).

(3) The POE staff shall maintain accessibility and provide public awareness activities in each district by:

(a) Having a district toll free telephone number;

(b) Having a dedicated local telephone number to be answered by person or machine twenty-four (24) hours a day, seven (7) days a week as First Steps; and

(c) Utilizing the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee.

(4) The POE staff shall maintain communication with the DEIC, district technical assistance team and lead agency on matters of child find, service options and other issues relevant to the First Steps Program, by completing the following activities:

(a) Presenting a report at each DEIC meeting that includes the following information:

1. Number of referrals and referral sources since last DEIC meeting;

2. List of current service provider including deletions and additions from last meeting;

3. Report on identified gaps related to services and location; and

4. A highlight of the month's activities that include the public awareness activities.

(b) Solicit advice from the DEIC, district technical assistance teams, and lead agency on child find, service options and other issues relevant to the First Steps Program.

(5) The POE staff shall act on all referrals for First Steps services.

(e) If a telephone is available, the POE staff shall call the family at least three (3) working days prior to the IFSP meeting to:

1. Confirm the time and place of the meeting;
2. Determine whether transportation is needed;
3. To reiterate the purpose of meeting; and
4. To answer questions.

(f) If the developmental and medical evaluators, family, and POE agree that the child is not eligible prior to the IFSP meeting, a meeting shall not be held unless any one (1) member disagrees or still has concerns, a meeting shall be held.

(g) The POE staff shall facilitate the initial IFSP meeting by:

1. Leading introductions;
2. Reviewing the purpose of the meeting;
3. Explaining the family rights and the array of services; and
4. Discussing and leading the IFSP team to verify eligibility based on collected documentation.

a. If the child is not eligible, the POE staff shall discuss other options and make the family aware they can recontact the POE anytime.

b. If the child is eligible but the family is not interested in services, the POE staff shall document the refusal of services and make the family aware they can recontact the POE any time for reevaluation.

c. If the child is eligible and the family is interested in services the POE staff shall:

(i) Develop an IFSP ensuring that all IFSP components are included; and

(ii) Determine the primary service coordinator.

(h) The POE staff shall ensure that the written IFSP is developed and recorded at the meeting.

(i) The POE staff shall send the completed IFSP to the family within five (5) working days of the IFSP meeting;

(j) The POE staff shall within five (5) working days of the IFSP meeting, make available, through appropriate releases, to the primary service coordinator the following:

1. The completed IFSP;
2. Any evaluation reports not previously sent; and
3. Any assessment reports not previously sent.

(k) The identified primary service coordinator shall send copies of the IFSP to other IFSP team members and to the parties requested by the family within ten (10) working days of the IFSP meeting.

(l) The POE staff shall send the necessary documentation of service decisions to the billing agent within five (5) working days after the IFSP meeting.

(m) The identified primary service coordinator shall be responsible for referrals to services identified on the IFSP.

(13) The POE staff shall:

(a) Provide consultation and support to the primary service coordinator as requested;

(b) Keep on file copies of all IFSP and reviews sent from the primary service coordinator;

(c) Assist primary service coordinators in transition of children from First Steps services to future services; and

(d) Track and notify the primary service coordinator that a transition conference shall be completed within federal time frame of no less than ninety (90) days prior to child's third (3) birthday by:

1. Sending notification, no later than the child's 30th month of age, to the primary service coordinator that the transition conference is due and the date by which it shall be held.

2. Receiving from the primary service coordinator the revised IFSP which incorporates the transition plan no later than one (1) week, five (5) working days, after the meeting has been held. This plan should include at least:

- a. Basic demographic information;
- b. A listing of family priorities;
- c. Family resources and concerns; and
- d. Documentation of the transition meeting and outcomes.

(14) The POE staff shall function as the primary service coordina-

tor to ensure that the transition conference and plan are completed in the event that the primary service coordinator resigns and no other primary service coordinator can be assigned in time, or referral is received within forty-five (45) days of child's third birthday.

(a) The POE staff shall be responsible for knowing the following transition procedure that include:

1. Ensuring all potential agencies and programs that could provide services to a particular child after the age of three (3), are included.

2. Processing the referrals of all children who are less than the age of two (2) years ten and one-half (10 ½) months for evaluation and First Steps services.

(b) For all children who are two (2) years and ten and one-half (10 ½) months old to age three (3), the POE shall facilitate the transition conference which would include representatives of available next referrals.

(c) The POE staff shall be responsible for conducting the transition conference and development of the plan when assuming the role of primary service coordinator.

(15) In the event the family refuses service coordination, the POE shall coordinate and facilitate all IFSP meetings.

(16) The POE staff shall maintain a complete record on all children referred through the POE by:

(a) Keeping on file all records generated by the POE or sent to the POE from all other service providers;

(b) Ensuring that all POE contacts shall be documented in the child's record;

(c) Notifying the billing agent of all changes in the status of the child or family within seven (7) working days of notification of changes to the POE or at least every six (6) months in conjunction with IFSP six (6) month reviews; and

(d) Providing data to the lead agency as requested.

(17) The POE shall provide a written data report to the DEIC:

(a) The POE shall complete the district data report monthly. The information to be included in the report is:

1. Number of referrals per quarter;
2. Sources of referrals;
3. Number of eligible children;
4. Eligibility categories and number of children in each category;
5. Number of children not eligible;
6. Number of children or families refusing services;
7. Number of IFSP's completed; and
8. Number of children who received primary, intensive and tertiary evaluations.
9. Age of child at time of referral.

(18) The POE shall collect and maintain the District Service Provider Directory.

(a) The POE shall collect data on all available First Steps service providers, maintain that data, and have the current services in a printable form, upon request from the community.

(b) Send a compiled list of changes to their district technical assistance team quarterly.

Section 2. Material Incorporated by Reference. (1) Incorporated by reference Hearing Check List may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department of Mental Health and Mental Retardation Services, 100 Fair Oaks Dr., Frankfort, Kentucky 40621. Copies may also be obtained from that office.

(2) Incorporated by reference District Early Intervention Committee Report may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department of Mental Health and Mental Retardation Services, 100 Fair Oaks Dr., Frankfort, Kentucky 40621. Copies may also be obtained from that office.

(3) Incorporated by reference Family Rights Handbook may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department of Mental Health and Mental

There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for intake through the point of entry.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child-find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (New Administrative Regulation)

908 KAR 2:120. Kentucky Early Intervention Program evaluation and eligibility.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective, July 2, 1996,

reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Evaluation. (1) Every child shall have an evaluation or assessment as a part of his permanent record;

(a) A primary evaluation shall occur within forty-five (45) days after receipt of the referral; or

(b) If primary evaluation does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(2) The primary level evaluation is the first level in a multi-level system that shall be utilized to determine eligibility:

(a) The primary level is used when there are no existing evaluations available within the allowed time limits;

(b) Primary level evaluations shall provide evaluation in all five (5) developmental areas;

(c) The primary evaluation shall be provided by an approved team consisting of a physician or nurse practitioner and a developmental evaluator;

(d) Primary evaluation shall be multidisciplinary and shall minimally include:

1. A medical component completed by a physician or a nurse practitioner that includes:

a. A history and physical examination; and

b. A hearing and vision screening; and

c. A child's medical evaluation shall be current according to the following:

(i) For children under twelve (12) months of age, the medical evaluation shall have been performed within three (3) months prior to referral to First Steps; and

(ii) For children twelve (12) months to three (3) years of age, the medical evaluation shall be performed within six (6) months prior to referral;

2. A developmental component completed by a qualified developmental evaluator that utilizes standardized measures and the results interpreted to the family.

(3) Verification of a child's eligibility for services shall be based upon the review by parents and professionals at the initial IFSP meeting;

(4) Reevaluations shall be provided when a child's eligibility warrants review or a new condition is suspected or becomes apparent;

(a) The need for reevaluation is determined by the IFSP team;

(b) Reevaluations shall be obtained at the level of evaluation determined to be needed by the IFSP team and initial evaluation provider;

(5) An intensive evaluation is the second level in a multi-level system that shall be utilized to determine eligibility:

(a) A child shall be referred for an intensive level evaluation when:

1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis or further define the child's developmental status.

2. A child doesn't meet eligibility guidelines at the primary level, but a primary evaluator or the family still have concerns that the child is developing atypically and a determination of professional judgement is needed.

3. When a concern of the child's condition warrants the review of records of the primary evaluation.

(b) An intensive level evaluation shall be provided by an approved team consisting of:

1. A board certified developmental pediatrician; or

2. A pediatrician who has experience in the area of early childhood development; and

3. One (1) or more qualified developmental professionals.

greater.

(c) Documentation of prematurity shall include a physician, or nurse practitioner, report of gestational age and a brief medical history.

