

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on September 7, 1994, at 10 a.m. in Room 149 of the Capitol Annex. See tentative agenda on pages 847-852 of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE TENTATIVE AGENDA - September 7, 1994 at 10 a.m. Room 149, Capitol Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Higher Education Assistance Authority

11 KAR 4:030. Student appeals process.

KHEAA Grant Programs

11 KAR 5:150. Notification of award.

11 KAR 5:170. Refund and repayment policy.

11 KAR 5:180. Records and reports.

AGRICULTURAL EXPERIMENT STATION

Fertilizer

12 KAR 4:080. Plant nutrients.

12 KAR 4:090. Guaranteed analysis.

12 KAR 4:100. Slowly released nutrients.

12 KAR 4:110. Terms and definitions.

12 KAR 4:130. Investigational allowances.

12 KAR 4:140. Monetary penalties.

12 KAR 4:160. Guaranteed nutrients.

TREASURY

State Treasury

20 KAR 1:020. Unclaimed property; definitions; location of owners.

20 KAR 1:030. Unclaimed property; escheating.

20 KAR 1:040. Unclaimed properties; claims.

20 KAR 1:050. Unclaimed property; examination of holder records.

20 KAR 1:060. Unclaimed property; safe deposit boxes or other safekeeping repositories.

20 KAR 1:070. Unclaimed property; administrative hearing, appeals process.

DEPARTMENT OF STATE Registry of Election Finance

Reports and Forms

32 KAR 1:100 & E. Slate software.

DEPARTMENT OF LAW

Division of Consumer Protection

40 KAR 2:061 & E. Repeal of 40 KAR 2:060, Business opportunities.

40 KAR 2:070 & E. Procedure for registration of telephone solicitation merchants.

40 KAR 2:080 & E. Prehearing procedure for rejection, revocation, suspension of registration or refusal to renew certification of professional solicitors or fundraising consultants.

40 KAR 2:090 & E. Hearing for rejection, revocation, suspension of registration or refusal to renew registration of professional solicitor or fundraising consultant.

40 KAR 2:100 & E. Notice of requested disclosure of percentage of gross revenue going to charitable organization.

40 KAR 2:110 & E. Notice of intent to solicit forms.

40 KAR 2:120 & E. Disclosure document forms.

40 KAR 2:130 & E. Hearings for rejection, revocation, suspension or refusal to renew registration for business opportunities.

40 KAR 2:140 & E. Prehearing procedure for rejection, revocation, suspension or refusal to renew for business opportunities.

40 KAR 2:150 & E. Cremation authorization forms.

40 KAR 2:160 & E. Crematory annual report form.

40 KAR 2:170 & E. Preneed cremation authorization forms.

40 KAR 2:180 & E. Statement of training for crematory operators forms.

40 KAR 2:190 & E. Crematory authority license application forms.

40 KAR 2:200 & E. Application for removal sale permit form.

40 KAR 2:210 & E. Application for conducting more than two (2) going-out-of-business sales in four (4) years form.

40 KAR 2:220 & E. Application procedure for obtaining going-out-of-business sale permits in excess of two (2) sales in a four (4) year period.

40 KAR 2:230 & E. Prehearing procedure for rejection of application for more than two (2) going-out-of-business sales during a four (4) year period.

40 KAR 2:240 & E. Hearing for denial of application for more than two (2) going-out-of-business sales during a four (4) year period.

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Personnel Board

101 KAR 1:365. Appeal and hearing procedures.

101 KAR 1:366. Standard of proof in disability discrimination cases.

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- 101 KAR 1:375. Employee grievances and complaints.
- 101 KAR 1:400. Promotion.

Classified

- 101 KAR 2:100 & E. Leave regulations.

Unclassified

- 101 KAR 3:010 & E. Leave regulations for unclassified service.

FINANCE AND ADMINISTRATION CABINET

Purchasing

- 200 KAR 5:021. Manual of Policies and Procedures. (Repeals 200 KAR 5:020)

Health Insurance Coverage for Nonstate Employees

- 200 KAR 20:010 & E. Health insurance coverage for nonstate employees.

GENERAL GOVERNMENT CABINET

Board of Medical Licensure

- 201 KAR 9:005. Ethical conduct. (Repeals 201 KAR 9:015)
- 201 KAR 9:041. Fee schedule.
- 201 KAR 9:084. Fee schedule.
- 201 KAR 9:175. Physician assistants; certification and supervision.

Board of Ophthalmic Dispensers

- 201 KAR 13:040. Licensing; application, examination; temporary permit; inactive status.
- 201 KAR 13:050. Apprentices.
- 201 KAR 13:055. Continuing education requirements.

Board of Nursing

- 201 KAR 20:390. Nursing incentive scholarship fund.

Board of Examiners of Social Work

- 201 KAR 23:070. Specialty certification.

Board of Respiratory Care

- 201 KAR 29:070. Scope of practice. (Public Hearing in July)

TOURISM CABINET

Department of Fish and Wildlife Resources

Fish

- 301 KAR 1:015. Boats and outboard motors; restrictions.
- 301 KAR 1:115. Propagation of aquatic organisms.
- 301 KAR 1:155. Commercial fishing requirements.
- 301 KAR 1:201. Fishing limits. (Repeals 301 KAR 1:200)

Wildlife

- 301 KAR 4:200 & E. Cyprus AMAX and Robinson Forest Wildlife Management areas use requirements and restrictions.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Administration

- 400 KAR 1:001. Definitions for 400 KAR Chapter 1.
- 400 KAR 1:030. Administrative service of process, computation of time and filing of documents.
- 400 KAR 1:040. Administrative discovery.
- 400 KAR 1:090. Administrative hearings practice provisions.

Department for Environmental Protection

Public Water Supply

- 401 KAR 8:651. Repeal of 401 KAR 8:650.

Standards for Solid Waste Facilities

- 401 KAR 48:005. Definitions related to 401 KAR Chapter 48.
- 401 KAR 48:050. Siting requirements for solid waste landfills.
- 401 KAR 48:090. Operating requirements for containing landfills.
- 401 KAR 48:300. Surface and groundwater monitoring and corrective action.
- 401 KAR 48:310. Financial requirements and bonds.

Division of Air Quality

General Administrative Procedures

- 401 KAR 50:035. Permits. (Amended After Hearing)

New Source Standards

- 401 KAR 59:101. New bulk gasoline plants.

New Source Performance Standards

- 401 KAR 60:100. Standards of performance for petroleum refineries.
- 401 KAR 60:110. Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.
- 401 KAR 60:111. Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984.
- 401 KAR 60:150. Standards of performance for sewage treatment plants.
- 401 KAR 60:160. Standards of performance for primary copper smelters.

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- 401 KAR 60:170. Standards of performance for primary zinc smelters.
- 401 KAR 60:180. Standards of performance for primary lead smelters.
- 401 KAR 60:190. Standards of performance for primary aluminum reduction plants.
- 401 KAR 60:250. Standards of performance for coal preparation plants.
- 401 KAR 60:260. Standards of performance for ferroalloy production facilities.
- 401 KAR 60:330. Standards of performance for stationary gas turbines.
- 401 KAR 60:340. Standards of performance for lime manufacturing plants.
- 401 KAR 60:370. Standards of performance for lead-acid battery manufacturing plants.
- 401 KAR 60:380. Standards of performance for metallic mineral processing plants.
- 401 KAR 60:390. Standards of performance for automobile and light-duty truck surface coating operations.
- 401 KAR 60:400. Standards of performance for phosphate rock plants.
- 401 KAR 60:420. Standards of performance for ammonium sulfate manufacture.
- 401 KAR 60:440. Standards of performance for pressure sensitive tape and label surface coating operations.
- 401 KAR 60:450. Standards of performance for industrial surface coating: large appliances.
- 401 KAR 60:460. Standards of performance for metal coil surface coating.
- 401 KAR 60:470. Standards of performance for asphalt processing and asphalt roofing manufacture.
- 401 KAR 60:480. Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry.
- 401 KAR 60:490. Standards of performance for the beverage can surface coating industry. (Amended After Hearing)
- 401 KAR 60:500. Standards of performance for bulk gasoline terminals.
- 401 KAR 60:540. Standards of performance for the rubber tire manufacturing industry.
- 401 KAR 60:560. Standards of performance for volatile organic compound (VOC) emissions from the polymer manufacturing industry.
- 401 KAR 60:580. Standards of performance for flexible vinyl and urethane coating and printing.
- 401 KAR 60:590. Standards of performance for equipment leaks of VOC in petroleum refineries.
- 401 KAR 60:600. Standards of performance for synthetic fiber production facilities.
- 401 KAR 60:620. Standards of performance for petroleum dry cleaners.
- 401 KAR 60:630. Standards of performance for equipment leaks of VOC from onshore natural gas processing plants.
- 401 KAR 60:640. Standards of performance for onshore natural gas processing: SO₂ emissions.
- 401 KAR 60:680. Standards of performance for wool fiberglass insulation manufacturing plants.
- 401 KAR 60:700. Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical

manufacturing industry (SOCMI) reactor processes.

- 401 KAR 60:730. Standards of performance for calciners and dryers in mineral industries

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- 401 KAR 61:056. Existing bulk gasoline plants.

General Standards of Performance

- 401 KAR 63:100. General provisions.
- 401 KAR 63:300. National emission standards for coke oven batteries.
- 401 KAR 63:320. Methional perchloroethylene air emission standards for dry cleaning facilities.

Environmental Protection

- 401 KAR 100:010. General administrative hearing practice provisions. (Repeals 400 KAR 1:050; 401 KAR 40:030)

Department for Surface Mining and Reclamation and Enforcement

Surface Effects of Noncoal Mining

- 405 KAR 5:001. Definitions for 405 KAR Chapter 5.
- 405 KAR 5:015. General provisions.
- 405 KAR 5:021. Permit and license fees.
- 405 KAR 5:025. License requirements.
- 405 KAR 5:030. Permit requirements.
- 405 KAR 5:035. Signs and markers.
- 405 KAR 5:038. Blasting.
- 405 KAR 5:040. Access roads and haul roads.
- 405 KAR 5:045. Protection of cultural and environmental resources.
- 405 KAR 5:050. Protection of the hydrologic balance.
- 405 KAR 5:055. Permanent and temporary impoundments.
- 405 KAR 5:060. Handling of materials.
- 405 KAR 5:065. Premining and postmining land use.
- 405 KAR 5:070. Revegetation.
- 405 KAR 5:075. Contemporaneous reclamation.
- 405 KAR 5:080. Reclamation bond.
- 405 KAR 5:085. Enforcement.
- 405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions.
- 405 KAR 5:096. Repeal of 405 KAR 5:010 and 405 KAR 5:020.

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- 405 KAR 7:015. Documents incorporated by reference.
- 405 KAR 7:095. Assessment of civil penalties.

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- 405 KAR 10:010. General requirements for performance bond and liability insurance.

Performance Standards for Surface Mining Activities

- 405 KAR 16:010. General provisions.

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405 KAR 16:020. Contemporaneous reclamation.
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Performance Standards for Underground Mining Activities

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501 KAR 6:050. Luther Luckett Correctional Complex.
501 KAR 6:130 & E. Western Kentucky Correctional Complex.

Department of State Police

Candidate Selection

502 KAR 45:015 & E. Qualifications.
502 KAR 45:035 & E. Application.
502 KAR 45:055 & E. Oral interview.
502 KAR 45:065 & E. Background investigation.

TRANSPORTATION CABINET Department of Vehicle Regulation

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601 KAR 15:010 & E. Disciplinary actions relating to employees commissioned pursuant to the provisions of KRS 281.770.

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School Administration and Finance

702 KAR 3:270. SEEK funding formula. (Amended After Hearing) (Deferred from August)
Bureau of Learning Results Services

Learning Results Services

703 KAR 4:060. Academic expectations. (Amended After Hearing) (Deferred from August)

Office of Instruction

704 KAR 3:455 & E. Instructional material and textbook adoption process.

Office of Learning Programs Development

Education Professional Standards Board

704 KAR 20:670. Kentucky teaching certificates. (Public Hearing in July)

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

Administration

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.
781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation service.
781 KAR 1:040. Rehabilitation technology services.
781 KAR 1:050. Carl D. Perkins Comprehensive Rehabilitation Center.
781 KAR 1:060. Admission and discharge for community facilities.

Department for the Blind

Department for the Blind

782 KAR 1:020. Definition of terms.
782 KAR 1:030. Scope and nature of services.

LABOR CABINET

Labor Standards; Wages and Hours

803 KAR 1:035. Hearing procedure.
803 KAR 1:110. Prevailing wage overtime agreement.

Occupational Safety and Health

803 KAR 2:034. Repeal of 803 KAR 2:033.

Department of Workers' Claims

Workers' Compensation

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803 KAR 25:094. Repeal of 803 KAR 25:095.
803 KAR 25:101. Provision of Workers' Compensation Rehabilitation Services.

Department of Mines and Minerals

Division of Mining

805 KAR 5:050. Performance bond for wages due from licensee.
805 KAR 5:060. Electrical mine safety standards. (Repeals 805 KAR 3:090)

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806 KAR 4:010. Fees of the Department of Insurance.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:050. Motor vehicle warranties.

Liability Self-Insurance Groups

806 KAR 46:020. Liability self-insurance group agent license.

Department of Housing, Buildings and Construction

Kentucky Building Code

815 KAR 7:100. The Kentucky Building Code. (Repeals 815 KAR 7:090)

Plumbing

815 KAR 20:020. Parts or materials list.

CABINET FOR HUMAN RESOURCES

Administration

900 KAR 1:090. Health care reporting requirements.

Department for Health Services

Communicable Diseases

902 KAR 2:090. Tuberculosis testing.

Maternal and Child Health

902 KAR 4:030. Newborn screening for inborn errors of metabolism and other inherited disorders.

Local Health Departments

902 KAR 8:040 & E. Definition of terms applicable for the personnel program for local health departments.

902 KAR 8:051 & E. Repeal of administrative regulation 902 KAR 8:050.

902 KAR 8:060 & E. Classification and compensation plans for local health departments of Kentucky.

902 KAR 8:070 & E. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

902 KAR 8:080 & E. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

902 KAR 8:090 & E. Promotion, transfer, and demotion of local health department employees.

902 KAR 8:100 & E. Disciplinary procedures applicable for local health department employees.

902 KAR 8:110 & E. Disciplinary appeal process applicable for local health department employees.

902 KAR 8:120 & E. Leave provisions applicable to employees of local health departments.

902 KAR 8:130 & E. Participation of local health department employees in political activities.

902 KAR 8:140 & E. Appointment of a health officer or a health department director of a local health department.

Sanitation

902 KAR 10:150. Domestic septage disposal site approval procedures.

902 KAR 10:160. Domestic septage disposal site operation.

902 KAR 10:170. Septic tank servicing.

Health Services and Facilities

902 KAR 20:016. Hospitals; operation and services.

902 KAR 20:145. Operations and services; rural health clinics.

Radiology

902 KAR 100:010. Definitions.

902 KAR 100:030. Quantities of radioactive material requiring labeling.

Water Fluoridation

902 KAR 115:010 & E. Water fluoridation for the protection of dental health.

Department for Employment Services

Unemployment Insurance

903 KAR 5:010. Application for employer account; reports.

903 KAR 5:220. Cash value of board and lodging.

903 KAR 5:392. Claimant profiling.

Department for Social Insurance

Public Assistance

904 KAR 2:006. Technical requirements; AFDC.

904 KAR 2:016. Standards for need and amount; AFDC.

904 KAR 2:040. Procedures for determining initial and continuing eligibility. (Deferred from August)

904 KAR 2:361 & E. Repeal of 904 KAR 2:360.

Food Stamp Program

904 KAR 3:010. Definitions.

904 KAR 3:020. Financial requirements.

904 KAR 3:035. Certification process.

Department for Social Services

Child Welfare

905 KAR 1:010 & E. Application for permission to place receive child.

905 KAR 1:310. Standards for child placing agencies.

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Day Care

905 KAR 2:140 & E. Child day care programs.

Block Grants

905 KAR 3:040. Allocation formula.

Adult Services

905 KAR 5:070. Adult protective services.

Children's Residential Services

905 KAR 7:240 & E. Kentucky Educational Collaborative for State Agency Children.

Department for Medicaid Services

Medicaid Services

907 KAR 1:022 & E. Nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:025 & E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:626 & E. Reimbursement of dental services. (Repeals 907 KAR 1:625E) (Not Amended After Hearing)

907 KAR 1:631 & E. Reimbursement of vision care services. (Repeals 907 KAR 1:630E) (Not Amended After Hearing)

907 KAR 1:635 & E. Conditions of coverage for the Kentucky Hospital Care Program (KHCP).

907 KAR 1:670 & E. Conditions of Medicaid provider participation; enrollment, documentation of services, disclosure, appeals process, and sanctions.

Department for Mental Health and Mental Retardation Services

Mental Health

908 KAR 2:060. Mental health and mental retardation manuals for funding instructions, program policies and standard, billing instructions, reporting requirements, and reimbursement guidelines.

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

Notice of Intent

Beginning July 15, 1994, administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

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

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

LEGISLATIVE ETHICS COMMISSION

Date: July 28, 1994

Executive Branch Ethics Commission

(1) **9 KAR 1:050** - Approval of outside employment of a public servant

(2) The Executive Branch Ethics Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 1:30 p.m., in Room 125, Capitol Annex, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill LeMaster, Executive Director, Executive Branch Ethics Commission, 161 Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 11A.040(9).

(b) The administrative regulation that the Executive Branch Ethics Commission intends to promulgate will not amend an existing administrative regulation. It will establish the procedure for the approval of outside employment by public servants.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 11A.040(9) requires the Executive Branch Ethics Commission to promulgate administrative regulations establishing a procedure for approval of outside employment of a public servant.

(d) The benefits expected from administrative regulation are: To allow public servants to hold outside employment with entities which do business with or are regulated by the agency for which the employee works, if low level public servants are not in a position to have any influence in their state position over the outside entity.

2. The State Board of Elections intends to promulgate an administrative regulation governing the subject listed above.

3. A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

5(a) Persons wishing to request a public hearing should mail their written request to the following address: State Board of Elections, 140 Walnut 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 from the State Board of Elections 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 procedures to be followed by preclearance counties to obtain approval of decisions from the State Board of Elections is KRS 117.015.

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will establish the procedures to be followed by preclearance counties to obtain approval of decisions from the state board of elections.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to ensure that if the State Board of Elections designates a county as a preclearance county, all decisions of the county board of elections are timely reported to and subject to the approval of the State Board of Elections.

(d) The benefits to be expected from administrative regulation are: This regulation will clarify the issue of how decisions of preclearance counties will be treated by the State Board of Elections.

(e) The administrative regulation will be implemented as follows: All decisions of the county board of elections of a preclearance county shall be in writing and sent by certified mail to the State Board of Elections no later than 3 days after the date of the decision. A decision by the county board of elections of a preclearance county is not final until it has been approved by the State Board of Elections. If a decision of the county board of elections of a preclearance county requires approval of the State Board of Elections before the next regularly scheduled meeting of the state board, the Executive Director of the State Board of Elections may approve or disapprove the decision of the county board of elections of a preclearance county.

STATE BOARD OF ELECTIONS

Date: August 15, 1994

State Board of Elections

31 KAR 4:080

1. The subject matter of the new administrative regulation is the procedure to be followed by preclearance counties to obtain approval of decisions from the State Board of Elections.

AUDITOR OF PUBLIC ACCOUNTS

Date: August 15, 1994

Auditor of Public Accounts

45 KAR 1:080 - Standards for Title VI reporting

(1) The subject matter of the proposed administrative regulation

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is the report format, procedures and time frame for state agencies to submit Title VI Implementation and Compliance Plans to the Auditor of Public Accounts for publication as required by statute.

(2) The Auditor of Public Accounts intends to promulgate an administrative regulation governing the above topic.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 26, 1994, at 11 a.m. at the Auditor of Public Accounts, 2439 Old U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 26, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Auditor of Public Accounts, 2439 Old U.S. 127 South, Frankfort, Kentucky 40601, (502)564-7494, Attention: JoJuana Leavell-Greene.