(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: January 13, 1997

FILED WITH LRC: January 15, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1997, at 9 a.m. in the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by February 13, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. 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: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of the Counsel, 275 E. Main St. - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2 per cent of children under 3, or approximately 3800, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(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 relevant to cost of doing business. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health, to implement First Steps, Kentucky's Early Intervention System. In addition, federal funds will be available through title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally

- (h) First Steps services shall be flexible, accessible and responsive to family-identified needs;
- (i) First Steps services shall be provided according to the normalization principle that families should have access to services provided in as normal a fashion and environment as possible and that promote the integration of the child and family within the community;
- (3) For a child that has been evaluated for the first time and determined eligible, a meeting to develop the initial IFSP shall:
 - (a) Be conducted within forty-five (45) days after the receipt of the referral; or
 - (b) If the IFSP does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented;
 - (4) A review of the IFSP for a child and the child's family shall be conducted at least every six (6) months. A review shall be conducted more frequently if:
 - (a) The family requests such a review; or
 - (b) The child's conditions change; or
 - (c) The service providers change;
 - (5) A meeting shall be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and to revise if changes have occurred;
 - (6) With the approval of the family, the primary service coordinator shall arrange a conference to discuss the possible transition of the child. The conference shall be conducted at least ninety (90) days before the child's third birthday and shall include:
 - (a) The family;
 - (b) A representative of the local education agency and representatives of other potential settings;
 - (c) The primary service coordinator as a representative of the First Steps Program;
 - (d) Others identified by the family;
 - (7) The IFSP shall include:
 - (a) Information about the child's present level of developmental functioning. Information shall cover the following domains:
 - 1. Physical development that includes:
 - a. Vision;
 - b. Hearing;
 - c. Fine and gross motor skills; and
 - d. Health status and immunization of the child;
 - 2. Cognitive development that include skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;
 - 3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;
 - 4. Social or emotional development that include skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. This includes:
 - a. Interactions with peers and adults;
 - b. Play skills;
 - c. Self-concept development; and
 - d. Bonding with family members;
 - 5. Adaptive development that includes self-help skills necessary for independent functions, that include:
 - a. Self-feeding;
 - b. Toileting; and
 - c. Dressing and grooming;
 - (b) Performance levels to determine strengths which can be used when planning instructional strategies to teach skills;
 - (c) A description of:
 - 1. Underlying factors that may affect the child's development;
 - 2. What motivates the child, as determined on the basis of observation, child interaction and parent report;
 - (d) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;

- (e) A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome and strategy statements shall:
 - 1. Be functionally stated;
 - 2. Be representative of the family's own priorities;
 - 3. Fit naturally into the family's routines or schedules;
 - 4. Reflect the use of the family's own resources and social support network;
 - (f) The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Services shall:
 - 1. Be stated in frequency, intensity, duration, location and method of delivering services; and in the payment arrangements, if any;
 - 2. Unless prior authorization is granted, based on individual needs of the child, the frequency and intensity for therapeutic intervention for each child shall:
 - a. Not exceed three (3) hours per discipline per week for the following disciplines:
 - (i) Audiologist;
 - (ii) Family therapist;
 - (iii) Nurse;
 - (iv) LPN;
 - (v) Health aide;
 - (vi) Nutritionist;
 - (vii) Dietician;
 - (viii) Occupational therapist;
 - (ix) Occupational therapist assistant;
 - (x) Orientation and mobility specialist;
 - (xi) Physical therapist;
 - (xii) Physical therapist assistant;
 - (xiii) Psychologist;
 - (xiv) Speech language pathologist;
 - (xv) Speech language pathologist assistant;
 - (xvi) Licensed social worker;
 - b. Not exceed five (5) hours per discipline per week for the following:
 - (i) Developmental interventionist; or
 - (ii) Developmental associate; or
 - (iii) Developmental assistant;
 - 3. To the maximum extent appropriate early intervention services shall be provided in natural environments, including the home and community settings, in which children without disabilities participate;
 - (g) The projected dates for initiation of the services, and the anticipated duration of those services;
 - (h) Other services that the child needs, such as medical services or housing for the family, but that are not required under early intervention. The funding sources to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;
 - (i) The name of the primary service coordinator chosen to represent the child's or family's needs. The Primary Service Coordinator will be responsible for the implementation of the IFSP and coordination with other agencies and persons;
 - (j) The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate;
 - 1. With approval of the family, a transition conference shall occur at least ninety (90) days prior to the child's third birthday;
 - 2. The transition conference shall involve staff from the First Steps Program, the primary service coordinator, the family, staff from the local public educational agency, and other agencies per family request;
 - 3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for

- (a) Necessity of proposed regulation in conflict: N/A
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for assessment and service planning.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (New Administrative Regulation)

908 KAR 2:140. Kentucky Early Intervention Program primary service coordination and assistive technology.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of Primary Service coordination as it relates to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Primary Service Coordination. (1) The primary service coordinator shall coordinate and assist in child find efforts with the local POE;

(2) The primary service coordinator shall make referrals to the POE within forty-eight (48) hours upon identification of a child that may be eligible for First Steps services. Referral shall be made after discussing the benefits of early intervention with the family and acquiring verbal permission to make the referral;

(3) The primary service coordinator shall utilize the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee for public awareness activities and materials;

(4) The primary service coordinator shall serve as the single point of contact in helping families obtain the services and assistance they need;

(5) The primary service coordinator shall have a caseload of:

(a) Up to ten (10); with a maximum of fifteen (15) if five (5) children are ninety (90) days away from their third birthday; if he is providing other First Steps services to those children and families or has a caseload in another program;

(b) Up to forty (40); with a maximum of fifty (50) if ten (10) children are ninety (90) days away from their third birthday; if he is not providing any other First Steps services, or is not carrying a caseload in another program;

(6) The primary service coordinator shall:

(a) Attend the First Steps Primary Service Coordination and IFSP training prior to facilitating, coordinating, or implementing any IFSP's, and attend communicating with families training within six (6) months of completing primary service coordination and IFSP training;

(b) Attend the initial IFSP meeting, if identified as primary service coordinator choice or if invited as a potential option for primary service coordinator, and help the POE facilitate that plan;

(c) Notify all the IFSP team members, in writing, of the upcoming IFSP or review date and location no less than thirty (30) calendar days prior to IFSP or review date;

(d) In the event of cancellation, notification of the rescheduling of the IFSP meeting shall be sent to the IFSP members within five (5) working days of the cancelled meeting;

(e) Facilitate the annual IFSP or six (6) months reviews. This includes:

1. Documenting outcomes that have been achieved, as well as, documenting those that have not been achieved;

2. Assisting families in identifying new outcomes, the service providers, frequency and location of all services; and

copy of the written request from the family shall be sent to the POE;

(b) One (1) month after the child's family terminates all services and the child is no longer receiving any First Steps services;

(25) The primary service coordinator shall provide data to the cabinet upon request;

(26) The primary service coordinator shall agree to have any or all records maintained by said primary service coordinator monitored by the cabinet, or their designee.

Section 2. Assistive Technology. (1) To be eligible to access assistive technology services and devices the child shall:

(a) Be eligible for First Steps;

(b) Have need for assistive technology devices and services documented by appropriate assessment procedures; and

(c) Have need for and use of assistive technology devices and services documented in the IFSP.

(2) The First Steps assistive technology review process shall be utilized for the following:

(a) All equipment requests which exceed \$500; and

(b) All equipment that is questionable by the initial service coordinator, the primary service coordinator, or cannot be determined by the IFSP team as appropriate.

(3) All equipment request requiring review shall:

(a) Be sent to the monitoring coordinator with the following information:

1. A current IFSP;

2. Assessments with recommendations;

3. Justification statement of specific devices based on needs;

4. Information regarding equipment or device request;

(b) Be reviewed by the coordinator for completeness and forwarded to a regional monitoring committee; and

(c) Complete process within ten (10) working days of receiving all information;

(4) The decision of the monitoring committee may be appealed to the state First Steps coordinator who shall:

(a) Consult with the appeal committee; and

(b) Issue final decision.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: January 13, 1997

FILED WITH LRC: January 15, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1997, at 9 a.m. in the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by February 13, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. 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: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of the Counsel, 275 E. Main St. - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2 per cent of children under 3, or approximately

3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health and mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(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 relevant to cost of doing business. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health, to implement First Steps, Kentucky's Early Intervention System. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

Certification for Dietitians and Nutritionist.

(f) A dietitian shall have in accordance with KRS 310.021:

1. A bachelor's degree; and
2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionist.

(g) An occupational therapist shall have in accordance with KRS 319A.130:

1. A bachelor's degree; and
2. A certificate and license from the Kentucky Occupational Therapy Board.

(h) An orientation and mobility (O and M) specialist shall have in accordance KRS 161.020 and with the Division of Special Learning Needs, Kentucky Department of Education a bachelor's degree in Special Education with emphasis on visual impairment and O and M, KRS 161.020.

(i) A physician shall have in accordance with KRS 311.571:

1. A doctor of medicine degree or doctor of osteopathy degree; and

2. A license from the Kentucky Board of Medical Licensure.

(j) A physical therapist shall have in accordance with KRS 327.020:

1. Bachelor's degree; and
2. A license from the Kentucky Board of Physical Therapy.

(k) A psychologist shall have in accordance with KRS 319.032:

1. A doctoral degree; and
2. A license from Kentucky Board of Examiners of Psychology.

(l) A certified psychologist with autonomous functioning or psychological associate shall have in accordance with KRS 319.056-064:

1. A master's degree; and
2. A certificate from the Kentucky Board of Examiners of Psychology.

(m) A social worker shall have in accordance with KRS 335.090:

1. A bachelor's degree; and
2. A license from the State Board of Examiners of Social Work of Kentucky.

(n) A speech-language pathologist shall have in accordance with KRS 334A.050:

1. A master's degree; and
2. A certificate and license from the Kentucky Board of Speech-Language Pathology and Audiology.

(o) A teacher of children who are deaf and hard of hearing shall have in accordance with KRS 161.030:

1. A bachelor's degree; and
2. A provisional certificate for teaching the deaf and hard of hearing, K-12 issued by the Kentucky Department of Education, Division of Certification.

(p) A teacher of the visually impaired shall have in accordance with KRS 161.020-030:

1. A bachelor's degree; and
2. A certificate for teaching of the visually impaired, K-12 issued by the Kentucky Department of Education, Division of Certification.

(2) The qualification for paraprofessionals providing early interventions services shall be:

(a) A developmental associate shall have:

1. An associate degree in the area of early childhood; or
2. A child development associate certificate for infant and toddlers caregiver or home visitor; or
3. A postsecondary vocational education diploma in child development or child care.

(b) A developmental assistant shall have:

1. A high school diploma; or
2. A GED.

(c) A certified occupational therapy assistant shall have in accordance with KRS 319A.110:

1. An OTA degree; and
2. A certificate and license from the Kentucky Occupational

Therapy Board.

(d) A physical therapy assistant shall have in accordance with KRS 327.040(12):

1. An associate degree in physical therapy assistance; and
2. A license from the Kentucky Board of Physical Therapy.

(e) A speech-language pathology assistant shall have in accordance with KRS 334A.030:

1. A bachelor's degree; and
2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(f) A licensed practical nurse shall have in accordance with KRS 314.051:

1. A high school diploma or a GED;
2. Have completed a state approved LPN education program; and
3. A license from the Kentucky Board of Nursing.

(3) The qualifications for recognized service positions providing services in First Steps shall be:

(a) An initial service coordinator shall be approved by the cabinet based on the following qualifications:

1. Meeting minimum highest entry-level requirement for one (1) of the professions delineated in this administrative regulation; and

2. Having the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(b) A primary service coordinator shall be approved by the cabinet based on the following qualifications:

1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; or

2. Meeting requirements for one (1) of the paraprofessionals delineated in this administrative regulation; or

3. Have a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving; finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(c) A developmental evaluator shall be approved by the cabinet by:

1. Meeting minimum highest entry-level requirements for one (1) of the professionals delineated in this administrative regulation; and

a. Having a bachelor's degree in a related field; and

b. Having two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development; and

2. Having had one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or

detrimental effect on the child's potential and the stress on the family.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing qualifications for personnel.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (New Administrative Regulation)

908 KAR 2:160. Kentucky Early Intervention Program covered services.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of covered services under First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Covered Services. (1) Services are covered when included and authorized in the individual's IFSP developed by an IFSP team which shall include, at least, the family and two (2) disciplines:

(a) At least two (2) disciplines shall be from separate agencies or represent different approved providers; and

(b) One (1) discipline shall be a licensed medical professional.

(2) Services covered are:

(a) Service coordination as provided in accordance with 908 KAR 2:110 and 908 KAR 2:140:

1. A child shall have only one (1) designated service coordinator at a given time; and

2. Service coordination shall be provided by those identified in 908 KAR 2:150;

(b) Primary evaluation as provided in accordance with 908 KAR 2:120:

1. Primary evaluation shall be considered the first level of a trilevel system of evaluation; and

2. Primary evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(c) Intensive team evaluation as provided in accordance with 908 KAR 2:120:

1. Intensive team evaluation shall be considered the second level of a trilevel system of evaluation;

2. Intensive team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(d) Tertiary team evaluation as provided in accordance with 908 KAR 2:120:

1. Tertiary team evaluation shall be considered the third level of evaluation in a trilevel system of evaluation.

2. Tertiary team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(e) Service assessment as provided in accordance with 908 KAR 2:130;

(f) Therapeutic intervention.

1. Therapeutic intervention includes three (3) types of service:

a. Individual home or community services which includes intervention provided to the child by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes); or

b. Individual office or center-based service which includes intervention provided by First Steps qualified professionals to an eligible child at the professionals office or center site; or

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for covered services.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administra-

tive procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Division of Mental Retardation (New Administrative Regulation)

908 KAR 2:170. Notice of action and administrative appeal.

RELATES TO: KRS 200.650-676, 20 USC 1471-1485

STATUTORY AUTHORITY: KRS Chapter 13B, 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Cabinet for Health Services, Department for Mental Health and Mental Retardation administers the early childhood intervention program for infants and toddlers. Through this program services are made available to infants and toddlers with special health care needs. The function of this administrative regulation is to establish an administrative appeal process for parents who wish to appeal a decision of the agency relating to the identification, evaluation or provision of service to a child through the program. Executive Order 96-862, effective, July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Notice of provider's action shall be provided to the parent or guardian which shall include at least the following:

(1) A description of action by the provider with explanation, including a description of any options the provider considered and the reasons why those options were rejected;

(2) A description of each evaluation procedure, test, record report or other relevant factor the provider used as the basis for the action;

(3) A description of the parent or guardian's right to appeal and

needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for administrative appeal.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the

administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (New Administrative Regulation)

908 KAR 2:180. Kentucky Early Intervention Program mediation.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement administrative regulations. This administrative regulation sets forth the provisions of mediation used in First Steps, Kentucky's Early Intervention System. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Retardation Services and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Mediation. (1) Mediation shall be adopted as an option to resolve complaints;

(2) Mediation shall be voluntary and freely agreed to by both parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;

(3) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;

(4) The time table for the mediation process shall be:

(a) Within five (5) working days after a request for mediation is made to the cabinet, the appointment of a mediator shall be made;

(b) Either party may waive the mediation and if waived the parents shall be informed by the cabinet within two (2) working days of this decision;

(c) Mediation shall be completed within thirty (30) working days of the receipt by the cabinet of the request for mediation.

(d) At any time during the mediation process, a request for a due process hearing may be initiated;

(5) Mediation resolutions may not conflict with state or federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;

(6) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the cabinet;

(7) Mediators shall be trained in First Steps policies and procedures.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: January 13, 1997

FILED WITH LRC: January 15, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1997, at 9 a.m. in the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by February 13, 1997, of their intent to attend. If no notification of intent to attend

and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 6, 7, 10, 11, 12, 13, 15, 16, 17, and 19 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (3) Sections 11 and 12 were amended to clarify that the forms must be received in the Board office within ten days of a field trip or education show for a student to receive credit, as required by KRS 13A.100.

201 KAR 12:200 (&E). Requirements for continuing education for renewal of license. Senator Roeding requested that the record reflect his objection to this administrative regulation because the deadline for the continuing education requirements was too soon.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (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) Section 1 was amended to specify the requirements for sponsoring a continuing education program, as required by KRS 13A.100; and (4) Sections 1 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting. Roy Grimes, Director of Wildlife, represented the Department. Mr. Grimes stated that the amendments offered by the Department were required to comply with the drafting and formatting provisions of KRS Chapter 13A.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state that the Department was authorized, not required, to promulgate this administrative regulation; (2) Sections 3(6), 6, and 7 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(j).

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Standards Applicable to Generators of Hazardous Waste

401 KAR 32:030. Pretransport requirements. Robert Daniel, Director, Division of Waste Management; Michael Welch, Branch Manager, Hazardous Waste Branch; and James Hale, Program Planning and Administration Branch, represented the Department; and Carl Breeding, Associated Industries of Kentucky and the Chemical Industry Council, and John Braezel, Manager, Public Affairs, Kentucky Chamber of Commerce, spoke in favor of the administrative regulation.

The administrative regulation was amended as follows: Section 6 was amended to insert language requiring the Cabinet to refund fees that were paid if the Cabinet failed to provide the required written determination.

Standards for Owners and Operators of Hazardous Waste Storage; Treatment and Disposal Facilities

401 KAR 34:060. Groundwater protection. In response to questions by Representative Bruce, Mr. Daniel stated that: (1) the administrative regulation was consistent with the federal regulations that strictly prohibited the use of waste oil as a dust repressant; (2) federal regulations did not prohibit the use of used oil in an agricultural scenario in a beneficial way, including with livestock rubs or on wagons for rust control; and (3) the Cabinet: (a) met with some outside stakeholders, including the Farm Bureau, after the initial deferral on the Waste Management administrative regulation package;

(b) discussed and responded to their waste oil concerns; and (c) did not meet with the fertilizers' association.

Mr. Hale stated that: (1) the universal waste rule allowed for the collection of used pesticides to benefit the farmer; and (2) the Department of Agriculture had started an agriculture initiative for collecting used pesticides from farmers to take to a collection point.