(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 Auditor of Public Accounts 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 Standards for Title VI Reporting is in KRS Chapter 344 (1994 Senate Bill 248).

(b) The administrative regulation that the Auditor of Public Accounts intends to promulgate will not amend an existing administrative regulation. It will establish the requirements for report format, procedures, and time frames for the publication of Title VI Implementation and Compliance Plans.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will require that all state agencies submit Title VI, of the Federal Civil Rights Act, Implementation and Compliance Plans in a uniform report format and time frame to the Auditor of Public Accounts for publication. The 1994 General Assembly enacted Senate Bill 248 which mandates the publication of this report.

(d) The Auditor of Public Accounts and Kentucky Commission on Human Rights will be able to publish the report in an expedited manner and citizens will be able to access the publication quicker and a standard format will make use easier and less confusing.

(e) The promulgated administrative regulations will be implemented in several phases:

1. All state agencies will submit implementation plans to the Auditor of Public Accounts for publication.
2. The Auditor of Public Accounts will publish the plans.
3. The Auditor of Public Accounts will update plans and compliance reports on a regular basis as required by Senate Bill 248.
4. The Auditor of Public Accounts and the Commission on Human Rights will provide for training and technical assistance to state agencies.

KENTUCKY REVENUE CABINET

DATE: July 26, 1994

Kentucky Revenue Cabinet

Office of General Counsel

Division of Tax Policy and Research

(1) Regulation Number and Title: **103 KAR 8:041**, Repeal of 103 KAR 8:040, 103 KAR 8:050, and 103 KAR 8:060.

(2) House Bill 85 amended various sections of KRS Chapter 393 to transfer the administration of the abandoned property law from the Revenue Cabinet to the Department of the Treasury, effective March 10, 1994. The Department of the Treasury has promulgated administrative regulations necessary for the administration of the abandoned property program and has requested that the Revenue Cabinet repeal its regulations relating to abandoned property.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, 200 Fair Oaks Lane, Building #2, Third Floor, Large Conference Room.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Revenue Cabinet, Office of General Counsel, Division of Tax Policy and Research, 200 Fair Oaks Lane, Building #2, 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 Revenue Cabinet at the address listed above.

STATE BOARD OF PHYSICAL THERAPY

Date: August 15, 1994

Kentucky State Board of Physical Therapy

(1) **201 KAR 22:052**, Refusal, revocation, suspension, or probation of license or certificate; administrative warning to licensee or certificent.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, at 9 a.m., Kentucky State Board of Physical Therapy, 9110 Leesgate Road, Louisville, Kentucky 40222-5159.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will

be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 9110 Leesgate Road, Louisville, Kentucky 40222-5159.

(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 Nancy Brinly at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to revision of complaint and hearing procedures for the Kentucky State Board of Physical Therapy is KRS 327.040.

(b) The administrative regulation that the Kentucky State Board of Physical Therapy intends to promulgate will amend 201 KAR 22:052, Refusal, revocation, suspension, or probation of license or certificate; administrative warning to licensee or certificant. It will amend the complaint and hearing procedures for the Kentucky State Board of Physical Therapy.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessary to comply with KRS Chapter 13A. The function of the regulation is to establish a complaint and hearing procedure.

(d) The benefit expected from this administrative regulation is that the public and licensees will have an improved understanding of the complaint and hearing procedures for the Kentucky State Board of Physical Therapy.

DEPARTMENT OF AGRICULTURE

DATE: July 28, 1994

Department of Agriculture

(1) The subject matter of the proposed administrative regulation **302 KAR 31:040** pertains to the storage and handling of pesticides and fertilizers for commercial and noncommercial facilities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 27, 1994, at 10 a.m. at Capital Plaza Tower, 7th floor, Frankfort, KY 40601.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Plaza Tower, 7th floor, 500 Mero Street, Frankfort, KY 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 Agriculture 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 storage and handling of pesticides and fertilizers for commercial and noncommercial activities is KRS 217B.050.

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

(c) The necessity and function of the proposed administrative regulation is as follows: Kentucky does not regulate the storage and handling of pesticides and fertilizer for commercial and noncommercial facilities. A spillage could create a danger to human health and the environment.

(d) The benefits expected from administrative regulation are: Storage of pesticides and fertilizers of identified quantities will now be regulated.

DATE: July 18, 1994

Department of Agriculture

(1) The subject matter of the proposed administrative regulation, **302 KAR 79:010**, establishes procedures to implement and administer an inspection and testing program for motor fuels to ensure compliance with HB 135.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 26, 1994, at 10 a.m. at Capital Plaza Tower, 7th floor, Frankfort, KY 40601.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Plaza Tower, 7th floor, 500 Mero Street, Frankfort, KY 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 Agriculture 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 inspection and testing of motor fuels is House Bill 135.

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

(c) The necessity and function of the proposed administrative regulation is as follows: Currently, Kentucky does not test the quality of motor fuels. This proposed administrative regulation establishes procedures to implement and administer an inspection and testing program for the quality of motor fuels to ensure compliance with HB 135.

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

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quality of motor fuel will now be tested regularly in Kentucky. This state will no longer be a "dumping ground" for bad gasoline.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION DIVISION FOR AIR QUALITY

Date: August 15, 1994

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

(1) The subject matter of this new administrative regulation, **401 KAR 50:065**, which would adopt the federal provisions for determining conformity of general federal actions to the State Implementation Plan (SIP), is as follows: The criteria and procedures for assessing the conformity of federal actions to the Kentucky SIP.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601, and phone number (502) 573-3382.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation relating to the federal conformity regulation is KRS 224.10-100, KRS 224.20-100, KRS 224.10-110, KRS 224.20-120, and 42 USC 7506(c)(4)(C).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: Section 176(c)(4)(C) of the Clean Air Act (42 USC 7506(c)(4)(C)) mandates that the U.S. EPA require each state to submit to the U.S. EPA Administrator and the U.S. Secretary of Transportation a revision of its SIP that includes criteria and procedures for assessing the conformity of federal activities to the SIP. 40 CFR 51.851(a) mandates that the state submit the conformity provisions within 12 months after November 30, 1993. The Division for Air Quality is proposing to promulgate the administrative regulation giving the Commonwealth the authority to ensure that the federal activities conform to the SIP of the Commonwealth.

(d) The benefit expected from the administrative regulation is: The departments, agencies, and instrumentalities of the federal government will work with the cabinet to ensure that their activities conform to the SIP of the Commonwealth.

(e) The administrative regulation will be implemented as follow:

on and after the effective date, the departments, agencies, and instrumentalities of the federal government will work with the cabinet to ensure that their activities conform to the SIP of the Commonwealth.

Date: August 15, 1994

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

(1) The subject matter of this new administrative regulation, **401 KAR 61:180**, would implement Sections 182(f) and 182(b)(2) provisions of the federal Clean Air Act Amendments of 1990. These provisions require all major stationary sources of oxides of nitrogen emissions (NO_x) located in ozone nonattainment areas, classified moderate or higher, to adopt Reasonably Available Control Technology (RACT) emission limitations by May 31, 1995. A major source, as defined in Title V of the Clean Act Amendments of 1990, includes any source which emits or has the potential to emit 100 tons or more of any regulated air pollutant, including NO_x. The regulation may contain presumptive NO_x RACT emission limits for certain significant NO_x emitters (e.g., utility, industrial, commercial, and institutional boilers, turbines, and internal combustion engines). NO_x RACT for other NO_x sources will be determined on a case by case basis.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601, and phone number (502) 573-3382.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation relating to the NO_x RACT regulation is KRS 224.20-110(2), KRS 224.10-100, 42 USC 7511a(f), and 42 USC 7511a(b)(2).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: The Natural Resources and Environmental Protection Cabinet is mandated by KRS 224.20-110(2) to promulgate a NO_x RACT regulation that implements the NO_x RACT provisions required by Sections 182(f) and 182(b)(2) of the Clean Air Act Amendments of 1990.

(d) The benefit expected from this administrative regulation is:

The adoption of a NO_x RACT regulation will allow the Commonwealth to comply with specific Clean Air Act provisions regarding NO_x emissions and assist it in achieving and maintaining compliance with the federal ozone standard in certain ozone nonattainment areas.

(e) The administrative regulation will be implemented as follows: on or after the classification date specified in the administrative regulation, applicable major stationary sources of NO_x will have to meet the NO_x RACT requirements.

**JUSTICE CABINET
DIVISION OF CHARITABLE GAMING**

Date: August 12, 1994
Justice Cabinet
Division of Charitable Gaming
500 KAR 11:010

(1) The subject matter of this administrative regulation, 500 KAR 11:010, is the issuance of temporary licenses to charitable organizations, manufacturers, distributors, and charitable gaming facilities.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for September 30, 1994, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, KY 40601-2690.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, KY 40601-2690, (502)564-5528.

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(9), KRS 238.525(4).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish the requirements and procedures for the granting of temporary licensure to qualifying charitable organizations, manufacturers, distributors and charitable gaming facilities.

(c) The necessity and function of this administrative regulation is as follows: KRS Chapter 238 does not establish temporary licensing procedures. It authorizes the Division of Charitable Gaming to establish temporary licensing procedures by administrative regulation.

(d) The benefits expected from the administrative regulation are: Whenever the processing of the application for licensure has been unduly delayed, the Division of Charitable Gaming will have procedures by which it can issue temporary licenses to those qualifying charitable organizations, manufacturers, distributors and charitable gaming facilities, pursuant to KRS 238.525(4), who have substantially complied with the licensure requirement.

(e) The administrative regulation will be implemented as follows: Whenever the processing of the application for licensure has been unduly delayed, the Division of Charitable Gaming will issue temporary licenses to those entities subject to licensure who have substantially complied with the licensure requirements. Implementation of this administrative regulation will occur immediately upon its effective date so as to enable the Division of Charitable Gaming to issue temporary licenses to those entities required by KRS 238.525 to be licensed by September 16, 1994.

Date: August 12, 1994
Justice Cabinet
Division of Charitable Gaming
500 KAR 11:020

(1) The subject matter of this administrative regulation, 500 KAR 11:020, is the conduct of hearings following notification to licensees of action affecting licenses.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for September 30, 1994, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, KY 40601-2690.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost, to requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, KY 40601-2690, (502)564-5528.

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

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

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

(b) Persons who wish to file this request may obtain a request

form from the Division of Charitable Gaming at the address listed above.

(7) Information relating to this administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(9), KRS 238.565(2), and KRS 13B.170.

(b) This administrative regulation will not amend an existing administrative regulation. It will establish the requirements and standards for conducting hearings upon notification of action adverse to a licensee.

(c) The necessity and function of this administrative regulation is as follows: KRS Chapter 238 does not establish hearing procedures. It authorizes the Division of Charitable Gaming to establish hearing procedures by administrative regulation.

(d) The benefits expected from this administrative regulation are: All licensees will be afforded the same rights and procedures upon notification of action to be taken adverse to the licensee. Agencies for which hearing procedures are not established by statute are authorized by KRS Chapter 13B to establish hearing procedures by administrative regulation.

(e) This administrative regulation will be implemented as follows: The Division of Charitable Gaming will issue conduct all hearings, including prehearing and posthearing procedures, pursuant to the provisions of this administrative regulation.

JUSTICE CABINET DEPARTMENT OF CORRECTIONS

Date: August 15, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:030**, Kentucky State Reformatory:

a. KSR 10-00-10 - Segregation-Special Management Inmate Legal Access

b. KSR 10-01-01 - Segregation Unit-Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation

c. KSR 10-01-02 - Segregation-General Operational Procedures

d. KSR 10-01-03 - Segregation-Inmate Tracking System and Record Systems

e. KSR 10-01-04 - Segregation-Administrative Segregation

f. KSR 10-01-05 - Segregation-Disciplinary Segregation

g. KSR 10-01-06 - Segregation-Protective Custody

h. KSR 10-01-07 - Segregation-Convalescent Care Unit

i. KSR 10-01-11 - Segregation Unit-Behavior Problem Control

j. KSR 10-01-13 - Segregation Unit-Property Room Access

k. KSR 15-01-01 - Operation Procedures and Rules and Regulations for Unit A, B and C: Function of Assigned Personnel

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:030, as follows:

1. KSR Segregation-Special Management Inmate Legal Access Policy (10-00-10) shall be amended to include orientation for legal aides assigned to the Segregation Unit. Unit D designation changed to Segregation. Process in delivering and collecting legal requests changed to be Copy Clerk responsibility.

2. KSR Segregation Unit-Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation Policy (10-01-01) shall be amended to indicate Unit D designation changed to Segregation throughout policy. The number of allotted positions in staffing pattern revised. Additional responsibilities for Unit Correctional Officers reflected.

3. KSR Segregation-General Operational Procedures Policy (10-01-02) shall be amended to reflect Unit D designation changed to Segregation. Amendment to allow exception to initial three (3) day lockdown. Use of restraints detailed when inmates are escorted out of the unit. Walk designations and sick call procedures revised to reflect accurate procedures. Current haircut procedure reflected. Attachment #2 amended to define allowable property in Segregation.

4. KSR Segregation-Inmate Tracking System and Records System Policy (10-01-03) shall be amended to reflect Unit D designation changed to Segregation. Amendment to include classification document must be completed on 30 day reviews. Inmate signature required acknowledging orientation received.

5. KSR Segregation-Administrative Segregation Policy (10-01-04) shall be amended to include Unit D designation changed to Segregation. Use of restraints and allowable property deleted from this policy as it is reflected in KSR 10-01-02.

6. KSR Segregation-Disciplinary Segregation Policy (10-01-05) shall be amended to reflect Unit D designation changed to Segregation. Use of restraints and allowable property deleted from this policy as it is reflected in KSR 10-01-02.

7. KSR Segregation-Protective Custody Policy (10-01-06) shall be amended to reflect Unit D designation changed to Segregation. Language regarding Adjustment Committee deleted as referred to in CPP. Property list deleted as is covered in KSR 10-01-02.

8. KSR Segregation-Convalescent Care Unit Policy (10-01-07) shall be amended to reflect Unit D designation changed to Segregation. To allow mental health inmates placement in CCU if criteria is met. Delete language no longer applicable and delete language regarding mail as it is covered in another policy.

9. KSR Segregation Unit-Behavior Problem Control Policy (10-01-11) shall be amended to reflect Unit D designation changed to Segregation. A five (5) minute watch shall be required of any inmate on lockdown status and stripped of property and incremental removal of property to control behavior. Time guidelines detailed and approval required on use of full restraints. A fifteen (15) minute watch implemented for 24 hours after ending a five (5) minute watch.

10. KSR Segregation Unit-Property Room Access Policy (10-01-

13) shall be amended to reflect Unit D designation changed to Segregation. Frequency of property room access and exceptions to regular schedule of access more defined. Routing and responsibilities in processing request forms detailed.

11. KSR Operational Procedures and Rules and Regulations for Unit A, B and C; Functions of Assigned Personnel Policy (15-01-01) shall be amended to reflect Third Edition ACA Standards referenced. Unit Maintenance Supervisor deleted as this position no longer exists. One perimeter fence check per shift shall be conducted by the Unit Roving Supervisor.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Kentucky State Reformatory to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policy and Procedures.

(d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Corrections Policy and Procedures.

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

Date: August 15, 1994

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:140**, Bell County Forestry Camp: Annual Planning Document, Permit Required Confined Space, Control of Hazardous Energy (Lockout or Tagout), Organization and Assignment of Responsibility, Monitoring of Operations, Policies and Procedures, Public Information and News Media Access, Institutional Duty Officer, Information System, Offender Records, Storage of Expunged Records, Court Trips, receipt of Order of Appearance, Food Services: General Guidelines, Food Service Security, Dining Room Guidelines, Food Service: Meals, Food Service: Menu, Nutrition and Special Diets, Health Requirements of Food Handlers, Food Service Inspection and Sanitation, Food Service: Purchasing, Storage and Farm Products, Institutional Classification Committee, Recreation and Inmate Activities, Inmate Clubs and Organizations, Religious Services, Social Services and Counseling Program, BCFC Prerelease Program, Community Center Program, Inmate Furloughs, Inmate Discharge Procedure, Extraordinary Occurrence Procedure, Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses, Staff/Visitors Meals, Classification Document, Classification Process, Classification Program Planning, Population Category Status, Instructions for Twelve Month Review, Transfers to Other Minimum Security Institutions, Conducting Inmate Organizational Meetings and Programs, Visitors for Religious Programs, Marriage of Inmates, Preparole Progress Report, and Parole Eligibility Dates.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30,

1994, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:140, as follows:

1. Annual Planning Document (01-13-01) shall be added to reflect the operating procedure at BCFC.

2. Permit Required Confined Space (07-13-01) shall be added to comply with OSHA regulations.

3. Control of Hazardous Energy (Lockout or Tagout) (07-06-01) shall be added to comply with OSHA regulations.

4. Organization and Assignment of Responsibility (01-02-01) shall be amended to reflect the current operating procedure at BCFC.

5. Monitoring of Operations, Policies and Procedures (01-05-01) shall be amended to reflect the current operating procedure at BCFC.

6. Public Information and News Media Access (01-08-01) shall be amended to reflect current policies for news media contacts.

7. Institutional Duty Officer (01-11-01) shall be amended to reflect changes in Duty Officer tasks.

8. Information System (05-01-01) shall be amended to add new computer systems.

9. Offender Records (06-01-01) shall be amended to update Records Office operations.

10. Storage of Expunged Records (06-02-01) shall be amended for references and technical word changes.

11. Court Trips (06-03-01) shall be amended to reflect how inmates are transported to courts.

12. Receipt of Order of Appearance (06-03-02) shall be amended to properly process court records.

13. Food Services: General Guidelines (11-01-01) shall be amended to update the current Food Service General Guidelines.

14. Food Service Security (11-02-01) shall be amended to update the current Food Service Security operating procedures.

15. Dining Room Guidelines (11-03-01) shall be amended to update the current Dining Room Guidelines for inmate behavior.

16. Food Service: Meals (11-04-01) shall be amended to ensure the Food Service Program follows Department of Corrections, Kentucky Food Service Code and ACA Standards.

17. Food Service: Menu, Nutrition and Special Diets (11-04-02) shall be amended to follow current Department of Corrections dietary standards.

18. Health Requirements of Food Handlers (11-06-02) shall be amended to ensure proper health standards in food service preparation.

19. Food Service Inspection and Sanitation (11-06-01) shall be amended to ensure safe sanitation practices.

20. Food Service: Purchasing, Storage and Farm Products (11-07-01) shall be amended to ensure procedures are followed in purchasing and storing of food service products.

21. Institutional Classification Committee (18-01-01) shall be amended to ensure proper classification procedures in compliance with the Corrections Classification Manual and procedures.

ADMINISTRATIVE REGISTER - 860

22. Recreation and Inmate Activities (22-01-01) shall be amended to update the current recreation and inmate activity procedures.

23. Inmate Clubs and Organizations (22-02-01) shall be amended to update inmate clubs operating procedures.

24. Religious Services (23-01-01) shall be amended to update Religious Services operating procedures.

25. Social Services and Counseling Program (24-01-01) was amended to update the Social Service and Counseling Programs available at BCFC and the current operating procedures.

26. BCFC Prerelease Program (25-01-01) was amended to update the BCFC Prerelease Program operating procedures.

27. Community Center Program (25-02-01) shall be amended to update the current operating procedure for a gradual release system for inmates.

28. Inmate Furloughs (25-02-02) shall be amended to update the Inmate Furloughs operating procedures.

29. Inmate Discharge Procedure (25-04-01) shall be amended to update the current inmate discharge procedures at BCFC.

30. Extraordinary Occurrence Procedure (01-04-02) shall be deleted due to the information in this policy being covered in CPP 1.6.

31. Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses (01-09-01) shall be deleted due to the information in this policy being covered in CPP 4.1.

32. Staff/Visitors Meals (11-08-01) shall be deleted due to the information in this policy being combined with BCFC 11-04-01.

33. Classification Document (18-02-01) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures and the Corrections Classification Manual.

34. Classification Process (18-03-01) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures and the Corrections Classification Manual.

35. Classification Program Planning (18-03-02) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures and the Corrections Classification Manual.

36. Population Category Status (18-03-03) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures and the Corrections Classification Manual.