In response to a question by Representative Lee, Mr. Daniels stated that while this administrative regulation would strictly prohibit a farmer from using used motor oil on a dusty road to his house, this activity was already prohibited both by federal rule and state administrative regulation.

Representative Bruce stated that he would call this administrative regulation back for review by the Subcommittee under its authority to review an existing administrative regulation, if he found it contained requirements different than what he understood it to contain.

Mr. Breeding stated that in addition to the amendments outlined in a December 20 letter sent to Chairman Crenshaw, there were two other technical corrections that the Cabinet agreed to and needed to present to the Subcommittee.

Chairman Crenshaw stated that: (1) in the future, when an agency reached an agreement on an amendment to an administrative regulation, the amendment should be submitted in writing to the Subcommittee prior to the meeting; (2) he was going to send the Cabinet a letter addressing the requirements relating to the federal mandate analysis comparison, the statement of consideration, and other matters that the Cabinet is required to consider; and (3) if the Subcommittee found problems with these administrative regulations in the future, they would be reviewed by the Subcommittee under its authority to review existing administrative regulations.

Mr. Daniels stated that: (1) the first amendment was to Section 9(7)(e)2.a., on page 22, regarding a reference to the drinking water administrative regulation for the establishment of clean-up standards; (2) the Cabinet had agreed to: (a) delete the reference to that administrative regulation; and (b) include a specific list within the hazardous waste administrative regulation; (3) the amendment was to: (a) delete "401 KAR Chapter 8" from line 14, page 22, and insert in lieu thereof "Section 5(1)(b) of this administrative regulation"; and (b) delete "chapter" from line 15, page 22, and insert in lieu thereof "paragraph"; (4) the second amendment was to delete three constituents from the table included in Section 5(1)(b); and (5) those constituents were ethylbenzene, styrene, and xylene.

The Subcommittee approved a motion by Representative Bruce, seconded by Senator Pendleton, to adopt these amendments.

This administrative regulation was also amended as follows: Section 5 was amended to: (1) comply with the drafting requirements of KRS 13A.222(4)(b); and (2) insert a table establishing the maximum concentration of constituents for groundwater protection.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections Policies and Procedures. Jack Damron and Tamela Biggs, Staff Attorneys, represented the Department.

This administrative regulation was amended as follows: (1) CPP 4.7, VI.A.1.a. was amended to specify that an employee was required to pay for an excessive alteration to a uniform, as required by KRS 13A.222(4)(a); (2) CPP 4.7 and 13.8 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) CPP 13.8, VI.E. was amended to cross-reference KRS 202A.400.

501 KAR 6:170. Green River Correctional Complex. This administrative regulation was amended as follows: (1) GRCC 11-03-01, A.12., GRCC 13-13-01, 3.b., GRCC 16-01-01, E.6., and GRCC 25-01-02, II.B.4.b. were amended to comply with the drafting requirements of KRS 13A.222(4); (2) the References Section of GRCC 16-01-01 and GRCC 25-01-02 were amended to correct statutory citations; (3) GRCC 19-01-01, G.3.a. was amended to authorize the Department to request, rather than require, yearly

stated that Kentucky could not: (1) regulate shipments of alcoholic beverages to Tennessee; or (2) prevent Kentucky residents from bringing alcohol into Kentucky that had been shipped to a neighbor in Tennessee at their request.

In response to a question by Senator Roeding, Ms. Farmer stated that an individual could go to a California winery and have wine shipped to his home address in Kentucky.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) Sections 1, 2, 3, and 5 were amended to comply with the: (a) drafting requirements of KRS 13A.222(4); and (b) formatting requirements of KRS 13A.220(4); and (3) Sections 1 and 3 were amended to delete provisions that modified KRS 244.165(2), as required by KRS 13A.120(2)(i).

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:101. Repeal of 815 KAR 7:100. Judith Walden, General Counsel, represented the Department.

This administrative regulation was amended as follows: (1) the TITLE was amended to comply with KRS 13A.310(3)(a)1.; (2) the RELATES TO paragraph was amended to correct statutory citations; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to state the reasons for repealing the administrative regulation, as required by KRS 13A.310(3)(a)2.; and (4) Section 1 was amended to comply with the drafting requirements of KRS 13A.220(4).

815 KAR 7:105. Kentucky Building Code/1997. In response to a question by Representative Bruce, Ms. Walden stated that: (1) it would not cost more to build a house under the new building code; and (2) she believed the Department's adoption of the new building code was supported by the Home Builders' Association, which was an integral part of the board.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (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); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

Plumbing

815 KAR 20:090. Soil, waste and vent systems. 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 1 through 13, 15, 17, 18 through 21, 23 through 32, 34, 35, 37, and 38 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

815 KAR 20:130. House sewers and storm water piping; methods of installation. 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 4 through 21, 23, 24, and 27 through 29 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

Cabinet for Health Services: Department for Health Services: Communicable Diseases

902 KAR 2:060. Immunization schedules. Dr. Reginald Finger, Director, Division of Epidemiology, represented the Department. Dr. Finger stated that this administrative regulation was promulgated to adopt a modern up-to-date immunization schedule as required by 1996 House Bill 588.

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 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); (3) Sections 4 through 6 were amended to clearly establish the immunization schedule and its requirements; and (4) a new Section 7 was created to incorporate by reference the required forms.

Health Services and Facilities

902 KAR 20:275 & E. Mobile health services. Ralph Von Derau, Health Planner, Office of Inspector General, represented the Cabinet and Marie Cull, Attorney, Kentucky Home Health Association, spoke in favor of the administrative regulation. Ms. Cull stated that: (1) she had discussed a typographical error in this administrative regulation with Mr. Von Derau prior to the public hearing; and (2) the words "and administration" should be deleted from Section 5(2)(d)1., which was on page 25, line 2, to be consistent with the rest of the administrative regulation.

Mr. Von Derau stated that: (1) in the Statement of Consideration filed by the Cabinet following the Notice of Intent public hearing, the Cabinet stated that the amendment requested by Ms. Cull was the intended language of the administrative regulation; and (2) the Statement was due to LRC by November 14.

Chairman Crenshaw stated that: (1) in the future, the agency would be required to submit any amendments to the Subcommittee prior to its meeting; and (2) because the amendment was not submitted before the meeting, a Subcommittee member was required to sponsor the amendment.

Representative Lee moved that the administrative regulation be amended to delete "and administration" from Section 5(2)(d)1., on page 25, line 2. The motion was seconded by Senator Pendleton and approved by the Subcommittee.

This administrative regulation was amended to delete the phrase "and administration" from Section 5(2)(d)1., on page 25, line 2, of the administrative regulation.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Department of Agriculture: Livestock Sanitation

302 KAR 20:110E. Treatment of imported mares. Mark Farrow, General Counsel; Don Notter, State Veterinarian; and Rusty Ford, Manager, Equine Programs, represented the Department. Mr. Farrow stated that these two administrative regulations: (1) dealt with the spread of contagious equine metritis bacterium into Kentucky, which was an obvious threat to the horse and equine industry; and (2) were promulgated pursuant to a federal deadline.

302 KAR 20:120E. Treatment of imported stallions.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: General Administrative Procedures

Robert Daniel, Director, Division of Waste Management; Michael Welch, Branch Manager, Hazardous Waste Branch; and James Hale, Program Planning and Administration Branch, represented the Department; and Carl Breeding, Associated Industries of Kentucky and the Chemical Industry Council, and John Braezel, Manager, Public Affairs, Kentucky Chamber of Commerce, spoke in favor of the administrative regulations.

401 KAR 30:005. Definitions related to 401 KAR Chapter 30.

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 43:040. Standards for universal waste transporters.
- 401 KAR 43:050. Standards for destination facilities.
- 401 KAR 43:060. Import requirements.
- 401 KAR 43:070. Petitions to include other waste under 401 KAR Chapter 43.

Standards for the Management of Used Oil

- 401 KAR 44:005. Definitions related to 401 KAR Chapter 44.
- 401 KAR 44:010. Applicability.
- 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.

Department for Environmental Protection: Division of Air Quality: General Administrative Procedures

401 KAR 50:035 (& E). Permits. Diana Andrews, Assistant Director, Division of Air Quality; and Kenneth Hines, Manager, Program Planning and Administration Branch, represented the Division. Mr. Hines stated that: (1) while the permitting process for the entire Cabinet was under review, improvements were being made in the processes because the Kentucky Division for Air Quality had faced the issue of implementing a federal operating permit program in Kentucky; (2) Kentucky was in the forefront of making changes to the permitting process; (3) this administrative regulation had been amended considerably to do two things: (a) to remove entirely from the permitting process those industries in Kentucky that the Cabinet felt it could assure compliance with air quality requirements without a permit; and (b) to make the permit as easy to obtain and maintain as possible for those people who the Cabinet felt were required to have a permit in order to ensure compliance with air quality requirements; and (4) while the Cabinet recognized this was an ongoing process, it felt the amendments accomplished those goals and should be approved by the Subcommittee.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:005. Safety administrative regulations. Sandra Pullen Davis, Staff Assistant to the Secretary, represented the Cabinet.

Ms. Davis stated that because this administrative regulation adopted the federal motor carrier safety standards for Kentucky, the Cabinet was required to amend the administrative regulation each time the federal government amended the federal regulations.

Kentucky Board of Education: Department of Education: Office of District Support Services: Pupil Transportation

702 KAR 5:150. Transportation of preschool children. Bobby Sherman, Legislative Liaison, Department of Education; and Joseph Kelly, Chairman, Kentucky Board of Education, represented the Department.

Bureau of Learning Results Services: Learning Results Services

703 KAR 4:010 & E. The formula for determining successful schools. Bobby Sherman, Legislative Liaison, Department of Education; Joseph Kelly, Chairman, Kentucky Board of Education; and Dr. Brian Gong, Associate Commissioner, Office of Curriculum, Assessment, and Accountability represented the Department. Dr.

Patricia Cerrito, Mathematics Professor, University of Louisville; Cindy Rausch, Parent, and Richard Innes, Villa Hills citizen, spoke in opposition to this administrative regulation.

Mr. Sherman stated that: (1) this administrative regulation: (a) had been deferred at the December Subcommittee meeting; and (b) dealt with the formula for determining successful schools; (2) the heart of this administrative regulation concerned the deletion of the scoring component of the performance events from the overall KIRIS assessment; (3) last month, some schools' representatives were understandably unhappy with the notion that their schools would have fared better if performance events had been included; (4) the Department and the Subcommittee agreed to defer the administrative regulation to give the Kentucky Board of Education another opportunity to talk about the necessity for deleting the performance events; and (5) a three or four hour discussion of this issue occurred on December 3 and 4 by the Board's Committee on KIRIS Accountability and by the full Board.

Mr. Kelly stated that, based upon the issues raised at the December Subcommittee meeting, including the issue of fairness: (1) this administrative regulation was brought back to the State Board for review; (2) when the State Board met on December 3 and 4, there was lengthy discussion by both the KIRIS Accountability Oversight Committee of the State Board and the full State Board; (3) both the committee and the full board weighed the issue of district and school notification against the necessity to achieve a test which yielded defensible data upon which to determine successful schools; (4) they recognized that the accuracy and the validity of KIRIS results were prime concerns of administrators, parents, teachers, the public, and legislators; (5) regarding the fairness issue and the timing of notification, the Department became aware of the problems with the performance events in January, 1996; (6) on January 30, 1996, press releases were made available that stated that performance events would not be included in the 1994-95 scoring; (7) on February 20, 1996, district assessment coordinators and superintendents were notified: (a) of the exclusion of performance events data from the 1994-95 results; and (b) that performance events would be included in the 1995-96 assessments for instructional purposes only; (8) while the State Board would have liked to give as much notice as possible, it felt the Department gave appropriate notification to the districts in a prompt fashion; (9) it had been almost a year since districts were notified that performance events would be excluded; (10) the State Board felt that any compromise which allowed only the schools which would benefit positively to count performance events would be unworkable, because it would require using admittedly deficient, indefensible data to: (a) achieve a quick fix; or (b) give instant gratification relative to their scores; (11) when he testified in front of a different legislative committee over a year ago on the issue of how or whether to proceed with KIRIS, the issue of validity and reliability was a major concern of its members; (12) speaking on behalf of the State Board and the Department, he made a commitment to the General Assembly that they would do everything they could to make the KIRIS vehicle as reliable and valid as possible; (13) after having found that the performance events were not defensibly reliable, to permit schools who did will on the events to use them anyway would be a breach of the commitment that was made to the General Assembly last year; (14) it broke his heart to have performance events excluded because he was a firm believer in performance events both: (a) as a good method of assessing what students knew and could do; and (b) for the instructional value which they add to the classroom; (15) while he thought performance events were a wonderful vehicle for utilization and demonstration of what students have learned and could do, he could not in good faith recommend that they continue to be included in the accountability process, because he knew their validity could not be substantiated; (16) while it understood and was sympathetic with the schools who would like to include the performance events, the State Board thought it would be a disservice to the schools to use something that was not valid,

13A.190(1)(a) required that one of four criteria exist in order to promulgate an emergency administrative regulation: (a) an imminent threat to the public health, safety, and welfare; (b) a need to prevent the loss of federal funds; (c) a need to meet a deadline for the promulgation of an administrative regulation, that was established by state law, federal law, state regulation, or federal regulation; and (d) a need to protect the human health and the environment; (5) because this administrative regulation did not meet any of those four criteria, she requested the Subcommittee ask the Governor to remove his signature from the statement of emergency, thereby voiding the finding of emergency; (6) while there had been much discussion about KIRIS, especially on the issue of performance events, there were also problems in other areas, including: (a) the weighting of the performance categories because there was little ability for a school to show progress from apprentice to proficient; (b) the weighting of portfolios, because even though the OEA panel recommended that the portfolios not be scored by teachers, the Department had chosen not to adopt that recommendation; and (c) the non-cognitive indicators that were addressed by Mr. Innes; (7) she also did not believe that this was a primarily performance-based assessment; (8) the recently-released RAND study indicated that the most primarily performance-based portion of this assessment was the performance events, which were now excluded; (9) this administrative regulation defined performance assessment as one that dealt with real live contexts, which in effect was an essay test that made students phrase the answers to their questions in a real life context; (10) there was no conclusive evidence of the appropriateness of using essay tests in the manner that were being used in a high-stakes accountability system; and (11) she was requesting that, because there was no basis for an emergency and no statutory authority for this administrative regulation: (a) this administrative regulation should be found deficient; and (b) the Governor should be asked to remove his signature from the emergency administrative regulation.

The Subcommittee did not approve a motion by Senator Roeding, seconded by Representative Allen, to find this administrative regulation deficient.

Senator Kafoglis stated that: (1) he was voting against the motion because he felt the Department had the statutory authority to promulgate the administrative regulation; (2) the criticisms that had been discussed should be addressed to, and considered by, the Task Force on Education; and (3) while he thought what occurred had been very unfortunate, if the performance events were not excluded, a more serious problem would exist.

Senator Roeding stated that: (1) he was voting for the motion to find this administrative regulation deficient because it did not meet any of the four criteria established by KRS Chapter 13A for the promulgation of an emergency administrative regulation; (2) all state agencies had promulgated emergency administrative regulations that did not meet the law of Kentucky, including the four criteria of KRS 13A.190(1)(a); and (3) because the KIRIS test was eighty percent an assessment on writing, if a student was weak in writing, his opportunity to show skills was limited by the KIRIS tests.

Representative Bruce stated that he agreed with Senator Kafoglis' statement and voted against the motion to find this administrative regulation deficient.

Representative Lee stated that: (1) he was voting against the motion to find this administrative regulation deficient because he believed the Department had the statutory authority under KRS Chapter 13A to promulgate this administrative regulation; (2) while he had some questions about the emergency clause, the issues raised regarding the KIRIS testing were important and should be addressed by the Task Force and the Interim Joint Committee on Education; and (3) definite changes should be made to the KIRIS testing during the next Regular Session of the General Assembly.

Chairman Crenshaw stated that: (1) while he normally did not explain his vote because he let the vote stand for itself, he would explain his vote against the motion to find this administrative

regulation deficient; (2) he had fully stated his problems with this administrative regulation, particularly with what appeared to be a retroactive application of the changes; and (3) requested, as did Mr. Day, that the State Board agree not to change in the middle of a cycle in the future.

Mr. Kelly stated that: (1) because the State Board shared the administrators' and teachers' concerns about modifications or changes to the process, a commitment was made to them this past year for stability; (2) the State Board adopted 95% of the recommendations that were offered in the OEA and KIER reports; (3) while the State Board knew the schools were looking for stability, in the future if information came to light that indicated that there was a deficiency or problem, he did not think anyone would not want them to: (a) make the information available to everyone; and (b) try to address the problem; (4) while he could commit to the Subcommittee that the State Board would not make a change just to enhance or modify the tests if those changes had no real substance, he could not commit to not bringing forward suggested changes that the State Board thought affected the credibility of the process; and (5) this approach was in keeping with the commitment that the State Board had made to all of the legislative committees it had appeared before in the past.

Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance

787 KAR 1:320E. Priority of deductions from benefits. Vic Gausepohl, Assistant Director; Larry Moore, Division; and Beverly Haverstock, General Counsel, represented the Department. In response to a question by Representative Bruce, Mr. Gausepohl stated that: (1) unemployment insurance was permitted to include various deductions for wages, child support, and other related matters; (2) because a federal law mandated that Kentucky withhold taxes on a voluntary basis from a claimant's unemployment insurance, the Department was prioritizing the deductions in this administrative regulation; and (3) with regard to the withholding of benefits for IRS purposes, the deduction was voluntarily optional for the claimant.