37. Instructions for Twelve Month Review (18-04-01) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures and the Corrections Classification Manual.

38. Transfers to Other Minimum Security Institutions (18-05-01) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures and the Corrections Classification Manual.

39. Conducting Inmate Organizational Meetings and Programs (22-02-02) shall be deleted due to the information in this policy being combined in BCFC 22-02-01.

40. Visitors for Religious Programs (23-02-01) shall be deleted due to the information in this policy being combined in BCFC 23-01-01.

41. Marriage of Inmates (23-03-01) shall be deleted due to this information being covered in CPP 14.3 and BCFC 23-01-01.

42. Preparole Progress Report (25-03-01) shall be deleted due to the information in this policy being covered in CPP 18.10.

43. Parole Eligibility Dates (25-03-02) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures.

(c) The necessity and function of the proposed administrative regulation is: to update operating procedures at Bell County Forestry Camp to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(d) The benefits expected from administrative regulation are: to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

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

TRANSPORTATION CABINET

Date: August 15, 1994

TRANSPORTATION CABINET

(1) **601 KAR 35:020** Relating to Transportation Plans for the Highway Movement of Coal.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994 at 1 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, KY 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation relating to transportation plans for highway movement of coal is KRS 42.455(8), 177.9771, 177.977 and 177.979.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend existing administrative regulation 601 KAR 35:020.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 351.175(6) requires that mine operators submit with their application for mining licenses a transportation plan certified by the Department of Vehicle Regulation. Further, KRS 350.060(11) requires that mine operators submit with their application for mining licenses a Transportation Plan certified by the Transportation Cabinet. In conjunction with one another KRS 42.455(8) and 177.977 designate the Transportation Cabinet as the agency responsible for the identification of public highways, roads, streets, and bridges that comprise the official coal haul highway system. This administrative regulation is adopted to provide for and regulate the gathering of pertinent information from all coal shippers or owners regarding the movement of coal and to specify the procedures to be used to obtain a certified transportation plan. The proposed amendment to this administrative regulation is necessary to incorporate by reference the form TC 99-81 "the Transportation Cabinet, certified Transportation Plan" effective May, 1987 as a part of the administrative regulation.

(d) The benefits expected are increased public awareness of the appropriate form on which to file transportation plans.

ADMINISTRATIVE REGISTER - 861

Date: August 15, 1994

TRANSPORTATION CABINET

(1) **603 KAR 5:070** Relating to Motor Vehicle Dimension Limits and Reasonable Access to the STAA System of Highways.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, KY 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation relating to motor vehicle dimension limits and reasonable access to the STAA system is found in KRS 189.221, 189.222, and 23 CFR Part 658.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend existing administrative regulation 603 KAR 5:070.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the state primary road system. The state primary road system consists of those roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a five-mile access on state maintained highways and a one-mile access on locally controlled highways be included with the list of highways over which motor vehicles with increased dimension shall be allowed to operate. The proposed changes in this administrative regulation would require that Kentucky allow motor vehicles with increased dimensions to operate with a gross weight of up to 80,000 pounds on the highways on which the motor vehicles with increased dimensions are allowed. Further, the changes include additional roads over which increased dimensions are to be allowed.

(d) The benefits expected are increased productivity of the trucking industry in the Commonwealth of Kentucky and a reduction in the number of citations issued for overweight trucks.

Date: August 15, 1994

TRANSPORTATION CABINET

(1) **603 KAR 5:230**, relating to the Extended Weight Coal and Coal By-products Haul Road System.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September

30, 1994 at 1 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, KY 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the extended weight coal and coal by-products haul system is KRS 177.9771.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will not amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the "Extended Weight Coal or Coal By-Products Haul Road System". KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the weight limits prescribed in KRS 177.9771 on a bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceeds certain limits. This administrative regulation identifies the Extended Weight Coal or Coal By-Product Haul Road System and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the Extended Weight Coal or Coal By-Products Haul Road System and establishes procedures to be followed by local governing bodies requesting this consideration. This proposed amendment to the administrative regulation specifically addresses the resolutions received by the Transportation Cabinet during the preceding year, the continuation of the resolutions received prior to the preceding year, and the amount of coal transported over public roads in Kentucky during calendar year 1993. As a result of this proposed change, there will be many roads added to and deleted from the Extended Weight Coal Haul Road System.

(d) The benefits expected from this proposed amended administrative regulation are the annual update of the Extended Weight Coal Haul Road System as required by KRS 177.9771 and improved highway safety where the cabinet is responding to local resolutions.

Date: August 15, 1994

TRANSPORTATION CABINET

(1) **603 KAR 5:301** Relating to Weight Classification of the State

Maintained System of Highways.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994 at 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, KY 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for this administrative regulation is KRS 189.222.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.222 authorizes the Secretary of Transportation to establish by official order reasonable weight limits for all highways included in this state maintained system of highways. This administrative regulation is promulgated to identify and incorporate by reference the official order and guidance manual setting forth each road in the state maintained system and to indicate the classification of each. The classification of each highway segment in conjunction with 603 KAR 5:066 establishes the weight limit for trucks using each road segment. The change in this administrative regulation shows the changes that have been made in the state highway system since 1993.

(d) The benefits expected from administrative regulation will be the public notice of the changes to the states highway weight classification of state highways. Specifically, several roads have been upgraded and therefore, need to be included as a higher class of highway. This will also provide notice to enforcement officers of the upgrade so that there is no misunderstanding about what weight truck can operate on specific highways.

DEPARTMENT OF EDUCATION

Date: August 1, 1994

State Board for Elementary and Secondary Education

(1) **702 KAR 3:275**, School District Tax Rate Formulas, proposed administrative regulation. This proposed administrative REGULATION outlines formulas for calculating the tax rates certified yearly to local school districts by the Department of Education.

(2) The State Board for Elementary and Secondary Education intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September

30, 1994 at 8:30 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to school district tax formulas is KRS 156.160.

(b) The administrative regulation that the Department of Education intends to promulgate is a new administrative regulation. It will provide guidelines for the calculation of the tax rates certified to school districts by the Department of Education.

(c) The necessity and function of the proposed administrative regulation is to provide guidelines for the calculation of the tax rates certified to the school districts by the Department of Education.

(d) The benefits expected from the administrative regulation are to provide clarification of the calculation of school district tax rates to school districts, the auditor's office and the general public.

Date: August 1, 1994

State Board for Elementary and Secondary Education

(1) Administrative Regulation Number and Title: **702 KAR 4:170** Facility Programming and Construction Criteria; repeal of 702 KAR 4:060, 702 KAR 4:070 and 702 KAR 4:080.

(2) The State Board for Elementary and Secondary Education intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994 at 8:30 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to facility programming and construction criteria is KRS 156.070, 156.160, 162.060.

(b) The administrative regulation that the Department of Education intends to promulgate will repeal 702 KAR 4:060 Construction criteria, 702 KAR 4:070 Mechanical, electrical, sanitary, heating and ventilation design, and 702 KAR 4:080 Temporary or supplemental units. It will consolidate these three existing administrative regulations, removing outdated provisions and further integrating the ideals of the Kentucky Education Reform Act into school facility construction.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt rules and administrative regulations relating to sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, and school buildings and classrooms. KRS 162.060 requires approval of all plans and specifications for school building construction by the chief state school officer, in accordance with the rules and administrative regulations of the State Board. This administrative regulation implements these statutory duties by prescribing various architectural, structural, mechanical, electrical, sanitary, heating and ventilation design specifications to ensure functional, safe and economical operation of the proposed educational facility, and to provide for a healthy and comfortable space for learning. The minimum standards stated in this administrative regulation shall be incorporated into the design of each new school building. Additionally, this administrative regulation repeals and replaces three (3) administrative regulations relating to school district facilities.

(d) The benefits expected from the administrative regulation are: An enhancement of the Kentucky Department of Education's ability to provide the local school district with a more complete guide to the physical learning environment; a level of minimum standards for all instructional spaces across the state; and an overhaul of the school facility construction process resulting in a consolidation of the regulatory effort into a more usable instrument.

EDUCATION PROFESSIONAL STANDARDS BOARD

DATE: August 9, 1994

Education Professional Standards Board

(1) **704 KAR 20:020** - Fifth-year program for renewal of provisional teaching certification and for Rank II equivalency.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 10 a.m. in the State Board Room, 1st floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the

required number of people at least 10 days prior to September 30, 1994, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the standards for a fifth-year program for certificate renewal and for Rank II is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:020, Fifth-year program for renewal of provisional teaching certification and for Rank II equivalency. Some form of this regulation has been in existence since 1964; the last revision was adopted in July 1988. It is proposed to phase out this regulation by establishing a January 1, 1995, date when candidates shall not be admitted to a plan for certificate renewal and for Rank II under this regulation and by adopting a deadline date of September 1, 1998, for completion of a program for those who are admitted before January 1, 1995.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation defines an equivalency for the Rank II salary classification and the fifth-year program acceptable for certificate renewal.

(d) The benefits expected from administrative regulation are: The current regulation establishes requirements for the fifth-year program which is required for certificate renewal and Rank II. The proposed amendments phase out these requirements by September 1, 1998. Requirements more focused on improving what teachers know and are able to do are being adopted in a new regulation to replace current requirements.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented through colleges and universities approved by the Education Professional Standards Board for offering fifth-year programs. Candidates will also be informed of the requirements at the time they receive initial certification. Candidates will apply to the Division of Certification for renewal of certification and Rank II with verification of completion of the requirements by a college or university.

DATE: August 9, 1994

Education Professional Standards Board

(1) **704 KAR 20:021** - The subject matter of the proposed administrative regulation is to define the planned fifth-year programs acceptable for certificate renewal and for Rank II classification.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 10 a.m. in the State Board Room, 1st floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request

this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to September 30, 1994, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the standards for a fifth-year program for certificate renewal and for Rank II is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will supersede an existing administrative regulation, 704 KAR 20:020, which will be phased out effective September 1, 1998. It is proposed to establish two plans to complete the fifth-year program in keeping with the professional growth plan of the candidate in order to achieve the experienced teacher standards established by the Education Professional Standards Board: (1) a master's degree related to the initial classroom teaching certificate or to an additional classroom teaching certificate, and (2) a thirty-two (32) semester hour program of graduate level coursework related to the initial classroom teaching certificate or to an additional classroom teaching certificate which may include an option for completing 12 semester hours of the 32 hour program with professional development in keeping with proposed guidelines.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 and 161.030 vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation defines an equivalency for the Rank II salary classification and the fifth-year program acceptable for certificate renewal.

(d) The benefits expected from administrative regulation are: The administrative regulation will establish requirements for completion of the planned fifth-year program and attaining Rank II for individuals with teaching certificates. Completion of the planned fifth-year program is a requirement for the renewal of teaching certificates. The purpose of the planned fifth-year program is to ensure that all teachers receive advanced preparation in teaching to become more effective teachers.

(e) The administrative regulation will be implemented as follows: The provisions of the proposed administrative regulation will be implemented through universities and colleges which have been approved by the Education Professional Standards Board to offer fifth-year programs. Candidates pursuing renewal of certification and Rank II will be advised by their university and college advisors on specific requirements and procedures (as outlined in these administrative regulations) to complete the planned fifth-year program. Once the program has been completed the college/university will verify completion to the Division of Certification and recommend the candidate for certificate renewal and Rank II.

DATE: August 9, 1994

Education Professional Standards Board

(1) **704 KAR 20:084** - The subject matter of the proposed administrative regulation is to adopt the preparation program required for issuance of the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 10 a.m. in the State Board Room, 1st floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to September 30, 1994, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to an interdisciplinary certificate for early childhood is KRS 161.030 and 161.028.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will not amend an existing administrative regulation. It will establish the regulation to issue a Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, based on a bachelor's degree and the approved program of preparation of eight teacher standards.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, the statute requires teacher education institutions to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary; the teacher standards; and the standards for approval of programs leading to such a certificate.

(d) The benefits expected from the administrative regulation are: The interdisciplinary early childhood education birth to primary certificate will ensure that young children in preprimary school programs established pursuant to state and federal statutes will have qualified teachers essential for the appropriate education of their students.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will outline requirements and the process for candidates to receive the interdisciplinary early childhood certificate. Candidates must complete programs of preparation approved by the Education Professional Standards Board. Following completion of the preparation program candidates will complete designated examinations, assessments, and then a one-year on-the-job internship to qualify for certification. Teachers who are currently teaching in preprimary classrooms will have the option of either continuing to teach in these classrooms without

additional credentials or completing the preparation for the early childhood certificate.

LABOR CABINET
Department of Workers' Claims

DATE: July 15, 1994

Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is the Workers' Compensation Medical Fee Schedule for Physicians, **803 KAR 25:089**.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994 at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a Workers' Compensation Medical Fee Schedule for Physicians is KRS 342.035.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will establish a medical fee schedule for physicians as defined in KRS 342.0011. 803 KAR 25:090, the Workers' Compensation Medical Fee Schedule, is being repealed and replaced by this administrative regulation.

(c) The necessity and function of the proposed administration regulation is as follows: This regulation is 1 of 3 administrative regulations the commissioner is promulgating to comply with the legislative mandate contained in House Bill 928 of the 1994 General Assembly requiring a 25 percent reduction in total medical costs of the Kentucky workers' compensation program.

(d) The benefits expected from administrative regulation are: Reduction of approximately 10 percent in the total medical costs of the workers' compensation program.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish the maximum fee amount for medical services and procedures to which the fee

schedule applies. The fee for each procedure is calculated by multiplying the listed unit value for the medical procedure by the applicable conversion factor.

DATE: July 15, 1994

Kentucky Department of Workers' Claims

(1) Regulation number and title: **803 KAR 25:091, Workers' Compensation Hospital Fee Schedule.**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994 at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:091 as follows: This amendment reduces each hospital's return to equity from 15 percent for each hospital having an adjusted cost-to-charge ratio that does not exceed 83 percentile, including the 12 percentile addition. For hospitals that service 70 percentile or more patients covered and reimbursed by medicaid or medicare the reimbursement rate has been reduced from 100 percent to 97 percent. The reimbursement rate for new hospitals not yet in operation for one full fiscal year has been reduced from 83 percent to 80 percent.

(c) The necessity and function of the proposed administration regulation is as follows: To ensure that all fees, charges, and reimbursements to hospitals under KRS 342.020 are limited to charges that are fair, current and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers.

(d) The benefits expected from administrative regulation are: Reduction in hospital fees to the payors of workers' compensation medical benefits.

(e) The administrative regulation will be implemented as follows: The reimbursement to a hospital for services or supplies furnished to

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an employee under KRS 342.020 shall be calculated by multiplying the hospital's total allowable charges by its adjusted cost-to-charge ratio.

DATE: July 15, 1994

Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is workers' compensation managed health care plans, **803 KAR 25:110**.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994 at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

(b) On a request for public hearing, a person shall state: 1. "I agree to attend the public hearing"; or

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to managed health care plans is an amendment to KRS 342.020 made by House Bill 928 passed by the Regular Session of the 1994 General Assembly.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will establish standards for managed care plans to be filed with the Department of Workers' Claims and approved by the commissioner that allow employers to provide medical services for work-related injuries and occupational diseases.

(c) The necessity and function of the proposed administration regulation is as follows: House Bill 928 requires the commissioner to promulgate a regulation to effect a 25 percent reduction in total medical costs within the workers' compensation program. This is one of three regulations being promulgated by the commissioner to achieve that reduction.

(d) The benefits expected from administrative regulation are: The assurance that quality medical care will be delivered to injured employees at a reasonable cost so as to expedite the injured employee's recovery and facilitate return to work.

(e) The administrative regulation will be implemented as follows: Managed health care systems will render health care services for work-related injuries and occupational diseases in accordance with

plans approved by the commissioner.

CABINET FOR HUMAN RESOURCES

Date: August 2, 1994

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) Amendment of **902 KAR 20:350**, Boarding homes.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 90 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Department for Health Services, Division of Environmental Health and Community Safety, 275 East Main Street, Frankfort, Kentucky 40621, or calling 502/564-3970 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to boarding homes is KRS 216B.305.

(b) The administrative regulation that the Department for Health Services, Division of Environmental Health and Community Safety intends to promulgate will amend 902 KAR 20:350, Boarding homes. It will provide the minimum standards for the operation of boarding homes in the areas of sleeping rooms; bedding; linens and laundry services provided; plumbing fixtures; water supply; sewage disposal and sanitation of the premises; heating; lighting and fire prevention; food handling and kitchen sanitation; handling and storage of resident's prescription drugs; complaint procedures for residents; boarding home registration; inspection and enforcement procedures.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 216B.305 requires persons who operate a boarding home to register with the local health department and

directs the Cabinet for Human Resources to promulgate administrative regulations relating to the registration and operation of boarding homes.

(d) The benefits expected from the administrative regulation are: The amended administrative regulation will remove boarding homes from an environment of health care and place them in an environment of preventative environmental health services designed to protect the health of boarding home residents. The boarding home program will be carried out by local health departments.

Date: August 2, 1994

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) Amendment of 902 KAR 45:110, Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, and vending machine companies.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be canceled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Department for Health Services, Division of Environmental Health and Community Safety, 275 East Main Street, Frankfort, Kentucky 40621, or calling 502/564-3970 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions is KRS 194.050, 217.015, 217.125(2), (3), (4), and 217.811.

(b) The administrative regulation that the Department for Health

Services, Division of Environmental Health and Community Safety intends to promulgate will amend 902 KAR 45:110 Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, and vending machine companies. It will establish a permit fee of \$25 for seasonal restricted food concessions. Seasonal restricted food concessions are currently being inspected pursuant to the state retail food code 902 KAR 45:005(37), but no fee is being charged to offset costs incurred.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 217.015 defines establishments requiring permits; KRS 217.125 requires permits and authorizes a fee schedule; and KRS 217.127 directs the Secretary to promulgate appropriate regulations for the enforcement of the state retail food code.

(d) The benefits expected from the administrative regulation are: The amended administrative regulation will generate revenue to offset the cost of inspections conducted by local health departments.

Date: August 15, 1994

Department for Health Services

(1) 902 KAR 55:040 Excluded over the counter products.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main St., Frankfort, KY.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to excluded over the counter products is KRS 194.050, 211.090, 218A.020(3), 218A.090(4)(i) and 218A.250.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 55:040, Excluded over the counter products. It will revise the date of the citation for the

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list of over the counter products that are exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act. The list itself is unchanged.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 218A.020(4) and 218A.090(4)(i) authorize the Cabinet for Human Resources to exclude products that may be lawfully sold over the counter (without prescription) from the provisions relating to controlled substances of KRS Chapter 218A. The purpose of this administrative regulation is to exclude certain over-the-counter products from the provisions of KRS Chapter 218A.

(d) The benefits expected from administrative regulation are: Conformity with federal regulation and elimination of unnecessary recordkeeping.

Date: August 15, 1994

Department for Health Services

(1) **902 KAR 55:045** Exempt prescription products.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main St., Frankfort, KY.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to exempt prescription products is KRS 194.050, 211.090, 218A.020(3), and 218A.250.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 55:045, Exempt prescription products. It will revise the date of the citation for the list of prescription products that are exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act. The list itself is unchanged.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 218A.020(3) provides that if any

controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance under KRS 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain stimulant or depressant compounds from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

(d) The benefits expected from administrative regulation are: conformity with federal regulation and elimination of unnecessary recordkeeping.

Date: August 15, 1994

Department for Health Services

(1) **902 KAR 55:090** Exempt anabolic steroid products.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main St., Frankfort, KY.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to exempt anabolic steroid products is KRS 218A.010 to 218A.030; 218A.080 to 218A.090; 21 CFR 1306.13; 21 CFR 1308.34.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 55:090, Exempt anabolic steroid products. It will add seven products to the list of anabolic steroid products which are exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act by updating the citation for the list. The list is incorporated from the federal regulations.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 218A.020(3) provides that if any

controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance under KRS Chapter 218A by regulation. The purpose of this regulation is to exempt certain anabolic steroid products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

(d) The benefits expected from administrative regulation are: conformity with federal regulation and elimination of unnecessary recordkeeping.

implement the Discount Option Program which fulfills the requirements of Acts 1994, c. 512, Part 11, §82(2), p. 1514.