Department of Insurance: Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060 & E. Registration of service contracts for consumer products. Carla Montgomery, Staff Attorney, represented the Department. Ms. Montgomery stated that this administrative regulation: (1) conformed to the 1996 General Assembly's amendment to KRS 304.5-070 of the definition of casualty insurance, which exempted makers of service contracts who repaired, replaced, or maintained consumer products if they were registered with the Department of Insurance; and (2) established procedures for those makers to register with the Department.

The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:

Kentucky Higher Education Assistance Authority: National Guard Tuition Assistance Program

11 KAR 13:010 (& E). National Guard Tuition Award Program.

Department of Law: Medical Examination of Sexual Abuse Victims

40 KAR 3:020E. Protocol for operation of local multidisciplinary teams on child sexual abuse.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:221E. Waterfowl seasons and limits.

301 KAR 2:222E. Waterfowl hunting requirements.

301 KAR 2:224E. Waterfowl hunting zones.

accredited program; (24) Kentucky should accept no lower standards for those who teach children than it was willing to uphold for those who treat cats and dogs; (25) NCATE was: (a) the only: 1. national organization that had promulgated and enforced standards for the preparation of competent teachers and other professional school personnel; and 2. accrediting body for schools, colleges, and departments of education recognized by the United States Department of Education and the Commission on Recognition of Post-Secondary Accreditation; and (b) a coalition of thirty national organizations that represented more than three million educators and members of the public committed to quality teaching; (26) the NCATE standards represented the best collective thinking of the professional organizations; (27) a recent publication of the National Council of State Legislatures observed that NCATE: (a) offered a mechanism for quality assurance in teacher preparation; and (b) could provide a cost effective system for states seeking quality control for the education of teachers; (28) by incorporating NCATE standards into the administrative regulation, Kentucky insured that its preparation programs met appropriate performance standards; (29) because some independent colleges had philosophical reservations about participating in NCATE, but were willing to accept state oversight of teacher preparation programs, this administrative regulation did not require teacher education institutions in Kentucky to be NCATE accredited, even though (a) the National Commission on Teaching and America's Future recommended that every state require all teacher preparation programs be NCATE accredited; (b) some states currently required that; and (c) other states were headed in that direction; and (30) because he believed the administrative regulation was satisfactory, he strongly urged the Subcommittee's support of it.

Dr. Banker stated that: (1) she was from Asbury College, a small private, independent institution south of Lexington; (2) while Asbury College had abided by the NCATE standards for the past twenty-five years, it was not currently nationally accredited by the national organization; (3) Asbury College had found that abiding by the standards made its students very marketable nationally; (4) students to Asbury College came from 45 states; (5) the teacher preparation program was Asbury's largest program; (6) Asbury College had not experienced any difficulty in getting students certified in other states as a result of its NCATE affiliation; (7) she and Dr. Lunney served on the committee that assisted in putting the proposals for this administrative regulation together; (8) this administrative regulation: (a) simply continued prior requirements; and (b) was not asking for anything different than was done in the past; (9) she hoped members had noted that in the September "U.S. News and World Report", Kentucky was listed as second in the nation in terms of teacher preparation; and (10) she would hate to see Kentucky go backwards.

Dr. Lunney stated that: (1) he appreciated the opportunity to share his concerns about this administrative regulation with the Subcommittee; (2) he was employed by the Association of Independent Kentucky Colleges and Universities, which was a coalition of the Council of Independent Kentucky Colleges and Universities, and the Kentucky Independent College Foundation; (3) the Council represented its member institutions in the areas of public advocacy, cooperative programs, and cooperative research; (4) the Foundation was principally responsible for private fund-raising on behalf of member institutions; (5) both the Council and the Foundation shared public relations responsibilities; (6) among other duties, he: (a) worked with the Council of Independent Kentucky Colleges and Universities as Director of Cooperative Programs; (b) was responsible for monitoring activities in teacher education; and (c) had attended almost every meeting of the Education Professional Standards Board since it was created in 1990; (7) he was uncomfortable testifying against this administrative regulation because he was sitting in opposition to people he considered to be his colleagues and friends; (8) while he had worked with those people in the past and looked forward to continuing to do so in the future, he had a difference of opinion with them on this administrative regulation; (9) he and his organization: (a)

supported the Education Professional Standards Board; and (b) encouraged the Board to seek leadership in national organizations that dealt with teacher preparation; (10) the Board was: (a) a much stronger board than when it was created in 1990; (b) served by a fine staff; and (c) ready, with its staff, to provide leadership on the national level in the area of professional standards; (11) on this administrative regulation, however, the Board was not acting as a leader, but was blindly following others whose primary agenda was not related to providing the best possible teachers for Kentucky students; (12) he wished the Board spent more time developing ways to determine the competence of the individuals it licensed because it was: (a) in the spirit of education reform; and (b) parallel to what the Department of Education was doing regarding students in elementary and secondary schools; (13) in his written communication that he sent each member in December, he questioned the validity of taking a process of voluntary accreditation and promulgating it into an administrative regulation; (14) he did not think the translation could be made; (15) he was not sure what: (a) was meant by Standard III.D., which stated that the unit ensured that there were systematic and comprehensive activities to enhance the competence and intellectual viability of the professional education faculty; and (b) an institution was required to do to meet that standard; (16) an important component of the accreditation process was professional judgment, which related both to: (a) the entity seeking accreditation; and (b) those who review that entity; (17) because the reviewers had three choices in evaluating the entity concerning each standard, the reviewers could determine the entity: (a) passed the standards; (b) passed with weakness; or (c) did not pass the standard; (18) after it had looked at all the standards, the accreditation process would determine whether the entity would: (a) receive accreditation; or (b) be denied accreditation; (19) because his understanding was that the requirements of an administrative regulation were either met or not met; (20) if the requirements of an administrative regulation were not met, the entity would not be approved, which was too stringent, especially if the institutions that sought accreditation were not judged in that way; (21) during his graduate preparation, he had a mentor who talked about the three types of teacher preparation institutions and their contribution to the profession, which included the: (a) research university, whose major contribution was the research it conducted on the learning process and on teacher preparation; (b) teachers' college, whose major contribution was to provide teacher candidates an opportunity to work closely with students during their preparation; and (c) liberal arts college, whose contribution was the strong grounding in academic preparation the students received; (22) while the mentor contended that the strength of the teaching profession was the melding of graduates from the three types of institutions, today: (a) the teachers' colleges have become state universities; (b) few of them still operated laboratory schools; and (c) many produced important research; and (23) even though it seemed to him that one aspect of the NCATE standards was to require all teacher preparation institutions to become centers for research, he still believed in the former diversity, even if part of it was already lost.

Dr. Worthy stated that: (1) she was the Boles Professor of Education at Centre College, an institution known for adherence to high standards for all its students, especially those who would be tomorrow's teachers; (2) her professional career had emphasized accreditation, teacher licensure, teacher assessment, and teacher education, at the institutional, state, and national level; (3) she strongly believed that the most important variable in achieving the vision of the Kentucky Education Reform Act was the competence of classroom teachers; (4) representatives of Centre College had taken advantage of all opportunities provided by statute for citizens of the Commonwealth to voice concerns regarding this proposed administrative regulation; (5) many of their specific recommendations were presented in a paper written during the Education Professional Standards Board's planning process in the Spring of 1995; (6) their major concern was with the inequities and inconsistencies in the

the Office of Teacher Education and Certification, representatives of the Board, and the Commissioner of Education had met with the president of NCATE and the president of the Educational Testing Service, the NCATE board changed its options for states when it created a new alternative to permit a state to avoid the process of program folios if the state was developing a performance-based system of licensure; and (4) that certainly was not reflected in this administrative regulation because it required more folios and written requirements, rather than an emphasis on performance.

Dr. Lindsey stated that: (1) accreditation occurred in a five-year cycle, not as an annual requirement; (2) the Board felt that part of any good preparation program was planning for the program and examining its history to continuously improve the program; (3) she has worked with representatives of private colleges that have been in the performance assessment business for over 20 years at Alberno College who spoke very eloquently of the: (a) difference standards had made in their graduates; and (b) continuing need for accreditation and program approval; (4) because Kentucky was in the forefront nationally in teacher education, Kentucky's plan was not of synchronization with what was occurring nationally; and (5) while this administrative regulation did not require more reports or additional paperwork, it did require the accountability that any good preparation program should have.

Dr. Worthy stated that: (1) because the Southern Association of Colleges and Schools (SACS) already required a system of continuous assessment of programs at each institution, the Education Professional Standards Board's requirement was a redundancy; (2) the state format was slightly different than the SACS format; and (3) while her college had been told that it was entering a continuing accreditation cycle, it was now required to submit folios that had not been required in the past for continuing accreditation of existing programs.

Dr. Lindsey stated that: (1) because new programs would become effective January, 1998, the new folio requirements reflected the need to document what would be included in the new programs; and (2) the folios were not required for programs that were currently in effect, just for new programs.