(d) The benefits expected from administrative regulation are: This administrative regulation will allow eligible participants to purchase health care services from participating providers at a discount rate.

Date: August 15, 1994

Cabinet for Human Resources

Department for Social Insurance

Division of Management and Development

(1) 904 KAR 2:440, Discount Option Program.

(2) Cabinet for Human Resources, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to September 30, 1994, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, 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 Discount Option Program is Acts 1994, c. 512, Part 11, §82(2), p. 1514.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will not amend an existing administrative regulation. It will establish a program which permits a person with family income below 200 percent of the federal poverty level to purchase health care services from Medicaid participating providers at the same rate Medicaid pays for the service.

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
9 KAR 1:050E

KRS 11A.040(9) establishes the conditions under which public servants are permitted to accept outside employment with a person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises. This portion of the statute was enacted in the 1994 Session and this provision became effective July 15, 1994, and directed that the commission shall promulgate administrative regulations to establish a procedure for approval. This administrative regulation establishes the procedure for the approval of outside employment by public servants and is being filed as an emergency in order to implement the pertinent provisions of HB 851 (codified as 11A.040(9)). This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
LIVINGSTON TAYLOR, Chairman

GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission

9 KAR 1:050E. Approval of outside employment of a public servant.

RELATES TO: KRS 11A.040(9)

STATUTORY AUTHORITY: KRS 11A.040(9)

NECESSITY AND FUNCTION: KRS 11A.040(9) requires the Executive Branch Ethics Commission to promulgate administrative regulations establishing a procedure for approval of outside employment of a public servant.

Section 1. (1) On or after July 15, 1994, a public servant who wishes to request approval of the Executive Branch Ethics Commission for outside employment shall submit a statement under oath to the appointing authority of his agency as follows:

"I request approval of off-duty employment with (name of outside employer). As a (public servant's job title), I am not involved in the (name of state agency's) decisions concerning (name of outside employer). If the request is approved, I agree that if, in the future, I realize that I will be involved in such decisions, I will immediately notify the (appointing authority) and the Executive Branch Ethics Commission and take steps to avoid any conflict of interest."

(2) The appointing authority shall review the request and consider the following factors:

(a) 1. The degree of separation between the public servant's state duties and decisions concerning the outside employer;

2. Example: whether the public servant is involved with the awarding of contracts to or regulation of the outside employer.

(b) 1. The public servant's level of supervisory or administrative authority, if any;

2. Example: whether the public servant has ultimate responsibility in a decision concerning the outside employer, although he is not involved in the decision made.

(c) 1. Whether the outside employment will interfere or conflict with the public servant's state employment duties.

2. A conflict exists if a public servant cannot carry out an appropriate course of action for his agency because of responsibilities his outside employment would require.

3. A conflict exists if the outside employment will materially interfere with the public servant's independent judgment in considering alternatives or courses of action that reasonably should be pursued in his state employment.

4. Relevant factors in determining whether there is potential for adverse effect include the duration of the outside employment, the functions performed by the public servant, the likelihood that a conflict will arise; the question is often one of proximity and degree.

(d) Whether the outside employment would create an appearance of conflict of interest with state duties.

(3)(a) The commission shall consider approval of the outside employment if the public servant's appointing authority submits a written statement to the commission as follows:

"As appointing authority for the (agency), I certify that as a (public servant's job title), (public servant's name) is not involved in this agency's decisions concerning (outside employer), that his off-duty employment by (outside employer), in my opinion, will not create a real or perceived conflict of interest which would damage public confidence in government; and that I approve such off-duty employment."

(b) The appointing authority shall attach to this statement:

1. The public servant's current P-1 personnel form and job description, and the name, title and location of the public servant's immediate supervisor.

2. The name and address of the outside employer; description of its type of business, ownership, and all its business and regulatory relationships with the appointing authority's agency; and a description of the public servant's off-duty job.

3. An explanation of the specific factors which separate the public servant's state job from the agency's decisions concerning the outside employer.

LIVINGSTON TAYLOR, Chairman

APPROVED BY AGENCY: August 15, 1994

FILED WITH LRC: August 15, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jill LeMaster

(1) Type and number of entities affected: The entities affected are executive branch employees who, in addition, are employed by outside entities which do business with or are regulated by the employee's state agency. The estimated number of these employees is 1,000.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effect upon competition) for the: It will cost executive branch employees their outside employment if they do not obtain approval for this outside employment.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Additional time will be

required by the commission to approve or disapprove the requested outside employment on a case-by-case basis.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Employees are required to submit a statement to the appointing authority. The appointing authority is required to submit a statement to the commission. These will require additional paperwork by those affected.

(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 Budget of commission.

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

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: None

(7) Assessments of alternative methods; reasons why alternatives were rejected: The alternative considered was to disallow all executive branch employees from holding outside employment with entities which do business with or are regulated by the agency for which the employee works. This alternative was rejected because some low level employees are not in a position to have any influence in their state position over the outside entity. Also, the statute only authorized one method.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. All employees seeking or holding outside employment with an entity which does business with or is regulated by his or her state agency must request approval of such.

STATEMENT OF EMERGENCY 302 KAR 79:010E

This emergency administrative regulation establishes procedures to implement and administer an inspection and testing program for the quality of motor fuels pursuant to HB 135 that went into effect on July 15, 1994. In order to begin the motor fuel inspection program, this regulation must go into effect immediately to protect human health and the environment. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent to promulgate an administrative regulation has been filed along with the emergency administrative regulation.

BRERETON C. JONES, Governor
ED LOGSDON, Commissioner

GENERAL GOVERNMENT CABINET Department of Agriculture Division of Weights and Measures

302 KAR 79:010E. Testing and inspection program.

RELATED TO: KRS Chapter 363

STATUTORY AUTHORITY: HB 135

NECESSITY AND FUNCTION: To establish procedures to implement and administer an inspection and testing program for the quality of motor fuels to ensure compliance with HB 135.

Section 1. Definitions. (1) "Gasoline-oxygenate blend" - a fuel consisting primarily of gasoline along with a substantial amount of one (1) or more oxygenates.

(2) "Octane rating" - the rating of the antiknock characteristic of a grade or type of gasoline as determined by dividing by two (2) the sum of the research octane number plus the motor octane number.

Section 2. Standard Specifications. (1) Gasoline offered for sale at a retail facility shall conform to ASTM D-4814, with the following exceptions:

(a) Distillation range (ASTM D-86) of gasoline containing up to ten (10) percent ethanol and other oxygenates shall be the same as specified for gasoline except the minimum temperature at fifty (50) percent evaporated shall be 150 degrees Fahrenheit (sixty-six (66) degrees Celsius).

(2) The test methods used to determine the standards shall conform to ASTM D-4814.

(3) Samples obtained for testing shall be obtained in a manner consistent with ASTM D-4814.

(4) Gasoline shall not be offered for retail sale under the name "premium" gasoline unless the antiknock octane index is greater than ninety-one (91).

Section 3. General Considerations. (1) Gasoline, diesel fuel, and gasoline oxygenate blends sold in Kentucky shall state on either the bill of lading or invoice the following:

(a) The name of the person transferring the motor fuel.

(b) The name of the person to whom the motor fuel is being transferred.

(c) The date of the transfer.

(d) The octane rating if the motor fuel is gasoline or a gasoline oxygenate blend.

(e) A declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

(2) Each retail facility selling motor fuel shall retain the bills of lading and invoices at the location to which the motor fuel is shipped for a period of not less than ninety (90) days. In the case of a person selling motor fuels at more than one (1) location, the bills of lading or invoices may be retained at a central location, provided bills of lading or invoices are made available to the inspector upon request.

(3) All retail dispensing devices shall state the following:

(a) All retail dispensing devices shall post the octane rating of all gasoline sold to consumers. At least one (1) label on each face of the dispenser shall identify the octane rating. If two (2) or more gasolines with different octane ratings are sold from a single dispenser, separate labels for each shall be placed on the face of the dispenser.

(b) The label, or labels, shall be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price.

(c) The label showing the minimum octane rating shall meet the same specifications as required under 16 CFR part 306.12.

Section 4. Diesel Fuel. (1) Diesel fuel offered for sale at a retail facility for use as a motor fuel shall conform to ASTM D-975-93.

ADMINISTRATIVE REGISTER - 872

(2) Each retail dispenser of diesel fuel shall be labeled according to the grade being dispensed as specified in NIST Handbook 44.

Section 5. Product Storage Identification. The fill connection for any petroleum product storage tank or vessel at the retail level shall be permanently, plainly, and visibly marked in accordance with the American Petroleum Institute color codes as specified and published in the API Recommended Practice 1637.

Section 6. Condemned Product. (1) Any person who removes product from storage because of condemnation shall provide documentation to the department outlining the final disposition process taken within ten (10) days.

(2) If the condemned product is upgraded to meet standards specified by law, the retail facility shall certify that the fuel meets all standards required. The Department of Agriculture may require that additional samples be obtained by the department for tests to certify the fuel.

Section 7. Inspection of Premises. (1) The department shall have access during normal business hours to all distributor and retailer records relating to the distribution or sale of motor fuel.

(2) The department shall have access to all motor fuel for the purpose of examination, inspection, taking of samples and investigation of a retailer or distributor. If access is denied by the owner or person representing a retailer or distributor, the department may obtain a search warrant or an injunction from a court of the appropriate jurisdiction.

(3) Samples of not more than one (1) gallon per grade per inspection may be collected from any distributor or retail outlet without cost to the state. The department shall present proper identification to the employee in charge prior to obtaining samples.

(4) The department may issue a stop-sale order for any motor fuel found not to be in compliance with any provision of this Act. The retailer shall be notified immediately of the stop-sale order. The order shall be in writing and contain an explanation for its failure to meet specifications. A stop-sale order shall be rescinded by the director upon resolution of the violation. The stop-sale shall apply only to the location where sample analysis indicates specification violation.

Section 8. Administrative Penalties. (1) When a violation is found of this Act, the department, Division of Weights and Measures, shall issue a notice of violation.

(2) The department may enter an order imposing one (1) or more of the following penalties against any person who violates any of the provisions of this chapter or impedes, obstructs, or hinders the department in the performance of its duty in connection with the provisions of this chapter:

(a) Issuance of a warning letter.

(b) Imposition of an administrative fine of not more than \$1,000 per violation for a first-time offender. For a second-time or repeat offender, the administrative fine shall not exceed \$5,000 per violation occurrence. When imposing any fine under this section, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefitted from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.

(3) The fine is due within thirty (30) days receipt of the violation unless an appeal is requested in accordance with subsection (4) of this section. Failure to pay a fine within thirty (30) days after receipt of the violation shall result in a stop-sale order issued by the department, Division of Weights and Measures.

(4) Any person aggrieved by a fine imposed by the department may appeal within thirty (30) days receipt of the violation, to the circuit court of the county in which the party resides.

(5) Any fine collected by the department shall be paid into an interest-bearing account established in the State Treasury.

(6) Any administrative fine collected is in lieu of any civil penalties sought pursuant to KRS Chapter 363.

Section 9. Incorporation By Reference. (1) The following documents are incorporated by reference:

(a) ASTM D-4814, Standard Specifications for Automotive Spark Ignition Engine Fuel, January 1993 edition;

(b) ASTM D 957-93, Standard Specification for Diesel Fuel Oils, December 1993 edition;

(c) American Petroleum Institute color codes as specified and published in API Recommended Practice 1637, July 1994 edition;

(d) The National Institute of Technology (NIST) Handbook 130, 1993 edition;

(e) 16 CFR 306.12 (as amended by 58 Federal Register 41375, August 3, 1993).

(2) The documents referred to in subsection (1) of this section may be inspected, copied or obtained at the office of the Department of Agriculture, Commissioner's Office, Capital Plaza Tower, Frankfort, KY 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: July 25, 1994

FILED WITH LRC: July 25, 1994 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Vicki Searcy and Donna Dutton

(1) Type and number of entities affected: 6,000 retail outlets.

(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 from the public comments received: Public hearing scheduled for September 26, 1994.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public hearing scheduled for September 26, 1994.

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

1. First year following implementation: There is a \$50 fee for the purpose of funding the administration of the motor fuels quality program. Additionally, this regulation requires that all gasoline sold in Kentucky state on the bill of lading or invoice the name of the person transferring the motor fuel, the name of the person to whom the motor fuel is being transferred, the date of transfer, the octane rating if the motor fuel is gasoline or gasoline-oxygenate blend, a declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

2. Second and subsequent years: There is a \$50 fee for the purpose of funding the administration of the motor fuels quality program the regulation requires.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation does not provide for any new employees. Current employees with the Division of Weights & Measures will be responsible for this program. The \$50 fee will help defray any costs incurred. There is a start-up cost of approximately \$50,000 for equipment.

2. Continuing costs or savings: After the first year, there will no longer be start-up costs.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be increased reporting and paperwork by the Division of Weights & Measures due to the fact the department will be inspecting and testing motor fuels which has never been done before.

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

Any fees collected will be used to defray cost of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The \$50 fee will be used to defray costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: The public hearing will be on July 26, 1994.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: After years of discussion, this program seems to be most effective with the least cost.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation tests for the quality of motor fuel throughout the state of Kentucky which will reduce any effects on the health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The state has never tested for the quality of motor fuel. The effects of this regulation are not detrimental but do have an impact on the environment and public health.

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

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

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

(10) Any additional information or comments: This program has been discussed for years and is being implemented to the satisfaction of all persons affected.

(11) Tiering: Is tiering applied? Yes. This administrative regulation provides for administrative fines from \$1,000 to \$5,000 based upon the degree and extent of harm caused, the cost of rectifying the damage, the amount of money the violator benefitted, whether the violation was willful or not, and the compliance record of the violator.

STATEMENT OF EMERGENCY

500 KAR 11:010E

The purpose of this emergency administrative regulation is to prescribe procedures by which temporary licenses will be issued pursuant to KRS 238.525. It is necessary to promulgate this emergency administrative regulation, because House Bill 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Under KRS 238.525(1), the licensing requirements become effective September 16, 1994, and all entities subject to the licensing requirements must be licensed by this date. It is anticipated that, as a result of undue delays in processing the applications for licensure, temporary licenses will be applied for and issued, pursuant to KRS 238.525(4), before an ordinary administrative regulation can be promulgated. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor

PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:010E. Temporary licensure.

RELATES TO: KRS 238.525

STATUTORY AUTHORITY: KRS 238.515(9), 238.525(4),

238.530(1),(2), 238.535(11), 238.555(1)

NECESSITY AND FUNCTION: If the processing of the application for licensure is unduly delayed, the Division of Charitable Gaming will have procedures by which it may issue temporary licenses to those qualifying charitable organizations, manufacturers, distributors and charitable gaming facilities who have substantially complied with the licensure requirements.

Section 1. Application for Temporary Licensure. A temporary license may be issued by the Division of Charitable Gaming to a charitable organization, manufacturer, distributor or charitable gaming facility if:

(1) There exists an undue delay in completing background checks or otherwise processing the application for regular licensure; and

(2) The applicant has exhibited substantial compliance with licensure requirements by completing and supplying the information requested on the appropriate licensure application form prescribed by the Division of Charitable Gaming.

Section 2. A temporary license issued by the Division of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Address of the licensee;

(3) Date of issuance of the temporary license;

(4) Expiration date of the temporary license;

(5) Premises or location at which the charitable gaming will be conducted, if the temporary license is for a charitable organization or a charitable gaming facility;

(6) Type of temporary license issued; and

(7) Address of the Division of Charitable Gaming.

Section 3. Processing Fee. (1) A processing fee of twenty-five (25) dollars shall accompany each application for temporary licensure.

(2) The twenty-five (25) dollar processing fee shall be credited to any balance due on the regular license at the time it issued.

Section 4. Incorporation by Reference. (1) The following temporary application forms and materials are incorporated by reference:

(a) Form CG-T-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (8/94)".

(b) Form CG-T-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment (8/94)".

(c) Form CG-T-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (8/94)".

(d) Form CG-T-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (8/94)".

(e) Form CG-T-Schedule A, "Application to Conduct Special Limited Charitable Game(s) (For Use With Form CG-T-1) (8/94)".

(f) Form CG-T-Schedule B, "Notice of Intent of Suborganization or Subordinate Organization of a Licensed Charitable Organization to Conduct Charitable Gaming (For Use With Form CG-T-1) (8/94)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, KY 40601-2690, 8 a.m. to 4:30 p.m., Monday through Friday.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: August 11, 1994

FILED WITH LRC: August 15, 1994 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All applicants (manufacturers, distributors, charitable gaming facilities and charitable gaming organizations) seeking licensure with the Division (estimate approxi-

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mately 1500 initially during start-up phase).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Any applicant (manufacturer, distributor, charitable gaming facility and charitable gaming organization) will incur initial cost of doing business of temporary licensure processing fee (\$25) to be applied/credited towards permanent licensing fee.

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

1. First year following implementation: Extensive application forms with information necessary to compile requisite background checks will be required of each licensee.

2. Second and subsequent years: Renewal applications will be required in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the temporary license applications will be the only significant cost incurred by the division.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the application forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to types and classes of applicants, locations (by county) of licensees, monies generated/received by categories of licensees, monies due from each licensee on receiving permanent license, and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: To the extent the processing fees charged do not cover the cost of implementation, funds from the Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All applicants for temporary licensure during start-up phase of division are charged the same processing fee of \$25 despite the fact that permanent licensure fees will vary among groups/types of applicants. The uniform processing fee was designed to speed up start-up processing of initial applica-

tions and the processing fee will be credited towards the permanent licensure fee due.

STATEMENT OF EMERGENCY

500 KAR 11:020E

The purpose of this emergency administrative regulation is to prescribe procedures by which hearings affecting licenses will be conducted pursuant to KRS Chapter 238. It is necessary to promulgate this emergency administrative regulation, because House Bill 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. It is anticipated that hearings might be required before an ordinary administrative regulation is effective. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor

PAUL F. ISAACS, Secretary

JUSTICE CABINET

Division of Charitable Gaming

500 KAR 11:020E. Conduct of hearings.

RELATES TO: KRS 13B.010, 13B.170, 238.565

STATUTORY AUTHORITY: KRS 13B.010, 13B.170, 238.515(9), 238.565(2)

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to be followed by the Division of Charitable Gaming in conducting hearings following notification to a licensee of an action to be taken against the licensee.

Section 1. Conduct of Hearings. (1) Except as provided in subsection (2) of this section, the provisions of KRS 13B.010 through 13B.170 shall govern all hearings conducted pursuant to KRS 238.565.

(2) The deadline for action by the secretary of the cabinet relating to a recommended order following a hearing shall be governed by KRS 238.565(3).

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: August 11, 1994

FILED WITH LRC: August 15, 1994 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson

(1) Type and number of entities affected: 11 licensees who request hearings following notification of action to be taken adverse to license.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No costs or savings.

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: No costs or savings.

1. First year: N/A

2. Continuing costs or savings: N/A

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3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account. KRS 238.570(2).

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Regulation applies equally to all licensees.

STATEMENT OF EMERGENCY

501 KAR 6:130E

These changes are necessary as an emergency to relieve the visitation policy that affects citizens and residents of Kentucky who participate in visits to the Western Kentucky Correctional Complex to see inmates, and the religious policy that effects the inmates themselves who desire to participate in religious services. The change in the visitation policy is to allow immediate compliance with a contract between the prison and food vendors and to halt the very serious problem of smuggling contraband, including drugs, into the institution. The changes in the regulation of religious services complies with a recent court settlement and provides for constitutional compliance with the First Amendment.