In response to questions by Chairman Crenshaw, Dr. Lindsey stated that: (1) this administrative regulation did nothing to change current requirements except to: (a) consolidate the requirements into one administrative regulation; and (b) incorporate by reference the new 1995 NCATE standards; (2) because current administrative regulations and statutes allowed the EPSB to require program folios, this new administrative regulation was not needed to give the Board the authority to require the folios; (3) the Kentucky teaching certificate administrative regulation that was already in effect outlined the components that were required as a part of each portfolio; (4) the administrative regulation that allowed the Board to require submission of folios was already in existence; (5) this new administrative regulation was not required to give the Board the authority to request those portfolios; and (6) the reason the new folios were required was that the Board had adopted many new certificates.

Subcommittee staff stated that: (1) the issue was whether the required submission date: (a) had been established in an existing administrative regulation; or (b) was established by this administrative regulation; (2) if an agency had the authority to establish a date by which something must be submitted, the date was required to be stated in an administrative regulation; (3) if the date had not been previously established in an administrative regulation, it was required to be included in this new administrative regulation, because the Board could not take action outside an administrative regulation, such as by letter or memorandum; (4) if there was a date which a regulated entity was required to meet, the date that must be established in the administrative regulation could not be prior to the effective date of the administrative regulation; (5) because it was not known when this administrative regulation would become effective, the administrative regulation needed to provide that submission would be required on

the effective date of this administrative regulation; and (6) if the date was not established in this administrative regulation, it was not part of this administrative regulation.

Dr. Lindsey stated that: (1) while the date was not included in an administrative regulation, the administrative regulation did require that all new programs must be approved by the EPSB; and (2) she believed that the date was a separate issue not covered by this administrative regulation, because it did not require submission by a particular date.

Dr. Worthy stated that she had a letter her College Dean sent to Dr. Lindsey before Christmas regarding a staff document that had been received which required the college to do the items specified in this administrative regulation by January 1.

Subcommittee staff stated that a staff letter could not mandate that something be submitted by a particular date, if the date was: (1) not included in an administrative regulation; or (b) occurred before the effective date of an administrative regulation.

Dr. Banker stated that: (1) she was not an employee of the Department of Education, but attended every meeting of the Education Professional Standards Board; (2) the administrative regulation that related to submission of the folios related to the new certifications; and (3) because the General Assembly had requested that the excessive amount of teacher certificates be eliminated: (a) the number of certificates were streamlined; and (b) there would be a new set of certificates.

Rep. Bruce requested that the agency defer consideration of this administrative regulation to permit the opposing parties enough time to work out an agreement.

In response to a question by Chairman Crenshaw, Dr. Lindsey stated that because she had already issued an invitation for the private institutions to meet with the Board at its January meeting, she would be glad to try to work out an agreement prior to the Subcommittee's next meeting.

Chairman Crenshaw stated that the Subcommittee wanted the Board to submit a report of the action it takes following its January meeting with the private institutions, prior to the February Subcommittee meeting.

Without objection, the following three (3) administrative regulations were deferred.

704 KAR 20:695. Standards for accreditation of teacher education.

704 KAR 20:700. Standards for admission to teacher education.

704 KAR 20:705. Admission, placement, and supervision in student teaching.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:034E. Repeal of 803 KAR 25:035.

803 KAR 25:036E. Computation of life expectancies for purposes including apportionment and attorney's fees.

Department of Insurance: Health Insurance Contracts

806 KAR 17:140E. Health insurance rate filing requirements.

Group and Blanket Health Insurance

806 KAR 18:080E. Association uniform data collection.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:026. Racing associations.

Harness Racing

811 KAR 1:020. Registration and identification of horses.

811 KAR 1:035. Claiming races.

811 KAR 1:120. Licensing of race meetings.

Cabinet for Health Services: Department for Health Services: Hazardous Substances

902 KAR 47:080E. Training and certification requirements for individuals who perform lead-hazard detection or lead-hazard abatement.

902 KAR 47:090E. Accreditation of training programs and

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of December 18, 1996

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of December 18, 1996, having been referred to the Committee on December 11, 1996, pursuant to KRS 13A.290(6):

- 900 KAR 6:020 (& E)
- 900 KAR 6:030 (& E)
- 900 KAR 6:040 (& E)
- 904 KAR 2:470 & E
- 906 KAR 1:040
- 907 KAR 1:034 & E
- 907 KAR 1:035 & E
- 907 KAR 1:140 & E
- 907 KAR 1:715 & E

The committee took no action on the previously listed Administrative Regulations which is reflected in the minutes of the December 18, 1996 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of January 15, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of January 15, 1997, having been referred to the Committee on January 10, 1997, pursuant to KRS 13A.290(6): 902 KAR 2:060, 902 KAR 20:275 & E

The committee approved the previously listed Administrative Regulations which is reflected in the minutes of the January 15, 1997 meeting, which are hereby incorporated by reference.

ADMINISTRATIVE REGISTER - H1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates H2

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 H13

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 H26

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.

VOLUME 23

ADMINISTRATIVE REGISTER - H3

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
201 KAR 1:130E	59	5-22-96	603 KAR 5:330E	366	7-12-96
Replaced		9-13-96	Replaced	2529	1-9-97
201 KAR 10:050E			701 KAR 5:020E	80	6-14-96
Replaced	170	9-11-96	Replaced	2464	12-5-96
201 KAR 11:190E	1877	10-14-96	701 KAR 5:051E	81	6-14-96
201 KAR 12:082E	321	7-1-96	Expired		10-14-96
201 KAR 12:200E	324	7-1-96	701 KAR 5:055E	82	6-14-96
201 KAR 20:390E	1541	8-16-96	Replaced	2465	12-5-96
301 KAR 2:221E	1880	10-2-96	701 KAR 5:086E	84	6-14-96
301 KAR 2:222E	1883	10-2-96	Expired		10-15-96
301 KAR 2:224E	1887	10-2-96	701 KAR 5:090E	85	6-14-96
301 KAR 2:225E	1544	8-16-96	Replaced	2466	12-5-96
302 KAR 3:010E	325	7-15-96	702 KAR 1:080E	86	6-14-96
Expired		1-18-97	Replaced	2467	12-5-96
302 KAR 20:110E	2439	11-6-96	702 KAR 7:055E	1368	8-12-96
302 KAR 20:120E	2440	11-6-96	702 KAR 7:065E	87	6-14-96
302 KAR 78:020E	61	6-5-96	Replaced	1433	12-5-96
Replaced	1934	11-11-96	702 KAR 7:125E	1369	8-12-96
307 KAR 5:010E	327	7-15-96	Replaced	2722	1-9-97
Expired		1-18-97	703 KAR 3:060E	1372	8-12-96
401 KAR 8:030E	1888	10-7-96	Replaced	2724	1-9-97
401 KAR 50:035E	62	6-14-96	703 KAR 3:205E	89	6-14-96
415 KAR 1:050E	328	7-3-96	Replaced	2472	12-5-96
415 KAR 1:060E	330	7-3-96	703 KAR 4:010E	1376	8-12-96
415 KAR 1:070E	333	7-3-96	703 KAR 4:090E	1379	8-12-96
415 KAR 1:080E	336	7-3-96	Replaced	2731	1-9-97
415 KAR 1:090E	340	7-3-96	704 KAR 20:305E	367	6-28-96
415 KAR 1:100E	343	7-3-96	704 KAR 20:475E	370	6-28-96
415 KAR 1:110E	344	7-3-96	Replaced	2356	1-9-97
415 KAR 1:114E	348	7-3-96	707 KAR 1:180E	91	6-14-96
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502 KAR 45:005E	1350	8-14-96	Replaced	2737	1-9-97
502 KAR 45:035E	1351	8-14-96	787 KAR 1:200E	371	6-26-96
502 KAR 45:045E	1351	8-14-96	Replaced	1681	1-3-97
502 KAR 45:055E	1897	10-15-96	787 KAR 1:320E	1898	10-3-96
502 KAR 45:075E	1352	8-14-96	803 KAR 25:034E	2442	11-14-96
502 KAR 45:150E	1353	8-14-96	803 KAR 25:036E	1899	10-15-96
502 KAR 60:010E	1354	8-14-96	803 KAR 25:089E	372	6-28-96
Withdrawn		9-11-96	Replaced	2485	12-12-96
503 KAR 6:010E	1355	8-14-96	803 KAR 50:010E		
Expired		2-18-97	Replaced	191	9-11-96
503 KAR 6:020E	1357	8-14-96	804 KAR 13:010E	373	7-8-96
Replaced	2717	1-9-97	Replaced	1942	11-11-96
503 KAR 6:030E	1358	8-14-96	806 KAR 5:060E	375	7-15-96
Replaced	2718	1-9-97	806 KAR 9:240E	1901	9-20-96
503 KAR 6:040E	1359	8-14-96	806 KAR 17:100E	376	7-15-96
Expired		2-18-97	Replaced	1822	12-11-96
503 KAR 6:050E	1360	8-14-96	806 KAR 17:120E	378	7-15-96
Replaced	2718	1-9-97	Replaced	1824	12-11-96
503 KAR 6:060E	1361	8-14-96	806 KAR 17:130E	379	7-15-96
Replaced	2719	1-9-97	Replaced	1825	12-11-96
503 KAR 6:070E	1362	8-14-96	806 KAR 17:140E	1550	8-23-96
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503 KAR 6:080E	1363	8-14-96	Replaced	1828	12-11-96
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503 KAR 6:090E	1365	8-14-96	900 KAR 6:010E	383	7-11-96
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503 KAR 6:100E	1366	8-14-96	900 KAR 6:015E	2954	12-18-96
Expired		2-18-97	900 KAR 6:020E	390	7-11-96
503 KAR 6:110E	1367	8-14-96	Replaced	2380	12-18-96
Replaced	2720	1-9-97	900 KAR 6:030E	391	7-11-96
603 KAR 5:320E	1546	9-3-96	Replaced	2381	12-18-96

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LOCATOR INDEX - EFFECTIVE DATES

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40 KAR 3:020	2894		201 KAR 12:200	2335	
101 KAR 1:325			As Amended	2971	
Amended	3070		201 KAR 20:215		
101 KAR 1:365			Amended	3073	
Amended	2193		201 KAR 20:220		
As Amended	2711	1-13-97	Amended	3075	
103 KAR 18:050			201 KAR 20:230		
Amended	461		Amended	3076	
As Amended	1578	10-14-96	201 KAR 20:370		
104 KAR 1:020			Amended	3077	
Amended	166		201 KAR 20:390		
As Amended	1391	9-11-96	Amended	2534	
105 KAR 1:200			Amended	3006	
Amended	2834		201 KAR 22:031		
106 KAR 3:010	2896		Amended	171	8-21-96
109 KAR 7:020	2638		201 KAR 22:106		
Amended	3005		Amended	173	8-21-96
200 KAR 5:021			201 KAR 22:135		
Amended	1403	11-11-96	Amended	175	8-21-96
Amended	3072		201 KAR 31:060	213	
200 KAR 5:025	1467		As Amended	1583	9-13-96
Amended	1955		201 KAR 32:060	215	
As Amended	2458	12-13-96	As Amended	1584	9-18-96
200 KAR 5:302	1468		300 KAR 2:010	1810	
As Amended	1924	11-11-96	As Amended	2459	12-11-96
200 KAR 5:304			301 KAR 1:016		
Amended	1401	11-11-96	Amended	2197	
200 KAR 5:306			As Amended	2713	1-10-97
Amended	1405		301 KAR 1:100		
As Amended	1925	11-11-96	Repealed	1929	11-11-96
200 KAR 5:325	1470	11-11-96	301 KAR 1:201		
200 KAR 15:010			Amended	468	
Amended	462		As Amended	1929	11-11-96
As Amended	1927	10-24-96	301 KAR 2:176	217	9-11-96
200 KAR 22:130	210	9-11-96	301 KAR 2:140		
201 KAR 1:040			Amended	2200	
Amended	169		As Amended	2714	1-10-97
As Amended	1393	9-11-96	301 KAR 2:211		
201 KAR 1:045			Repealed	217	9-11-96
Amended	464		301 KAR 2:221		
As Amended	1578	9-13-96	Amended	2842	
201 KAR 1:130			301 KAR 2:222		
Amended	465		Amended	2844	
As Amended	1579	9-13-96	301 KAR 2:224		
201 KAR 2:045	3124		Amended	2848	
201 KAR 2:220	3125		301 KAR 2:225		
201 KAR 8:015			Amended	2536	
As Amended	1394	8-21-96	As Amended	2972	
201 KAR 8:430	211		301 KAR 3:022		
As Amended	1395		Amended	1619	
As Amended	1581	9-18-96	As Amended	2460	12-11-96
201 KAR 9:021			301 KAR 3:028		
Amended	2836		Amended	471	
201 KAR 9:041			As Amended	1932	11-11-96
Amended	2838		301 KAR 4:200		
201 KAR 9:141			Amended	472	
Amended	2839		As Amended	1933	11-11-96
201 KAR 9:310			302 KAR,3:010	2898	
Amended	2840		302 KAR 78:020	1471	
201 KAR 10:050			As Amended	1934	11-11-96
Amended	170	9-11-96	307 KAR 2:020	1812	
201 KAR 12:082			As Amended	2451	12-11-96
Amended	2195		307 KAR 5:010	2900	
As Amended	2969				

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Amended	653		401 KAR 36:070		
401 KAR 34:275			Amended	797	
Amended	655		401 KAR 37:005	1166	
401 KAR 34:280			Amended	2089	
Amended	663		401 KAR 37:010		
401 KAR 34:281	1109		Amended	799	
Amended	2042		Amended	2103	
401 KAR 34:287	1118		401 KAR 37:030		
401 KAR 34:290			Amended	809	
Amended	669		401 KAR 37:040		
401 KAR 34:360			Amended	816	
Amended	672		401 KAR 37:050		
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Amended	2051		401 KAR 38:005	1179	
401 KAR 35:010			Amended	2113	
Amended	680		401 KAR 38:010		
401 KAR 35:020			Amended	928	
Amended	683		401 KAR 38:020		
401 KAR 35:050			Amended	931	
Amended	687		401 KAR 38:030		
Amended	2065		Amended	934	
401 KAR 35:060			401 KAR 38:040		
Amended	690		Amended	938	
401 KAR 35:070			Amended	2127	
Amended	694		401 KAR 38:050		
401 KAR 35:080			Amended	943	
Amended	701		401 KAR 38:060		
401 KAR 35:090			Amended	949	
Amended	703		401 KAR 38:070		
401 KAR 35:100			Amended	956	
Amended	710		401 KAR 38:080		
401 KAR 35:120			Amended	959	
Amended	717		401 KAR 38:090		
Amended	2068		Amended	961	
401 KAR 35:180			401 KAR 38:100		
Amended	722		Amended	965	
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Amended	724		Amended	968	
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Amended	731		Amended	970	
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Amended	751		Amended	980	
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401 KAR 35:290			Amended	982	
Amended	757		401 KAR 39:120		
401 KAR 36:005	1154		Amended	983	
Amended	2076		401 KAR 40:001	1205	
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Amended	760		Amended	986	
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Amended	783		Amended	2145	

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503 KAR 4:060	1290		As Amended	2985	
As Amended	1590	9-17-96	603 KAR 5:230		
503 KAR 4:070	1291		Amended	1419	
As Amended	1590	9-17-96	Amended	2171	
503 KAR 6:020	2342		As Amended	2462	11-14-96
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As Amended	2718	1-9-97	Amended	2529	1-9-97
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As Amended	2718	1-9-97	Amended	1422	
503 KAR 6:060	2346		As Amended	2464	12-5-96
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503 KAR 6:080	2346		Withdrawn		10-15-96
As Amended	2719	1-9-97	701 KAR 5:055		
503 KAR 6:090	2348		Amended	1423	
As Amended	2720	1-9-97	As Amended	2465	12-5-96
503 KAR 6:110	2349		701 KAR 5:060		
As Amended	2720	1-9-97	Repealed	2350	1-9-97
600 KAR 2:020			701 KAR 5:065	2350	1-9-97
Amended	2850		701 KAR 5:086	1473	
600 KAR 2:030			Withdrawn		10-15-96
Amended	2853		701 KAR 5:090		
601 KAR 1:005			Amended	1425	
Amended	2257		As Amended	2466	12-5-96
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601 KAR 1:025			Amended	1426	
Amended	1010		As Amended	2467	12-5-96
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601 KAR 1:101			Amended	1428	
Amended	1012		As Amended	2468	12-5-96
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601 KAR 1:160			Amended	185	9-5-96
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601 KAR 1:200			Amended	1429	
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601 KAR 11:020			Amended	2820	
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601 KAR 12:020			Amended	1431	
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601 KAR 13:025			Amended	2268	
Amended	2261		Amended	2821	
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601 KAR 13:070			Repealed	1368	8-12-96
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601 KAR 13:100	221		Repealed	1368	8-12-96
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803 KAR 25:089			Amended	2288	
Amended	1750		811 KAR 1:120		
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803 KAR 25:091			811 KAR 1:215		
Amended	2619		Amended	3116	
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803 KAR 25:096			As Amended	2990	
Amended	1455		815 KAR 7:105	2644	
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803 KAR 25:190			As Amended	436	9-11-96
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804 KAR 11:010			Amended	2691	
Amended	1463		As Amended	2990	
Withdrawn		1-2-97	815 KAR 20:120		
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As Amended	1942	11-11-96	As Amended	2739	1-9-97
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805 KAR 7:080	1293		900 KAR 2:060		
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806 KAR 5:060	2368		Amended	3035	
806 KAR 9:240	2906		900 KAR 6:010	2373	
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806 KAR 17:120	1824	12-11-96	900 KAR 6:020	2380	12-18-96
806 KAR 17:130	1825	12-11-96	900 KAR 6:030	2381	12-18-96
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808 KAR 10:260			Amended	3119	
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808 KAR 10:290			Expired		9-5-96
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6.824	2 KAR 2:010	78.510-78.852	105 KAR 1:200
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