BRERETON C. JONES, Governor
JACK C. LEWIS, Commissioner

DEPARTMENT OF CORRECTIONS

501 KAR 6:130E. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

EFFECTIVE: July 18, 1994

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised July 13, [March 15,], 1994 are incorporated by reference and shall be referred to as Western Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen
WKCC 02-00-03	Invoice and Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures [(Amended 3/15/94)]
WKCC 02-01-01	Inmate Funds
WKCC 02-02-01	Agency Funds and Accounting Procedures
WKCC 02-08-01	Property Receipt and Inventory Procedures [(Amended 3/15/94)]
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing
WKCC 10-02-01	Special Management Inmates [(Amended 3/15/94)]
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food [(Amended 3/15/94)]
WKCC 11-00-04	Food Service Security
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing
WKCC 13-00-01	Special Health Programs
WKCC 13-01-01	Use of Pharmaceutical Products
WKCC 13-02-01	Health Care Services
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards [(Amended 3/15/94)]
WKCC 15-03-01	Meritorious Good Time
WKCC 15-05-01	Restoration of Forfeited Good Time
WKCC 16-01-01	Visiting Policy and Procedures (Amended 7/13/94) [(Amended 3/15/94)]
WKCC 16-02-01	Inmate Correspondence
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property
WKCC 17-02-01	Inmate Reception and Orientation
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKCC 20-01-01	Education Program [(Amended 3/15/94)]
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Clubs and Organizations
WKCC 23-00-01	Religious Services (Amended 7/13/94) [(Amended 3/15/94)]
WKCC 25-02-01	Inmate Release Process
WKCC 25-03-01	Prerelease Programs

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 18, 1994 at 1 p.m.

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STATEMENT OF EMERGENCY 601 KAR 15:010E

House Bill 531 passed by the 1994 General Assembly (1994 Ky. Acts ch. 317) was effective on July 15, 1994. At that time, the administrative regulations relating to disciplinary actions initiated pursuant to KRS Chapter 18A were no longer effective for motor vehicle enforcement officers commissioned pursuant to KRS 281.770. Therefore, in order that there be available disciplinary procedures for these personnel between now and the time the ordinary administrative regulation is effective, this emergency administrative regulation is needed. The ordinary administrative regulation is insufficient because the new law is already effective. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Administrative Regulations Compiler on July 14, 1994.

BRERETON C. JONES, Governor
DON C. KELLY, Secretary

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement

601 KAR 15:010E. Disciplinary actions relating to employees commissioned pursuant to the provisions of KRS 281.770.

RELATES TO: KRS 281.770, 1994 Ky. Acts ch. 317
STATUTORY AUTHORITY: 1994 Ky. Acts ch. 317
EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 18A.095 specifies that employees of the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement commissioned pursuant to KRS 281.770 be disciplined under the provisions of KRS Chapter 281 rather than KRS 18A.095. This administrative regulation sets forth the administrative procedure to be followed by the Department of Vehicle Regulation in imposing disciplinary action against Motor Vehicle Enforcement commissioned employees and the procedures before the Trial Board.

Section 1. Definitions. (1) "Class A violation" means any violation for which the disciplinary action is to be dismissal, reduction in grade, salary reduction of more than ten (10) percent, temporary transfer of work station for up to sixty (60) days, or suspension without pay of more than twenty (20) days.

(2) "Class B violation" means any violation for which disciplinary action is to be reduction in grade, salary reduction of ten (10) percent or less, temporary transfer of work station for up to thirty (30) days, or suspension without pay of five (5) to twenty (20) days.

(3) "Class C violation" means any violation for which the disciplinary action is to be a written reprimand or a suspension without pay of four (4) days or less.

(4) "Commissioned employee" means an employee of the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement appointed pursuant to KRS 281.770.

(5) "Complaint" means an allegation preferred against a commissioned employee which may result in a charge against that commissioned employee pursuant to 1994 Ky. Acts ch. 317.

(6) "Disciplinary action" means the punishment of a commissioned employee found guilty of one (1) or more charges, to include the specific penalties found in 1994 Ky. Acts ch. 317, §2(17).

(7) "Felony" means as defined in KRS 431.060 and 500.080.

(8) "Internal affairs" means the Director of the Division of Motor Vehicle Enforcement, the commissioned employees designated by the director to investigate complaints, and the administrative staff designated by the director to process complaints, charges, and disciplinary actions.

(9) "Misdemeanor" means as defined in KRS 431.060 and 500.080.

(10) "Probation" means a condition under which disciplinary action against a charged commissioned employee is suspended provided the commissioned employee incurs no further charges; if further charges are incurred, the probation is considered to have been violated, and disciplinary action for the original charge(s) will proceed.

(11) "Summary suspension" means an immediate suspension from duty imposed by a supervisor on a subordinate commissioned employee when the supervisor deems the suspension is necessary for the preservation of public order, the protection of the physical safety of an individual, to prevent any violation of law by the commissioned employee, or as a result of any violation of law by the commissioned employee.

(12) "Supervisor" means any commissioned employee who:

(a) Has been designated by the Director of the Division of Motor Vehicle Enforcement to exercise command authority over any region, branch, post or section of the Division of Motor Vehicle Enforcement;

(b) Has been designated by an officer of superior rank to exercise supervisory authority; or

(c) Any commissioned employee who holds the rank of sergeant or above.

(13) "Violation" means as defined in KRS 431.060 and 500.080.

Section 2. Time Limitation on Disciplinary Action. (1) Except as set forth in subsection (2) of this section, review of or investigation into an alleged act of misconduct shall be initiated within one (1) year after the date of the alleged act of misconduct.

(2) A review of or investigation into an alleged act of misconduct classified as a Class A violation may be initiated at any time.

(3) A review of or investigation into an alleged act of misconduct is initiated when a complaint is received and recorded by Internal Affairs or when the commissioned employee suspected of wrongdoing is notified in writing that he is under investigation, whichever occurs first.

Section 3. Criminal Charges. (1)(a) Any commissioned employee who is arrested or indicted for any offense classified as a felony shall:

1. Be summarily suspended from duty by his immediate supervisor, any supervisor in his chain of command, or the commissioner; and

2. Not exercise any of the powers of a peace officer for the duration of the suspension.

(b) The suspension shall be with pay unless the commissioner determines that it shall be without pay.

(c) A commissioned employee who is summarily suspended shall surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who effects the suspension.

(d) The commissioner may assign the commissioned employee suspended pursuant to this subsection to clerical or administrative duties during the period of suspension.

(e) The suspension shall remain in effect until a final determination of the criminal charge has been made by the court of jurisdiction, or until the commissioner determines that a return to full duty status is appropriate under the circumstances.

(f) The department may proceed with disciplinary action prior to a final disposition of the criminal charge.

(2)(a) Any commissioned employee who is arrested, summoned or cited for an offense classified as a misdemeanor or violation may be summarily suspended from duty by his supervisor if, in the exercise of his discretion, the supervisor believes that this suspension from duty is in the best interests of the department or the commissioned employee.

(b) The commissioned employee under suspension shall not possess or attempt to exercise any of the powers of a peace officer for the duration of the suspension.

(c) A commissioned employee who is summarily suspended shall

surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who effects the suspension.

(d) The suspension shall be with pay unless the commissioner determines that it shall be without pay.

(e) The supervisor may assign the commissioned employee to administrative or clerical duties during the period of suspension.

(f) The suspension may be rescinded at any time by the supervisor, when in his discretion he determines that the purpose for the suspension has been served.

(g) The department may initiate disciplinary action prior to a final disposition of the charge.

Section 4. Summary Suspension. (1) A supervisor may summarily suspend from duty any subordinate commissioned employee:

(a) When the suspension is necessary for the preservation of public order;

(b) To protect the physical safety of an individual;

(c) To prevent a violation of law by the commissioned employee; or

(d) As a result of any violation of law by the commissioned employee.

(2) A commissioned employee who is summarily suspended shall surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who effects the suspension.

(3) A commissioned employee under summary suspension shall be relieved from duty and shall not exercise the powers of a peace officer until he is returned to duty.

(4) A summary suspension shall be with pay unless the commissioner determines that it shall be without pay.

(5)(a) Any supervisor who summarily suspends a subordinate commissioned employee shall immediately notify the commissioner, through the chain of command, of the action taken and the material circumstances surrounding the action.

(b) This notification shall be followed with all due speed by a written report to the commissioner which shall describe with specificity the reasons for the suspension.

(c) A copy of this report shall be forwarded directly to Internal Affairs for investigation and to the commissioned employee who was summarily suspended.

Section 5. Complaints Against Commissioned Employees. (1) Each written complaint received by the commissioner or charge filed by the commissioner regarding a commissioned employee shall be reviewed and classified according to degree of seriousness by Internal Affairs.

(2) A person making a written complaint shall be advised in writing by Internal Affairs of the receipt of the complaint.

(3)(a) A commissioned employee against whom a complaint is preferred or a charge filed by the commissioner shall be provided with a copy of the complaint by Internal Affairs.

(b) Internal Affairs may waive this requirement only if there are reasonable grounds to believe that the commissioned employee will attempt to obstruct the investigation.

(c) If Internal Affairs waives notice to the commissioned employee of the complaint or charge, the reasons for the waiver shall be set forth in writing and made available to the commissioned employee following completion of the investigation.

(4) A copy of the complaint or charge notification to the commissioned employee shall be sent by Internal Affairs to the commissioned employee's immediate supervisor.

(5) Verbal complaints may be recorded and transcribed for signing by the complainant.

(6) Unsigned complaints shall not be made a matter of record unless good cause exists to believe the complaint to be true and the alleged misconduct constitutes a Class A violation, in which case the supervisor shall initiate a written complaint. Persons who make verbal complaints shall be informed of this policy.

(7) A supervisor may make an inquiry into any alleged unwritten or unsigned statement of misconduct to determine if the supervisor should file a written complaint with the commissioner.

(8) Any commissioned employee who has knowledge of or observes a violation of the Standards of Conduct set forth in Section 13 of this administrative regulation by another commissioned employee may initiate disciplinary action through the filing of a written complaint.

(9) A supervisor who initiates disciplinary action against a subordinate commissioned employee shall do so by the filing of a written complaint with the commissioner.

(10) After receiving notice of a written complaint, the commissioned employee shall have the opportunity to make written response, but shall not be required to do so.

Section 6. Internal Investigation of Complaints. (1) Internal Affairs shall investigate any complaint which, if true, would be a Class A violation. A case number shall be assigned by Internal Affairs to each complaint investigated or referred for investigation. A log shall be maintained by Internal Affairs showing the name of the complainant, the name of the commissioned employee who is the subject of the complaint, the case number, the date received, and the disposition.

(2)(a) Commissioned employees under investigation shall answer all questions specifically directed and narrowly related to the performance of official duty.

(b) Any commissioned employee who refuses to answer any question specifically directed and narrowly related to the performance of official duty on grounds that the answer would tend to incriminate him shall be advised that he may be disciplined for refusing to answer a question that is specifically directed and narrowly related to the performance of duty, and the case shall then be referred to the Office of General Counsel for review and advice prior to any additional questioning or investigation.

(3)(a) The officer from Internal Affairs conducting an internal investigation may interview any other commissioned employee or employee of the Division of Motor Vehicle Enforcement on any matter related to the investigation.

(b) The commissioned employee shall answer truthfully any question relating to the subject matter of the investigation of which he has knowledge.

(c) If the commissioned employee or employee refuses to answer on grounds of privilege or that the answer would tend to incriminate him, the case shall be referred to the Office of General Counsel for review and advice prior to any additional questioning of the witness.

(4) Internal investigations of complaints shall be concluded by a finding that:

(a) The complaint is unfounded;

(b) Insufficient evidence exists to determine the validity of the complaint; or

(c) One (1) or more of the allegations of the complaint have been substantiated.

(5) If one (1) or more of the allegations of the complaint are substantiated, a recommendation shall be made by the Internal Affairs investigator(s) regarding disciplinary action. Recommendations for disciplinary action shall be supported by specific and articulable fact.

(6) Completed Internal Affairs investigations of Class B or C violations with recommended disciplinary action shall be forwarded by the appropriate supervisor through the following channels for review:

(a) Appropriate supervisor's supervisor;

(b) Director of the Division of Motor Vehicle Enforcement;

(c) Internal Affairs; and

(d) Commissioner.

(7) The routing mechanism shall be sealed and marked "EYES ONLY" on the outside of the envelope.

(8) Completed Internal Affairs investigations of Class A violations with recommended disciplinary action shall be forwarded through channels by Internal Affairs to the division director and commissioner.

(9) Completed Internal Affairs investigations with a recommendation of no disciplinary action shall be forwarded through the channel set forth in subsection (6) of this section terminating at the division director for final action.

(10) The notice of final action on disciplinary matters shall be routed by Internal Affairs by the same procedures as the complaints against commissioned employees are routed. All reports of internal investigations shall be filed in Internal Affairs upon conclusion of the investigation.

(11) For purposes of this review process, when an item is marked "EYES ONLY" the individual to whom the item is addressed shall be the only one to open and review it. The individual to whom the item is addressed shall reseal the item and forward it to the next person in the review process.

(12) The complainant may, at the discretion of the commissioner, be informed at the conclusion of the investigation of whether disciplinary action was imposed as a result of the complaint, but shall not be apprised of any details of the investigation.

Section 7. Imposition of Disciplinary Action. (1) Prior to the imposition of any disciplinary action other than a written reprimand, written notice shall be provided to the commissioned employee by the commissioner of the precise form that the disciplinary action will take, together with a specific explanation of the reasons therefore. The notice shall be precise as to the standard of conduct violated and the attendant facts and circumstances.

(2) Within five (5) days after receiving notice of disciplinary action, a commissioned employee may make written response and request that the proposed action be reviewed by an individual member of the trial board prior to imposition. A request for review shall be specific as to the reasons why the proposed action is in error or is unjust.

Section 8. Review of Proposed Disciplinary Action. (1) The individual members of the trial board established pursuant to 1994 Ky. Acts ch. 317, §3 shall be assigned requests for review of proposed disciplinary action on a rotating basis.

(2) The review officer has the following responsibilities and capabilities:

(a) He may interview the commissioned employee who is to be disciplined;

(b) He may interview the Internal Affairs staff who performed the investigation;

(c) He shall conduct a thorough review of the appropriate reports; and

(d) He may interview other commissioned employees or review other reports.

(3) Upon concluding his review, the review officer shall make a recommendation to the commissioner as to whether the proposed disciplinary action should be imposed without change, amended, or rescinded, and shall explain the basis for the recommendation.

(4) The commissioned employee who requested the review shall be provided with a copy of the recommendation.

(5) Within ten (10) days of receiving the recommendation of the review officer, the commissioner shall issue an order setting forth the action to be taken.

Section 9. Board of Appeals. (1) Except for the disciplinary actions which result in a Trial Board pursuant to the provisions of 1994 Ky. Acts ch. 317, §3 or a reprimand, except where the reprimand is for conduct unbecoming as set forth in Section 13 (44) of this administrative regulation, any disciplinary action may be appealed to a Board of Appeals.

(2) The Board of Appeals shall consist of three (3) members of the Trial Board appointed by the commissioner.

(3) The members of the Board of Appeals shall serve for one (1) calendar year from the date of appointment.

(4) Any Board of Appeals member who is disciplined for miscon-

duct shall be removed and a successor appointed to serve the remainder of the term.

(5) Members may serve more than one (1) term.

(6) The commissioner shall designate one (1) of the members to serve as chairman.

(7) A request for appeal shall be filed with the commissioner not later than ten (10) days following the effective date of the disciplinary action.

(8) A request for appeal shall cause a hearing to be held within sixty (60) days from the date of the request.

(9) The appellant shall be notified at least ten (10) days prior to the hearing of the time and location at which the hearing will be held.

(10) The board may not subpoena witnesses, but any witnesses who are employed by the Division of Motor Vehicle Enforcement shall be required to attend and testify if the appellant or the investigating officer requests.

(11) The appellant shall be entitled to review any departmental reports relating to the disciplinary action prior to the hearing, and shall be provided with a copy of the Internal Affairs report.

(12) The appellant may be represented by counsel. The department shall be represented by the Office of General Counsel.

(13) All testimony at the hearing shall be given under oath and recorded.

(14) Any evidence that is relevant and material shall be admissible, including hearsay.

(15) Board members may question the appellant and any witnesses.

(16) The disciplinary action may be reversed, affirmed or modified upon the vote of two (2) of the three (3) board members.

(17) The audio record of the appeal shall be filed in Internal Affairs.

(18) If the appellant wants a transcript of the record, he shall pay for it.

(19) The chairman shall cause an order to be written concerning the proceedings which reports the action taken. This order shall be filed with Internal Affairs and in the office of the Director of the Division of Motor Vehicle Enforcement and shall constitute final administrative action on the case, absent a showing of fraud or duress, in which case another hearing may be held.

(20) All records and reports of proceedings before the Board of Appeals, with the exception of the final order, are confidential.

(21) Decisions of the Board of Appeals may only be appealed to Franklin Circuit Court as provided in 1994 Ky. Acts ch. 317, §3.

Section 10. Retention of Disciplinary Records. (1) All records of disciplinary actions for Class A violations shall be retained by Internal Affairs until ten (10) years after separation or termination of the affected employee.

(2) All records of disciplinary actions for Class B or Class C violations shall be destroyed after the expiration of five (5) years from the effective date of the action.

Section 11. Types of Disciplinary Actions. (1) The appropriate disciplinary action for committing a Class A violation shall be one (1) or more of the following:

(a) Dismissal;

(b) Reduction in grade;

(c) Salary reduction greater than ten (10) percent; or

(d) Suspension from duty without pay for at least twenty-one (21) working days.

(2) The disciplinary action for committing a Class B violation shall be a suspension from duty without pay for a minimum of five (5) working days and a maximum of twenty (20) working days, a reduction in grade, or a salary reduction of ten (10) percent or less.

(3) The disciplinary action for committing a Class C violation shall be one (1) of the following:

(a) A written reprimand; or

(b) A suspension from duty without pay of four (4) working days or less.

(4)(a) Repeated violations of the standards of conduct shall result in enhanced penalties.

(b) The third disciplinary action in any twelve (12) month period shall be enhanced as follows:

1. A Class C violation shall be treated as a Class B violation; and
2. A Class B violation shall be treated as a Class A violation.

(5)(a) The commissioner may place on probation for a period of up to one (1) year any commissioned employee found to have violated any of the standards of conduct set forth in Section 13 of this administrative regulation.

(b) The commissioner may probate the entire disciplinary action given a commissioned employee, or any part of it.

(c) Determination of what will be probated is at the discretion of the commissioner after consideration of input from the commissioned employee's supervisor, Internal Affairs, and the Director of the Division of Motor Vehicle Enforcement.

(d) The only condition of probation which may be imposed is that the commissioned employee not violate any of the standards of conduct during the probationary period.

(e) The violation of any of the standards of conduct during the probationary period shall cause the probation to be revoked and the original sentence, or remainder thereof, to be imposed.

(f) Probation shall not be granted except on the commissioned employee's admission of guilt to the alleged violation, and shall not be granted for more than one (1) violation in any twelve (12) month period.

(6) Complaints which contain more than one (1) allegation shall be classified according to the most serious violation alleged and shall not be severed for purposes of investigation.

Section 12. Trial Board. (1) If a commissioned employee is entitled to a Trial Board hearing as provided in 1994 Ky. Acts 1994 ch. 317, §3, a Trial Board hearing shall be automatically scheduled unless the disciplined employee, in writing specifically, waives his right to the Trial Board hearing within five (5) days of the effective date of preference of charges.

(2) The commissioner shall serve as Chairman of the Motor Vehicle Enforcement Trial Board.

(3) The commissioner shall rule on all motions except as otherwise provided by law.

(4)(a) The Trial Board hearing shall commence with a reading of the charges by the chairman.

(b) Following the reading of the charges, the defendant commissioned employee shall enter his plea.

(c) If the commissioned employee is not represented by counsel, the chairman shall advise the defendant commissioned employee that he has the right to be represented by private counsel of his choice at his own expense.

(5) The chairman shall swear in the Trial Board members.

(6) The chairman shall consider other preliminary motions by either party.

(7) The order for presentation of evidence and arguments is as follows:

- (a) Department opening statement.
- (b) Defendant opening statement.
- (c) Presentation of evidence by department.
- (d) Presentation of evidence by defendant.
- (e) Presentation of rebuttal evidence by department.
- (f) Presentation of rebuttal evidence by defendant.
- (g) Closing statement by defendant.
- (h) Closing statement by department.

(8)(a) All witnesses shall be sworn at the time their testimony is offered and shall be separated unless otherwise ordered by the chairman.

(b) The defendant commissioned employee shall be permitted to

remain present throughout all proceedings even though he may testify in his own behalf.

(c) The department shall be permitted to have present throughout the proceeding investigative personnel.

(9) At the hearing, all charges shall be put in issue, and evidence at the hearing shall be confined and limited to the issues presented by the written charges. Technical rules of evidence shall not apply.

(10) The attorney for the department shall state to the Trial Board the nature of the charges and the evidence upon which he relies to support it.

(11) The department shall bear the burden of proof and it shall be by a preponderance of the evidence.

(12) The defendant or his attorney may state his defense and the evidence upon which he relies to support it or he may reserve his opening statement until the conclusion of the evidence for the agency.

(13) At the conclusion of all evidence, the chairman shall instruct the Trial Board as to the law of the case, including the issues which are to be decided, the grounds for finding for or against the defendant commissioned employee, and its other duties in considering the case. If the Trial Board consists of seven members, a vote of at least four (4) members concurring shall be necessary to sustain the charges; if five (5) members, a vote of at least three (3) members concurring; and if three (3) members, a vote of at least two (2) members concurring.

(14) If the Trial Board finds the commissioned employee guilty of any one (1) or more charges, it shall fix his punishment by reprimand or suspension for any length of time not to exceed six (6) months, or by reducing the grade if the commissioned employee's classification warrants same, or by combining any two (2) or more punishments, or by reducing the monthly salary of the commissioned employee by not more than twenty (20) percent for not more than six (6) months, or by removing or dismissing the commissioned employee from the service of the agency. The same number of members concurring as provided in subsection (13) of this section shall be necessary to establish the penalty.

Section 13. Standards of Conduct. (1) Conformance to law.

(a) A commissioned employee, whether on or off duty, shall obey all laws of the United States and of any state or local jurisdiction in which the commissioned employee is present.

(b) A conviction for violating any law shall be prima facie evidence of a violation of this standard, but the fact that no conviction is obtained or that no prosecution is initiated, shall not preclude the department from taking disciplinary action for a violation of this standard.

(c) Violation of law is:

1. A Class A violation if the law violated is a felony or a Class A misdemeanor;
2. A Class B violation if the law violated is a Class B misdemeanor; and
3. A Class C violation if the law violated is a violation or local ordinance.

(2) Dishonesty.

(a) Commissioned employees shall at all times be honest and truthful in dealing with their fellow commissioned employees or members of the public and in any written or oral communications.

(b) Upon order of the commissioner, the commissioner's designee, or his supervisor, a commissioned employee shall answer truthfully all questions specifically directed and narrowly related to the scope of employment and operations of the Division of Motor Vehicle Enforcement which may be asked of him.

(c) Dishonesty is a Class A violation.

(3) Cowardice.

(a) Commissioned employees shall carry out their duties with courage and determination and shall remain firm and steadfast in the face of opposition and danger.

(b) Cowardice is a Class A violation.

(4) Use of force.

(a) Commissioned employees shall use force in accordance with law and division policy, and shall use only that degree of force which is reasonable and necessary under the circumstances.

(b) Use of excessive force is a Class C violation unless the complainant suffered serious physical injury, in which case it is a Class A violation.

(5) Affiliation with a subversive organization.

(a) A commissioned employee shall not in any manner affiliate himself with any organization or group which:

1. Advocates the overthrow of the government of the United States or any state;

2. Has adopted the policy of advocating or approving the commission of acts of force or violence to deny any person his rights under the Constitution of the United States or any state; or

3. Seeks to alter the form of government of the United States or any state by unconstitutional means.

(b) Affiliation with a subversive organization is a Class A violation.

(c) Obstructing an internal investigation.

(a) A commissioned employee shall not destroy, conceal or alter any record, or attempt to coerce or intimidate any witness or potential witness in any internal investigation of alleged misconduct.

(b) Obstructing an internal investigation is a Class A violation.

(7) Negligence.

(a) Commissioned employees shall perform their duties in a competent and efficient manner.

(b) Negligence occurs when, due to a commissioned employee's inaction or failure to perform assigned tasks correctly, an incident takes place which causes harm (physical, financial or otherwise) to a member of the public, a fellow employee, a member of another agency, or the Division of Motor Vehicle Enforcement.

(c) Negligence is a Class A violation.

(8) Insubordination.

(a) Commissioned employees shall promptly obey any lawful orders of a superior officer including orders relayed from a superior officer by a commissioned employee of the same or lesser rank.

(b) Commissioned employees who are given an otherwise proper order which is in conflict with a previous order, or with any administrative regulation, or policy, whether stated in this administrative regulation or elsewhere, shall respectfully inform the superior officer issuing the order of the conflict.

(c) If the superior officer issuing the order does not amend or retract the conflicting order, the order shall be promptly obeyed, with responsibility for the conflict to be on the superior officer issuing the order.

(d) Commissioned employees shall not obey any order which would require them to commit any illegal act.

(e) Insubordination is a Class B violation.

(9) Immoral conduct.

(a) Commissioned employees shall maintain a level of moral conduct in their personal and business affairs which is in keeping with their oath of office and the standards of conduct. (b) Commissioned employees shall not engage in any act of moral turpitude which impairs their ability to perform as law enforcement officers or causes the Division of Motor Vehicle Enforcement to be brought into disrepute.

(c) Immoral conduct is a Class B violation.

(10) Use of intoxicants on duty.

(a) Commissioned employees shall not consume intoxicating beverages while in uniform or on duty except in the performance of duty and while acting under proper and specific orders from a superior officer.

(b) Commissioned employees shall not report for duty, or be on duty, while under the influence of intoxicants to any degree whatever, or with an odor of intoxicants on their breath.

(c) Consumption of alcoholic beverages while on duty is a Class B violation.

(d) Being under the influence of intoxicants while on duty is a Class B violation for the first offense, and a Class A violation for any subsequent offense.

(11) Interference with an official investigation.

(a) A commissioned employee shall not interfere with any case being handled by other commissioned employees of the Division of Motor Vehicle Enforcement or any other governmental agency unless ordered to intervene by a superior officer or under circumstances where the commissioned employee believes that a manifest injustice would result from failure to take immediate action.

(b) Interference with an official investigation is a Class B violation.

(12) Soliciting personal advancement.

(a) A commissioned employee shall not request or utilize the aid of any person outside the Division of Motor Vehicle Enforcement or of any group of persons or organization for the purpose of bettering his position within the Division of Motor Vehicle Enforcement or to secure restoration to a rank, position, or assignment from which he has been removed.

(b) Any violation of Sections 1501 - 1508 of Title 5 of the United States Code, the Hatch Act, shall be considered to be a violation of this section.

(c) Soliciting personal advancement is a Class B violation.

(13) Responsibility of ranking officers.

(a) Ranking officers shall be responsible for the proper enforcement of these standards of conduct.

(b) A ranking officer shall not knowingly permit the violation of any of these standards of conduct by a subordinate or fail to recommend disciplinary action when a violation occurs.

(c) Failure by a ranking officer to properly enforce the standards of conduct is a Class B violation.

(14) Conformance to policies and administrative regulations.

(a) Commissioned employees shall obey and abide by all the policies and administrative regulations of the Division of Motor Vehicle Enforcement, whether stated in this administrative regulation or elsewhere, and whether stated in the form of a policy, memorandum, or any other written or oral directive.

(b) Nonconformance to policies or administrative regulations is a Class C violation.

(15) Use of medication on duty.

(a) While on duty, a commissioned employee shall not use any medication which causes drowsiness or otherwise affects adversely the commissioned employee's ability to operate a motor vehicle safely.

(b) Improper use of medication is a Class C violation.

(16) Use of intoxicants off duty.

(a) Commissioned employees, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in:

1. Intoxication in public;

2. Any behavior which discredits the commissioned employee or the Division of Motor Vehicle Enforcement; or

3. The commissioned employee being unfit to report for his next regular tour of duty.

(b) Excessive use of intoxicants while off duty is a Class C violation.

(17) Alcoholic beverages and drugs on motor vehicle enforcement property.

(a) A commissioned employee shall not store or bring into any post, vehicle, or other facility of the Transportation Cabinet any alcoholic beverage or controlled substances except those which are being held as evidence or have been seized as contraband.

(b) Possessing alcoholic beverages or controlled substances on Transportation Cabinet property is a Class C violation.

(18) Gambling.

(a) A commissioned employee shall not participate in any form of gambling while on duty or while in any Division of Motor Vehicle Enforcement post, vehicle, or other Transportation Cabinet facility.

(b) A commissioned employee shall not participate in any form of

illegal gambling at any time except in the performance of duty and while acting under direct and specific orders from a superior officer.

(c) Gambling on duty or on Transportation Cabinet property is a Class C violation.

(19) Personal appearance.

(a) Commissioned employees shall maintain a neat and clean appearance at all times when in public or when engaged in the performance of duty.

(b) A commissioned employee shall not use tobacco in any form when performing any official duty in direct or immediate contact with the public.

(c) Failure to maintain a proper personal appearance is a Class C violation.

(20) Gratuities or rewards.

(a) A commissioned employee shall not solicit or accept any gratuity or reward for any activity performed in his official capacity.

(b) Solicitation or acceptance of a gratuity or reward is a Class C violation.

(21) Abuse of position.

(a) A commissioned employee shall not use his official position, official identification card, or badge for the following:

1. Personal or financial gain;

2. Obtaining privileges not otherwise available to him except in the performance of duty; or

3. Avoiding consequences of illegal acts.

(b) A commissioned employee shall not lend to another person his identification card or badge or permit them to be photographed or copied.

(c) A commissioned employee shall not authorize the use of his name, photograph, or official title in connection with testimonials or advertisements of any commodity or commercial enterprise without the approval of the commissioner.

(d) Abuse of position is a Class C violation.

(22) Endorsements and referrals.

(a) A commissioned employee shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service.

(b) In the case of ambulance or towing service, when this service is necessary and the person needing the service is unable or unwilling to procure it or requests assistance, commissioned employees shall proceed in accordance with procedures established in the guidance manual or by policy memorandum.

(c) Making an endorsement or referral is a Class C violation.

(23) Discourtesy.

(a) Commissioned employees shall be courteous to the public and other commissioned employees.

(b) Commissioned employees shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.

(c) In the performance of their duties, commissioned employees shall not use coarse, violent, profane, or insolent language or gesture, and shall not express any prejudice concerning race, religion, politics, national origin, disability, lifestyle or similar personal characteristics.

(d) When performing any official duty in direct and immediate contact with members of the public or other commissioned employees, commissioned employees shall address superior officers by rank.

(e) Discourtesy is a Class C violation.

(24) Identification.

(a) Commissioned employees shall furnish their name and unit number to any person requesting that information when they are on duty or while holding themselves out as having an official capacity, except when the withholding of such information is necessary for the performance of police duties or is authorized by their supervisor.

(b) Failure to provide proper identification is a Class C violation.

(25) Associations.

(a) Commissioned employees shall avoid associations or dealings with persons whom they know, or should know, are racketeers, gamblers, felons, persons under criminal investigation or indictment, or others who have a reputation in the community for felonious or criminal behavior, except as directed otherwise by a superior officer.

(b) Commissioned employees shall not visit or enter a house of prostitution, gambling house, or any other establishment wherein the laws of the United States, the laws of the Commonwealth of Kentucky, or any other law or ordinance are violated except in the performance of duty and while acting in response to lawful and specific orders of a superior officer.

(c) Prohibited associations is a Class C violation.

(26) Requests for assistance.

(a) When any person applies for assistance or advice or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon consistent with established procedures.

(b) Failure to properly respond to a request for assistance is a Class C violation.

(27) Public statements and appearances.

(a) A commissioned employee shall not publicly criticize or ridicule the Division of Motor Vehicle Enforcement, its policies, or other commissioned employees by speech, writing, or other expression where the speech, writing, or other expression is defamatory, obscene, unlawful, undermines the effectiveness of the Division of Motor Vehicle Enforcement, interferes with the maintenance of discipline, or is made with reckless disregard for truth or falsity.

(b) A commissioned employee shall not address public gatherings, appear on radio or television, prepare any articles for publication, act as correspondents to a newspaper or periodical, release or divulge investigative information or any other matters of the Division of Motor Vehicle Enforcement while holding himself out as representing the Division of Motor Vehicle Enforcement in these matters without proper authority.

(c) Improper public statements or appearances is a Class C violation.

(28) Payment of debts.

(a) Commissioned employees shall not undertake any financial obligations which they know or should know they will be unable to meet and shall pay all just debts when due.

(b) An isolated instance of financial irresponsibility shall not be grounds for discipline.

(c) Repeated instances of financial irresponsibility may be cause for disciplinary action.

(d) Filing for bankruptcy shall not be cause for discipline.

(e) Financial difficulties stemming from unforeseen medical expenses or personal disaster shall not be cause for discipline, provided that a good faith effort to settle all accounts is being undertaken.

(f) Failure to pay a just indebtedness is a Class C violation.

(29) Dissemination of information.

(a) Commissioned employees shall treat the official business of the Division of Motor Vehicle Enforcement as confidential.

(b) Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with procedures established in the guidance manual or by policy memorandum.

(c) Commissioned employees may remove or copy official records or reports only in accordance with established procedures.

(d) Commissioned employees shall not divulge the identity of persons giving confidential information except as authorized by proper authority.

(e) Dissemination of confidential information is a Class C violation.

(30) Reports.

(a) Commissioned employees shall submit all necessary reports on time and in accordance with established procedures.

(b) Reports submitted by commissioned employees shall be accurate and complete.

(c) Submission of inaccurate or late reports is a Class C violation.

(31) Improper handling of property and evidence.

(a) Property or evidence which has been discovered, gathered, or received in connection with Division of Motor Vehicle Enforcement responsibilities shall be processed in accordance with established procedures.

(b) A commissioned employee shall not convert to his own use, manufacture, conceal, falsify, remove, tamper with, or withhold any property or evidence in connection with any investigation or other police action.

(c) Improper handling of property and evidence is a Class C violation.

(32) Improper use and care of equipment.

(a) Commissioned employees shall utilize issued equipment only for its intended purpose, in accordance with established procedures and training instructions, and shall not abuse, damage, lose, or use for personal purposes any issued equipment.

(b) All issued equipment shall be maintained in proper order.

(c) Any commissioned employee who violates this standard of conduct may be required to reimburse the department for the replacement or repair cost of the damaged or lost equipment.

(d) Abuse or loss of equipment is a Class C violation.

(33) Improper operation of official vehicles.

(a) Commissioned employees shall operate official vehicles in a careful and prudent manner, and shall obey all laws of the Commonwealth and administrative regulations of the Commonwealth pertaining to the operation of motor vehicles.

(b) Loss or suspension of any driving privilege or license shall be reported immediately.

(c) Careless or improper operation of an official vehicle is a Class C violation.

(34) Use of weapons.

(a) A commissioned employee shall not use or handle weapons in a careless or imprudent manner.

(b) Careless or improper use of a weapon is a Class C violation.

(35) Unauthorized appearance in a civil case.

(a) Without the prior approval of his supervisor, a commissioned employee shall not testify or give sworn statements in any civil case in which the Division of Motor Vehicle Enforcement may have an interest or in which the commissioned employee has acted in his official capacity.

(b) If the commissioned employee has been lawfully served with process, he shall notify his supervisor.

(c) Unauthorized appearance in a civil case is a Class C violation.

(36) Reporting violations of standards of conduct.

(a) A commissioned employee shall not fail to report to his supervisor the violation of any standard of conduct which he observes or of which he has knowledge concerning other members of the Division of Motor Vehicle Enforcement.

(b) Failure to report a violation of the standards of conduct is a Class C violation.

(37) Leaving assignment.

(a) A commissioned employee shall not leave his patrol area or work assignment without proper authority except in cases of emergency.

(b) Unauthorized absence from patrol area of work assignment is a Class C violation.

(38) Response to radio dispatches and use of radio.

(a) Commissioned employees shall promptly acknowledge receipt of all dispatches directed to them and, upon receipt of any call for service, shall immediately proceed to the place designated where they shall perform their required duties.

(b) After completing their assignments, they shall immediately call their posts and report their availability for further service.

(c) Commissioned employees shall keep their radios in service at

all times and shall not render themselves unavailable for radio calls except in emergencies or when authorized to check out of service by a supervisor.

(d) All messages transmitted by radio and all radio conversations shall conform to the rules and regulations of the Federal Communications Commission.

(e) Profanity and superfluous remarks shall be prohibited.

(f) Improper response to radio dispatches or improper use of the radio is a Class C violation.

(39) Reporting vital information.

(a) A commissioned employee shall not fail to report to his supervisor any information which he becomes aware of which may result in the apprehension of fugitives or the arrest or felons.

(b) In addition, failure of any commissioned employee to promptly relay information of official interest or pertaining to the duties of another commissioned employee shall constitute a violation of this section.

(c) Failure to report vital information is a Class C violation.

(40) Bail or bond for persons arrested.

(a) A commissioned employee shall not furnish bail or bond for any person, except members of the commissioned employee's immediate family, who has been arrested.

(b) Providing bail or bond for an arrested person is a Class C violation.

(41) Dereliction of duty.

(a) Commissioned employees shall perform their duties in a responsible and attentive manner.

(b) Dereliction of duty may be demonstrated by:

1. A lack of knowledge of the application of the laws to be enforced;

2. Unwillingness or inability to perform assigned tasks;

3. Failure to conform to work standards established for the commissioned employee's rank, grade, or position;

4. Failure to take appropriate action when confronted with a violation within the commissioned employee's scope of authority;

5. Exercise of poor judgment with regard to conformance to the primary mission of the division;

6. Absence without leave; or

7. Repeated poor evaluations or a written record of repeated infractions of any administrative regulations, policies, or procedures of the Division of Motor Vehicle Enforcement.

(c) Commissioned employees, while on duty, shall at all times remain alert and in a sufficient state of readiness to quickly respond to any appropriate situation requiring action.

(d) Commissioned employees, while on duty, shall not sleep, conduct personal business, attend to personal pleasures, or engage in any other activities which would cause them to neglect or be inattentive to duty.

(e) Dereliction of duty is a Class C violation.

(f) Dereliction of duty is a Class A violation when the act or omission which forms the basis for the charge is intentionally done for personal gain or for the gain of any person, group, company, or organization, and is detrimental to the operational efficiency of the Division of Motor Vehicle Enforcement.

(42) Exceeding lawful authority.

(a) Commissioned employees shall at all times perform their duties within the parameters of the law enforcement authority conferred upon them by the department.

(b) Exceeding lawful authority may be demonstrated by the following noninclusive list:

1. Admonishing or lecturing citizens;

2. Making a physical arrest, or other enforcement activity which is directed at persons outside the scope of the authority of the Division of Motor Vehicle Enforcement, as defined by the commissioner.

(c) Exceeding lawful authority is a Class C violation.

(43) Reporting criminal investigations.

(a) Whenever any commissioned employee conducts any criminal investigation he shall report in writing, pursuant to established procedure, his activities with respect to the investigation.

(b) Failure to report a criminal investigation is a Class C violation.

(44) Conduct unbecoming.

(a) Commissioned employees shall conduct themselves at all times, both on and off duty, in a manner to reflect favorably on the Division of Motor Vehicle Enforcement.

(b) Conduct unbecoming an commissioned employee shall include any conduct that brings the Division of Motor Vehicle Enforcement into disrepute or reflects discredit upon the commissioned employee as a member of the Division of Motor Vehicle Enforcement, or impairs the operation or efficiency of the Division of Motor Vehicle Enforcement or the commissioned employee.

(c) Conduct unbecoming shall also include sexual harassment, which is any attempt by a commissioned employee to obtain sexual favors by means of coercion, intimidation, or any other means, or making unwelcome sexual advances, comments, or gestures, or other actions which can be construed as contributing to a sexually harassing or offensive environment.

(d) Conduct unbecoming is a Class C violation, with the exception of sexual harassment, which is a Class A violation.

Section 14. Motor Vehicle Enforcement Guidance Manual. (1) The "Motor Vehicle Enforcement Guidance Manual" approved May 3, 1994 is incorporated by reference as a part of this administrative regulation.

(2) The guidance manual sets forth the policies and procedures to be followed by the Division of Motor Vehicle Enforcement employees.

(3) The guidance manual may be viewed or copied at the Division of Motor Vehicle Enforcement. It may be obtained from the Division of Management Services for a fee of twelve (12) dollars. Both offices are located at 501 High Street, Frankfort, Kentucky 40622. Their office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

NORRIS BECKLEY, Commissioner

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: July 1, 1994

FILED WITH LRC: July 15, 1994 at 1 p.m.

STATEMENT OF EMERGENCY 704 KAR 3:455E

This emergency regulation, as approved by the State Board for Elementary and Secondary Education, defines the process for bidding, adopting, selecting and purchasing textbooks and instructional materials. HB 545, passed in 1992, added new language and amended parts of KRS Chapter 156, the state textbook laws. The administrative regulation promulgated as a result had a letter attached at the legislative subcommittee hearing. The legislation introduced in the 1994 General Assembly addressing the attached letter stalled in committee, therefore, the replacement regulation is needed as the prior regulation has gone out of effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

BRERETON C. JONES, Governor
JOSEPH W. KELLY, Chairman

EDUCATION AND HUMANITIES CABINET Department of Education Bureau of Learning Results Services

704 KAR 3:455E. Instructional material and textbook adoption process.

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190, 160.345

STATUTORY AUTHORITY: KRS 156.410, 156.433, 156.437, 156.439, 156.474, 156.476, 157.110, 157.130, 157.140, 157.150, 157.160

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 156.400 to 156.476 set up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth; KRS 157.100 to 157.190 require that the Department of Education set up management procedures for the textbook program. KRS 156.433 and 156.439 require that administrative regulations be written to: define instructional materials; identify instructional materials eligible for purchase with state textbook funds; identify instructional materials which are subject to review before being approved for use; establish a procedure for the review of instructional material and a process for adding an instructional material to the approved list; establish a method for calculating and distributing a school district's textbook and instructional material allocation; and design a planning instrument for each school to use in documenting its textbook and instructional material needs during each adoption period. This administrative regulation establishes the standards and procedures which are necessary to carry out the statutory requirements dealing with textbooks and instructional materials.

Section 1. Definition. "Instructional material" means any print, nonprint or electronic medium of instruction designed to assist students.

Section 2. The subjects included in the "Program of Studies for Kentucky Schools", 704 KAR 3:303, shall be arranged into six (6) groups as follows: Group I - Social Studies P-12; Group II - Language Arts P-12; Group III - Science P-12; Group IV - Music P-12 and Vocational Education 1-12; Group V - Mathematics P-12 and Computer Education 6-12; Group VI - Reading P-12, Literature, Art, Foreign Language, Health P-12, and Driver Education 10-12.

Section 3. (1) Vendors submitting bids shall ship adequate textbook and instructional material samples to the Department of Education, individual State Textbook Commission members, and to the state review site before the beginning of the review process. All other pertinent bid information shall be provided by the bid opening.

(2) When the review process has been completed and the individual commission members have no further need for samples in their possession, the samples shall be disposed of in the following manner:

(a) Reclaimed by publishers; or

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies.

Section 4. (1) Each adoption year before establishing the state list, the State Textbook Commission shall conduct a hearing for the following purposes:

(a) Interviewing publisher agents, representatives and vendors of textbooks and instructional materials; and

(b) Hearing any person or organization that may have complaints or concerns about a textbook or instructional material being considered for listing.

(2) Parties desiring to be heard shall file with the Secretary of the

State Textbook Commission a written request two (2) weeks prior to the hearing. The request shall clearly state:

- (a) Name and address of the person or organization requesting the hearing;
 - (b) Title, author, International Standard Book Number, and copyright date of the textbook or instructional material in question;
 - (c) Sections of the textbook or instructional material being questioned and nature of concern;
 - (d) Anticipated problems that would be created if the textbook or instructional material is adopted; and
 - (e) Suggested alternatives.
- (3) One (1) spokesperson shall represent a group or organization.
- (4) The commission's position and action shall be forwarded to the concerned parties after the state list has been established.

Section 5. (1) The Kentucky State Textbook Commission may inquire into and ascertain if any vendor has violated this administrative regulation or the Kentucky Revised Statutes, or if the vendor has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include actions such as unsolicited contact by vendors or their representatives with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members, local district personnel and review committee members meals, gifts, trips, or entertainment to assure the listing, adoption, and purchase of their textbooks or instructional materials. If there is sufficient evidence that a vendor is guilty, the vendor shall be called before the State Textbook Commission to determine if violations did occur and what course of action shall be taken.

(2) Vendors proposing to give local districts free-of-charge items such as blackline masters, teachers editions, workbooks, and extra textbooks, if the districts adopt and purchase their items, shall file a list of gratis items as an official part of their bid.

(3) In addition to textbook sampling required under KRS 156.440, vendors may sample gratis items to local districts or schools for use in the adoption process. Gratis sampling shall be minimal and not be done in a manner to assure the adoption and purchase of a vendor's textbooks or instructional materials.

(4) The State Textbook Commission may refuse to execute or may cancel a vendor contract upon discovery that the vendor has violated any part of this administrative regulation or does not have the ability to perform all the terms and conditions of the contract.

(5) All bidders for textbook or instructional material contracts shall file with the Department of Education the name and address of a Kentucky person, firm, or corporation upon whom process may be served.

Section 6. Vendors and local school districts or school councils may agree to pilot new textbook and instructional material programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook or instructional material program. Piloting shall not be conducted during the adoption year (July-April) for a subject being considered for adoption by the local districts. The chief state school officer shall approve all piloting programs. The local school district superintendent shall file the request for approval with the chief state school officer. The request shall clearly state:

- (1) The vendor that will conduct the pilot;
- (2) The purpose of the pilot;
- (3) The subject and grade levels in which the pilot shall be conducted;
- (4) The schools where the pilot shall be conducted;
- (5) The name of the school district staff member supervising the pilot;
- (6) Beginning and ending date of pilot; and
- (7) Brief summary of evaluation procedures.

Section 7. Any school administrator, school council chair, or teacher shall not receive directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks and instructional materials.

Section 8. (1) Each textbook submitted for adoption in Kentucky shall meet the "Manufacturing Standards and Specifications for Textbooks," developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturer's Institute, as revised August 1, 1988. This edition is incorporated by reference and is on file in and can be inspected, copied, and obtained from the Division of Curriculum Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday-Friday, 8 a.m. - 4:30 p.m.

(2) Publishers may submit an old copyright with the official bid; however, a revised edition shall be submitted before the commission hearing. Publishers may submit a galley proof, incomplete book, or statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 9. Inaccurate information, defective binding, workmanship or material shall be reported by school personnel to the vendor as soon as detected. Vendors shall be held responsible for all inaccurate or defective textbooks and instructional materials. Textbooks and instructional materials that show manufacturing defects in the first or second year of use shall be replaced by the vendor on a one-for-one basis. After the first two (2) years of use, a replacement agreement shall be negotiated between the local district and the vendors. School districts shall start the replacement process as soon as it has been determined that textbooks or instructional materials are inaccurate or defective.

Section 10. (1) Request to substitute revised editions of textbooks or instructional materials under contract shall be considered at the first regular meeting of the calendar year of the State Textbook Commission to be held on or before May 1.

(2) Substitutions shall not be permitted for textbooks or instructional material to be used the last year of a contract.

(3) The vendor shall agree to supply either the listed or the substituted item in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the textbook or instructional material was bid and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Thirty (30) days prior to date of the commission meeting publishers shall provide a sample of the substituted textbook or instructional material and a list of the changes with page numbers of the revised edition or other reference data that compares it with the textbook or program presently listed.

Section 11. The retail price for textbooks or instructional materials to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

Section 12. (1) The State Textbook Commission shall direct the process for including instructional materials used in lieu of basal programs on the state list. The commission shall receive assistance in the review and selection of instructional materials from professional educators and lay citizens who may serve on a contractual basis.

(2) The Commissioner of Education shall recommend to the State

Textbook Commission names of instructional material reviewers with knowledge about the area or areas being considered for adoption.

(3) The State Textbook Commission shall:

(a) Appoint, from a list of qualified applicants prepared by the Commissioner of Education, twelve (12) instructional material reviewers;

(b) Approve the evaluative criteria and instruments of evaluation developed by the instructional material reviewers; and

(c) Select, approve, and publish a list of high quality instructional materials using the information submitted by the reviewers.

(4) The instructional material reviewers shall:

(a) Be comprised of twelve (12) individuals. Four (4) shall be classroom teachers with expertise in the content area considered for adoption and shall be actively employed in a public school; two (2) shall be other educators; two (2) shall have expertise and experience working with instructional technology; one (1) shall be a library/instructional media specialist; one (1) shall have expertise in alternative ways of learning; and, two (2) shall be parents with children currently enrolled in the public schools;

(b) Represent gender, grade level, geographic, and ethnic diversity;

(c) Attend meetings and training sessions as requested by the Department of Education;

(d) Develop and submit to the State Textbook Commission an instrument of evaluation to be used in reviewing instructional materials;

(e) Review instructional material except those that are ancillary to basal textbook programs to determine those of high quality using the instrument of evaluation approved by the State Textbook Commission; and

(f) Submit to the State Textbook Commission their recommendations for instructional material to be placed on the state's approved list and shall submit the instruments used in the evaluation process.

(5) Electronic instructional materials shall be reviewed and approved by the Kentucky Education Technology System and shall not be subject to approval by the State Textbook Commission.

Section 13. (1) Schools may use state textbook funds for the purchase of adopted textbooks, instructional materials, or programs in any combination based on identified pupil needs. Purchases may include the following:

(a) Textbooks on the commission's approved list;

(b) Instructional materials on the commission's approved list;

(c) Electronic instructional materials on the Kentucky Education Technology System approved list; and

(d) Items not on the above named approved lists but that meet selection criteria.

(2) Instructional material not subject to state review but eligible for purchase shall include the following:

(a) Reference books, trade books, pamphlets, periodicals, and other supplemental print material for student use;

(b) Supplementary video tapes, cassette tapes, slides, and recordings;

(c) Graphic materials, transparencies, globes, maps, music material, math and science manipulatives, calculators, and similar material; and

(d) Supplementary electronic instructional materials.

(3) The following materials and services shall not be eligible to be purchased with state textbook funds:

(a) Furniture, personnel services, testing programs, supplies and materials consumed in initial use such as workbooks, raw and blank materials.

(b) Audio visual equipment, major audio-visual installations such as public address systems, sound laboratories for language, computers, televisions (including receiving sets and related equipment) and other equipment; and

(c) Teacher resources including teachers' guides, manuals, and backline master books.

Section 14. (1) Every school in the Commonwealth with grades primary through eight (8) shall complete an annual plan identifying purchases to be made with textbook funds according to the adoption cycle including necessary replacements. These plans may be revised.

(2) Each school's plan shall be kept on file in the district's central office, and the superintendent shall certify by a letter to the Kentucky Department of Education that all approved plans have been received and meet Kentucky Department of Education standards.

Section 15. (1) Pupils in grades primary through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction; and

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made by local school districts to the Department of Education.

(3) Request for large print textbooks and material shall be directed to the Kentucky School for the Blind.

(4) The local board of education shall assume responsibility for the care of large print textbooks and return them to the Kentucky School for the Blind when no longer needed.

(5) Large print textbooks and materials provided by the Kentucky School for the Blind shall not be charged to the textbook account of the local school.

Section 16. (1) The Department of Education shall prepare textbook and instructional material budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing basal textbook and instructional material programs during each adoption or funding cycle. The funds shall be used for students in primary through grade eight (8), exclusively.

(2) When allocating funds for the purchase of textbooks and instructional materials, the Department of Education shall use the pupil membership at the close of the first month of the current school year.

(3) After receiving a statement of funds allocated, the superintendent shall notify within thirty (30) days the school council, or if none exists, the principal, of the per-pupil allotment to be expended by each school.

(4) Money appropriated in the current fiscal year shall be spent on textbooks and instructional materials in that year's adoption cycle. Money carried over to the next fiscal year may be spent by each school on textbooks and instructional materials in accordance with its plan.

(5) After July 1, checks shall be issued to districts having on file in the Kentucky Department of Education a statement from the superintendent certifying the receipt of all approved plans.

(6) Local school districts shall establish and maintain accounts that reflect the receipt and expenditures of state textbook and instructional material funds. These accounts shall be subject to audit.

Section 17. (1) Local school districts shall establish and maintain a textbook rental program for grades nine (9) through twelve (12). This shall not prohibit local districts from using local funds to provide a free textbook program.

(2) Local school districts not providing a free textbook program for grades nine (9) through twelve (12) shall establish annually a textbook rental fee. The maximum rental fee shall be based on six (6)

dollars per two (2) semester course that requires the use of basal textbooks. Local school districts, at their option, may charge a deposit fee not to exceed three (3) dollars per two (2) semester course to be refunded if textbooks are returned in satisfactory condition. Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) Local school districts shall establish and maintain accounts for the textbook rental program subject to audit. The school council, or if none exists, the principal, shall be notified regarding the school's balance.

Section 18. (1) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label shall be affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." The purchase date and the issue date shall be recorded on the uniform label.

(2) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed shall be classified as a used textbook.

(3) A complete record shall be kept by the school for all state-provided textbooks and instructional materials for grades primary through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12).

Section 19. Pupils or parents shall compensate schools for textbooks and instructional materials lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100 percent of retail cost for one (1) and two (2) year old textbooks and instructional materials; seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks and instructional materials; and twenty-five (25) percent of retail cost for five (5) and six (6) year old textbooks and instructional materials. Funds collected shall be credited to the school's textbook account.

Section 20. (1) The local superintendent shall assume responsibility for the disposal of textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities;

(b) Make the textbooks available to pupils within the school district;

(c) Publicize in the local newspaper that textbooks are available to individual residents of the local district. Textbooks disposed of in this manner shall not be made available to used textbook dealers;

(d) Make the textbooks available to civic organizations or others for the purpose of distribution to underdeveloped countries or disadvantaged students;

(e) Make the textbooks available to recycling operations;

(f) Sell textbooks to used textbook dealers; or

(g) Destroy textbooks in any manner that is practical and in the best interest of the state and local school district.

(2) Any funds from the sale of the textbooks shall be credited to the school's textbook account.

Section 21. (1) No child shall be denied full participation in any educational program due to an inability to purchase any necessary textbooks. Local school districts shall make available free textbooks to all children in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks, using the eligibility guidelines for the free and reduced price lunch program. The parents of these children may be asked to contribute financially toward the rental and deposit cost of their children's textbooks the same percentage that they contribute financially toward the cost of their children's lunches.

(2) Local school districts shall adopt policies and procedures so that, at the beginning of the school year, pupils or their parents are

given written notice of how to obtain free and reduced rental textbooks. The policies and procedures shall also insure that any written communication regarding payment of fees for textbooks shall include a form that parents can use to request waiver or partial waiver of textbook fees.

(3) Local districts shall keep records that include:

(a) The numbers of pupils in grades nine (9) through twelve (12) receiving free lunches and reduced price lunches;

(b) The number of pupils in grades nine (9) through twelve (12) who request or apply for, or whose parents request or apply for, free or reduced rental textbooks and the number of pupils receiving free or reduced rental textbooks; and

(c) Copies of any forms, notices or instructions used by schools in the collection of textbook fees or the provision of free or reduced rental textbooks.

(4) In the provision of textbooks to indigent children, no child shall be discriminated against because of race, sex, color, national origin, age, or disability and there shall be no overt identification of any indigent children.

Section 22. (1) Every public school student shall have access to necessary textbook(s) or instructional material(s) which shall be furnished free of charge in grades primary through eight (8), and, except for students otherwise partially or wholly exempted from the rental fee, shall have the textbook(s) available for the reasonable rental fee set forth in Section 17 of this administrative regulation for each subject studied in grades nine (9) through twelve (12).

(2) Quantities of textbooks and instructional materials needed for each student and each classroom shall be determined at the school level.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.410.

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 15, 1994 at 1 p.m.

STATEMENT OF EMERGENCY 803 KAR 25:089E

This emergency administrative regulation is required by House Bill 928 passed by the Regular Session of the 1994 General Assembly. In an amendment to KRS 342.035, House Bill 928 required the Commissioner of the Department of Workers' Claims to execute a contract with a consultant within ten (10) days of the effective date of the Act on April 4, 1994, and for the consultant to present recommendations on ways to reduce the total medical costs within the Kentucky workers' compensation system within sixty (60) days following the execution of the contract. The commissioner was then given thirty (30) days in which to promulgate a regulation to effect a twenty-five (25) percent reduction in total medical costs. The new medical fee schedule and accompanying administrative regulations on managed care and the workers' compensation hospital fee schedule are expected to achieve the mandated reduction. An ordinary administrative regulation alone is not sufficient in this situation because House Bill 928 mandates that the regulation "shall be effective on an emergency basis." This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor

WALTER W. TURNER, Commissioner

REGULATORY IMPACT ANALYSIS

LABOR CABINET
Department of Workers' Claims

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

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. The function of this administrative regulation is to regulate the fees of "physicians" as defined in KRS 342.0011.

Section 1. Definitions. (1) "Medical fee schedule" refers to the 1994 Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" shall have the same meaning as in KRS 342.0011.

Section 2. Services Covered. The medical fee schedule governs all medical services provided to injured employees by physicians under KRS Chapter 342, unless a lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to administrative regulations.

Section 3. Fee Computation. The appropriate fee for a procedure covered by the medical fee schedule is obtained by multiplying the listed unit value for the medical procedure by the applicable conversion factor. The resulting fee is the maximum fee allowed for the service provided.

Section 4. Incorporation by Reference. (1) The 1994 Workers' Compensation Medical Fee Schedule for Physicians is hereby incorporated by reference.

(2) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - Fourth Floor - The Meyer Building 624 West Main Street, Louisville, Kentucky 40202;

(c) Lexington - 950 National City Plaza, Lexington, Kentucky 40507;

(d) Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

(e) Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501;

(d) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose. Copies of the medical fee schedule may be obtained from the agency upon payment of reproduction costs.

Section 5. 803 KAR 25:090, Workers' compensation medical fee schedule, is hereby repealed.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

Contact Person: Valerie Salven

(1) Type and number of entities affected: This proposed administrative regulation will affect "physicians" as defined in KRS 342.0011, the employees who seek medical treatment under KRS Chapter 342, and the employers, self-insured employers, special fund, uninsured employers' fund and insurance carriers making medical payments under the Kentucky Workers' Compensation Act. This administrative regulation replaces 803 KAR 25:090.

(a) Direct and indirect costs or savings to those affected:

1. First year: This proposed administrative regulation is anticipated to result in a reduction of 10 percent of the total medical costs within the workers' compensation program. This will result in savings for the payors of workers' compensation medical fees, and a reduction in profits to the affected providers of medical services.

2. Continuing costs or savings: Anticipated to be the same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: This administrative regulation does not require additional reporting to the Department of Workers' Claims; it may actually result in less paper work for affected entities as a result of fewer bills being submitted on "by report" basis.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be an initial expense to the Department of Workers' Claims for the printing and distribution of the new fee schedule. This expense is expected to be around \$10,000.

2. Continuing costs or savings: The agency expects to break even and to recover the expenses of printing through the sale of the medical fee schedule at cost.

3. Additional factors increasing or decreasing costs: None known at this time.

(b) Reporting and paperwork requirements: Printing and distribution of the new fee schedule.

(3) Assessment of anticipated effect on state and local revenues: None; no effect.

(4) Assessment of alternative method; reasons why alternatives were rejected: KRS 342.035 requires the commissioner to promulgate administrative regulations to adopt a schedule of fees to ensure that all fees, charges, and reimbursements under KRS 342.020 shall be limited to such charges as are fair, current and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In addition, House Bill 928 has directed the commissioner to promulgate a regulation at this time to effect a 25 percent reduction in total medical costs within the workers' compensation program. This regulation and other regulations being promulgated concurrently are expected to achieve the 25 percent reduction. The reductions made in this particular fee schedule were based upon analyses and the recommendation of the consultant with whom the commissioner executed a state personal services pursuant to House Bill 928.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: Since 803 KAR 25:090 is being repealed concurrently with the promulgation of this administrative regulation, there is no conflict, overlapping or duplication.

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

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. All similarly situated or similarly licensed medical service providers to whom this regulation applies are treated equally and receive the same fees for services described in the schedule.

STATEMENT OF EMERGENCY
803 KAR 25:091E

This emergency administrative regulation is required by House Bill 928 passed by the Regular Session of the 1994 General Assembly. In an amendment to KRS 342.035, House Bill 928 required the Commissioner of the Department of Workers' Claims to execute a contract with a consultant within ten (10) days of the effective date of the Act on April 4, 1994, and for the consultant to present recommendations on ways to reduce the total medical costs within the Kentucky workers' compensation system within sixty (60) days following the execution of the contract. The commissioner was then given thirty (30) days in which to promulgate a regulation to effect a twenty-five (25) percent reduction in total medical costs. The new medical fee schedule and accompanying administrative regulations on managed care and the workers' compensation hospital fee schedule are expected to achieve the mandated reduction. An ordinary administrative regulation alone is not sufficient in this situation because House Bill 928 mandates that the regulation "shall be effective on an emergency basis." This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
WALTER W. TURNER, Commissioner

LABOR CABINET
Department of Workers' Claims

803 KAR 25:091E. Workers' compensation hospital fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 342.035 requires the Commissioner of the Department of Workers' Claims [Workers' Compensation Board] to promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable and limited to charges that are fair, current, and reasonable for like services, where treatment is paid for by general health insurers, ~~[of a like standard of living in the same community and where treatment is paid for by the injured person himself.]~~ The increased security of payment afforded by the Workers' Compensation Act may be considered in determining what fees are reasonable. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. The function of this administrative regulation is to regulate hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Hospital" means any facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty center which is licensed pursuant to Kentucky Revised Statutes Chapter 216B.

(2) "Hospital-based physician" means any physician whose fees for services are billed by the hospital.

(3) "Unbundling" means the practice of submitting separate bills for services to any payor pursuant to this administrative regulation which are billed to payors other than pursuant to this administrative regulation on a global basis.

(4) "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item only.

(5) "New hospital" means a hospital which has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for all hospitals as defined in Section 1(1) of this administrative regulation, for all compensable services and supplies provided on or after the effective date of this administrative regulation.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1) A hospital's base cost-to-charge ratio shall be based on the latest HCFA-2552 which has been supplied to the Cabinet for Human Resources, Department of Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013 on file as of November 30 of each calendar year. The calculation for cost shall be the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95 of the HCFA-2552.

(2) The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of twelve (12) ~~[fifteen-(15)]~~ percentile.

(3) A hospital's adjusted cost-to-charge ratio shall not exceed eighty-five (85) percentile, including the twelve (12) ~~[fifteen-(15)]~~ percentile addition, except for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Human Resources, Department of Medicaid Services. The adjusted cost-to-charge ratio for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed ninety-seven (97) ~~[100]~~ percentile.

(4) The reimbursement to a hospital for services or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total allowable charges by its adjusted cost-to-charge ratio.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the Commissioner of the Department of Workers' Claims by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Workers' Compensation Board.

(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 Kentucky Workers' Compensation Board shall calculate and publish each hospital's adjusted cost-to-charge ratio on or before February 1 of each calendar year. A new hospital shall be assigned a base cost-to-charge ratio of eighty (80) ~~[eighty-three-(83)]~~ percentile until it has been in operation for one (1) full fiscal year.

(2) Any assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the Workers' Compensation Board 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 will 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 the Kentucky Workers' Compensation Act.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be the latest cost-to-charge ratio for Medicaid purposes assigned to the hospital by the state where the hospital is located. An out-of-state hospital shall furnish its most recent cost-to-charge ratio for Medicaid purposes when submitting its bill for services.

Section 7. Reports to be Filed by Hospitals. All bills submitted by a hospital pursuant to this administrative regulation shall be submitted

on a uniform billing form (UB-82) or the successor to this form prescribed by the Commissioner of Insurance, with the Kentucky Workers' Compensation Medical Provider's Certification attached. Unless a bill complies with this section, it shall not be considered a bill or statement for services for the purposes of KRS 342.020 and 342.035.

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

(2) Any hospital-based physician providing only the professional component shall bill for and be paid the professional component only. A hospital-based physician billing for the professional component shall submit the bill to the insurer on the HCFA 1500, or successor to this form approved by the Commissioner of Insurance with the Kentucky Workers' Compensation Medical Provider's Certification attached.

(3) All workers' compensation medical payment obligors administering or paying bills subject to this administrative regulation shall be required to audit the bills to ensure compliance with this administrative regulation.

(4) Any records or documents requested by a workers' compensation medical payment obligor shall be supplied by the hospital not later than ten (10) working days from the date the request for records or documents is received, unless good cause is shown for a failure to do so. A hospital shall not charge more than fifty (50) cents per page for reproducing the requested records or documents unless the requested records or documents total less than ten (10) pages, in which case a minimum five (5) dollar fee may be charged.

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

(2) A hospital-based physician [practitioner] shall use the HCFA 1500 or UB-82, or successor forms prescribed by the Commissioner of Insurance 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 [25:090].

(3) Any physicians or other providers performing services which are regulated pursuant to 803 KAR 25:089 [25:090] (Kentucky medical fee schedule for physicians) in a hospital as defined in Section 1 of this administrative regulation shall bill for services rendered pursuant to 803 KAR 25:089 [25:090] only.

(4) Kentucky law requires the employer (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.

~~[Section 10. Kentucky Workers' Compensation Medical Provider's Certification. All bills submitted by a hospital or hospital-based physician pursuant to this administrative regulation shall be accompanied by a "Kentucky Workers' Compensation Medical Provider's Certification."~~

**KENTUCKY WORKER'S COMPENSATION
MEDICAL PROVIDER'S CERTIFICATION**

~~(1) The undersigned who has submitted the attached statement for services (Form HCFA 1500 or Form UB-82, or successor) does hereby certify that s/he has reasonable grounds to believe that the medical services, supplies, or appliance(s) for which payment is sought were reasonably required as a result of the patient's having~~

~~suffered a work-related injury or occupational disease.~~

Medical Provider _____ Date _____

~~(2) This certificate may be executed on behalf of the hospital or hospital-based physician by an employee or agent who is also authorized to execute billing forms UB-82 or HCFA 1500 for that provider.~~

~~(3) Patient history, written or oral, and information from the employer, medical payment obligor, prior medical providers, referring providers, or their agents may furnish reasonable grounds for the belief that the medical services, supplies, or appliances were reasonably required for a work-related injury or occupational disease.]~~

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: Hospitals treating workers' compensation patients and the insurers or employers making payments to them. The Kentucky Hospital Association has 112 members. This is an amendment to the existing workers' compensation hospital fee schedule administrative regulation which took effect on February 2, 1993.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment reduces each hospital's return to equity from 15 percent to 12 percent for each hospital having an adjusted cost-to-charge ratio that does not exceed 85 percentile, including the 12 percentile addition. For hospitals that service 70 percentile or more patients covered and reimbursed by medicaid or medicare, the reimbursement rate has been reduced from 100 percent to 97. The reimbursement rate for new hospitals not yet in operation for one full fiscal year has been reduced from 83% to 80%.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Remain the same as under the original version of the regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional costs from printing copies of the amended regulation for distribution to the public. These costs are expected to be less than \$1,000.

2. Continuing costs or savings: Minimal after the first year.

3. Additional factors increasing or decreasing costs: Demand for copies of the workers' compensation hospital fee schedule.

(b) Reporting and paperwork requirements: No change from original regulation.

(3) Assessment of anticipated effect on state and local revenues: None; no effect.

(4) Assessment of alternative method: HB 928 has directed the commissioner to promulgate a regulation to effect a 25 percent reduction in the total medical costs within the workers' compensation program. This regulation and other regulations being filed in connection with the Kentucky Workers' Compensation Medical Fee Schedule for Physicians and a regulation concerning workers' compensation managed health care plans are expected, collectively, to achieve this reduction.

(5) 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.

(6) Any additional information or comments: None

TIERING: Is tiering applied? Yes. Each hospital's base cost-to-charge ratio is calculated separately based upon information supplied by each hospital to the Cabinet of Human Resources pursuant to 907 KAR 1:376 and 907 KAR 1:013.

STATEMENT OF EMERGENCY
803 KAR 25:110E

This emergency administrative regulation is required by House Bill 928 passed by the Regular Session of the 1994 General Assembly. In an amendment to KRS 342.035, House Bill 928 required the Commissioner of the Department of Workers' Claims to execute a contract with a consultant within ten (10) days of the effective date of the Act on April 4, 1994, and for the consultant to present recommendations on ways to reduce the total medical costs within the Kentucky workers' compensation system within sixty (60) days following the execution of the contract. The commissioner was then given thirty (30) days in which to promulgate a regulation to effect a twenty-five (25) percent reduction in total medical costs. The new managed health care plans and accompanying administrative regulations on the medical fee schedule for physicians and the workers' compensation hospital fee schedule are expected to achieve the mandated reduction. An ordinary administrative regulation alone is not sufficient in this situation because House Bill 928 mandates that the regulation "shall be effective on an emergency basis." This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
WALTER W. TURNER, Commissioner

LABOR CABINET
DEPARTMENT OF WORKERS' CLAIMS

803 KAR 25:110E. Workers' compensation managed health care plans.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish procedures and standards for certification of workers' compensation managed care system health care plans pursuant to KRS 342.020. The function of a managed care plan is to assure that quality medical care will be delivered to the injured employee at a reasonable cost so as to expedite the injured employee's recovery and facilitate return to work.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or mental disability or death or medical services that are immediately necessary to alleviate severe pain. "Emergency medical care" does not include follow-up care, except when immediate care is required to avoid serious disability or death.

(3) "Gatekeeper physician" means any qualified physician acting within the scope of his license designated by a managed care plan as a "gatekeeper" empowered to make referrals of patients for specialized care or diagnostic services.

(4) "Managed health care system" means a health care network that utilizes gatekeeper providers, performs utilization review and does medical bill audits.

(5) "Managed care plan" means a written plan describing the operations of a managed health care system.

(6) "Provider" means any person or entity licensed, certified or registered to provide medical services.

(7) "Revocation" means the termination of a managed health care plan certificate to provide services under the Kentucky Workers' Compensation Act prior to expiration of the certificate.

(8) "Service area" means a geographic area consisting of a county or group of counties of which no county shall be subdivided.

Section 2. Certification Process. (1) All managed health care plans shall be certified by the commissioner. Any managed health care system may apply to have a plan or plans certified by the commissioner. Managed care systems may operate one (1) or more plans.

(2) Applications for initial certification and renewal shall be submitted in a form acceptable to the commissioner and shall contain the following information:

(a) System identification.

1. System name and address.

2. Date and state of incorporation.

3. Name, address and phone number of each corporate officer and director, the person who will be the day to day administrator, and the medical director.

4. Name and address of each owner of more than five (5) percent of the stock or controlling interest in the entity.

5. Name, address and phone number of the medical director, who shall be a medical doctor (M.D. physician) and who shall oversee and monitor compliance with the quality care, utilization review and credentialing provisions of the managed care plan.

6. Name, address and phone number of the case manager who shall be qualified as either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist or certified rehabilitation registered nurse who shall oversee and monitor case management provisions of the managed care plan.

7. Description of the system's organizational structure.

(b) System qualifications.

1. Description and map of the system's service area.

2. Name, address, phone number, and specialty of all participating providers, separately identifying those providers who will serve as gatekeeper. The system shall provide assurance that all licensing, registration or certification requirements have been met and are current for the providers to practice in Kentucky (or border states wherein the provider practices) and that each participating provider will maintain in full force and effect a professional malpractice policy with limits of no less than \$250,000 for an occurrence of professional negligence.

3. A specimen of the agreement that each class of medical provider will execute to participate in the system.

4. Specimens of the materials which the system will provide to workers setting forth the grievance procedure, the requirements and restrictions of the system, and the means of accessing services and treatment within and outside of the service area. The applicant shall detail the time and means by which the materials shall be delivered to employees and employers.

Section 3. Financial Ability. The managed care system shall demonstrate to the commissioner that it has sufficient financial resources and professional expertise to perform all of the necessary functions of a managed care system and plan. The managed care system requesting certification shall demonstrate such resources and ability to the commissioner by the following:

(1) In the event the applicant has previously provided managed care or other similar medical and administrative services in the Commonwealth of Kentucky, the applicant shall provide a summary and description of the administrative and medical services provided, together with a list of representative entities for which managed care related administrative or medical services have been provided; and

(2) In the event the applicant has not provided services related to

the delivery of a managed care in the Commonwealth, the commissioner shall require, prior to certification, that the applicant post either a performance bond or cash surety deposit in an amount up to \$500,000 with the office of the commissioner to demonstrate sufficient financial resources to provide all of the administrative and medical services required to be performed under a managed care plan. Such bond or cash surety to be released by the commissioner sixty (60) days after the managed care system demonstrates to the commissioner that all of its arrangements for rendering workers' compensation managed care services in the Commonwealth have been terminated.

Section 4. Plan Qualifications. A copy of the managed care plan shall be submitted with the application and shall demonstrate:

(1) Assurance of access to quality medical services in a prompt, effective manner for employees of the employer. The plan shall offer an adequate number of health care providers including gatekeeper, specialty and subspecialty physicians, and general and specialty hospitals to afford employees reasonable choice and convenient geographic accessibility to all categories of licensed care. The employee shall choose a gatekeeper when it becomes apparent that continuing care is required for an injury or disease compensable under KRS Chapter 342.

(2) Employers or insurers may contract with multiple managed care systems in order to maximize access for their employees.

(3) Employees may access health care providers who are not participating plan providers:

(a) For emergency care as defined in Section 1 of this administrative regulation;

(b) When the employee is referred outside the managed care plan for medical services by a plan physician;

(c) When authorized treatment is unavailable through the managed care plan;

(d) To obtain a second opinion when a managed health care plan physician recommends surgery.

(4) Mechanisms to ensure continuity of care upon termination of contracts between the managed care system, the employer, and/or participating providers;

(5) Mechanisms for utilization review which will prevent inappropriate, excessive or medically unnecessary medical services which shall include:

(a) Treatment standards upon which utilization review decisions shall be based assuring quality care in accordance with prevailing standards in the medical community of which the plan provider is a member. The standards shall conform to any practice parameters or guidelines for clinical practice adopted by the commissioner;

(b) Mechanisms requiring periodic review to determine that continued treatment of an injured employee is reasonable, appropriate and medically necessary and that treatment plans required by Section 11 of this administrative regulation have been timely prepared;

(c) Assurance that the managed care system is certified or has contracted with a private review agent who is certified to conduct utilization review pursuant to the standards set forth in 906 KAR 1:080;

(d) Adequate procedures for credentialing providers and evaluating the quality and cost effectiveness of services delivered under the plan;

(6) Provisions for employer or carrier audit of the managed care system's operations and the financial arrangements between the system and its providers.

(7) A grievance procedure meeting the requirements of Section 9 of this administrative regulation.

(8) Effective methods of informing employees, employers, and medical practitioners as to the services provided by the plan and requirements imposed by the plan including a twenty-four (24) hour toll free phone number by which information may be obtained as to plan operations, after-office-hours care and twenty-four (24) hour

access to emergency care.

(9) A system to provide authorization numbers to medical providers and health facilities where preauthorization or continued stay review is required by the plan. Such authorization numbers shall be recorded in the treatment authorization code section of the appropriate billing forms.

(10) Aggressive case management by either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist or a certified rehabilitation registered nurse to coordinate the delivery of health services and return to work policies, promote an appropriate, prompt return to work and facilitate communication between the employee, employer and health care providers. The plan shall describe the circumstances under which injured employees will be subject to case management and the services to be provided.

Section 5. Plan Certification. (1) The commissioner shall notify the applicant in writing of the determination made upon the application for certification or modification thereof, within sixty (60) days of receipt of a complete application.

(2) A certificate shall be valid for a period of two (2) years and only for the service area and managed care plan or plans specified by the commissioner. Upon written request made at least sixty (60) days prior to expiration of the current certificate, the commissioner may recertify a plan, for additional successive two (2) year periods. Geographical areas may be added upon filing of a supplemental application demonstrating the system's ability to serve the expanded area.

(3) If an application does not meet the requirements for certification or expansion, the commissioner shall notify the applicant in writing specifying those items deemed deficient. The applicant is granted thirty (30) days from the date of notice by the commissioner to correct deficiencies through an amended application.

(4) Certifications of a managed care plan are not transferable. A new application for certification must be filed when fifty (50) percent or more of the ownership or controlling interest of a system has been transferred.

Section 6. Plan Modifications. (1) A managed care system which either implements or experiences material variations as to any matter set forth in the original application or managed care plan shall obtain approval for such modification by filing a request for modification with the commissioner.

(2) Intended variations shall not be implemented until approved by the commissioner.

(3) A modification outside the control of the system must be filed with the commissioner within fifteen (15) days of its occurrence.

(4) Within fifteen (15) days of entering into an agreement with an employer or insurer to provide workers' compensation managed care services, the managed health care system shall submit notification thereof to the commissioner. The notification shall identify the employer or employers with whom the managed care system has contracted and the certified managed care plan applicable to that employer. Notification shall be deemed approved unless disapproved by the commissioner in writing within fifteen (15) days of filing. The system shall promptly furnish any information deemed necessary by the commissioner to review the notice. When an employer or insurer terminates a contract with a managed health care system, the managed health care system shall file notification with the commissioner within fifteen (15) days of the occurrence, indicating the employers for whom managed care services have been terminated and the effective date of the termination.

Section 6. Suspension or Revocation of Certification. (1) The certification of a managed care plan by the commissioner may be suspended or revoked if:

(a) Service is not being provided according to the terms of the

certified managed care plan, or, in accordance with prevailing treatment standards, or, those adopted by the commissioner;

(b) The plan for providing services or the contract with the insurer or health care provider fails to meet the requirements of KRS Chapter 342 or this administrative regulation.

(c) Any material false or misleading information is intentionally submitted by the managed care system or participating provider to the commissioner, the employer or the insurer.

(d) The managed care system knowingly or negligently utilizes a health care provider whose license, registration, or certification has been suspended or revoked, or who is otherwise ineligible to provide treatment of the type rendered to an injured employee.

(2) The commissioner may investigate the operations of certified managed health care systems at any time and the system and its providers shall cooperate in any investigation by the commissioner. Should the commissioner believe that grounds for termination or suspension of a managed care plan certification exist, written notice setting forth such grounds shall be mailed to the system. The system is granted fifteen (15) days from the date of the notice in which to file written response. Thereafter, the commissioner shall render a written decision by which the certification of the plan may be terminated, suspended or conditionally continued to permit the correction of deficiencies directed.

Section 7. Appeal of Commissioner's Action. Any managed health care system may seek review from the Franklin Circuit Court within thirty (30) days of the date of the commissioner's final decision concerning its managed care plan.

Section 8. Coverage. (1) All employees of an employer for whom a managed care plan has been approved by the commissioner shall obtain medical services compensable under KRS Chapter 342 from the certified managed care plan of the employer, except for those injuries or diseases for which continuing treatment was initiated prior to the date the managed care plan for the employer was approved. However, when an employee under continuing care changes the designation of treating physician, the employee's provider choice shall be limited to providers under the certified plan and medical services thereafter shall be obtained pursuant to the managed care plan.

(2) If initial emergency care following a compensable injury is rendered by a medical provider outside the managed health care plan, the injured worker may remain under the care of that provider so long as the provider complies with utilization review, reporting standards and quality assurance mechanisms prescribed by the employer's managed care plan. Reimbursement of such nonplan providers shall be at the level prescribed by applicable workers' compensation fee schedules.

Section 9. Grievance Procedure. (1) Each worker's compensation managed care plan shall contain an expeditious, informal grievance procedure to resolve disputes by employees and providers relative to the rendition of medical services. A detailed description of the employee grievance procedure shall be included in informational materials provided to employees and a detailed description of the provider grievance procedure shall be included in all provider contracts.

(2) The grievance procedure shall meet the following requirements:

(a) A grievance is made when a written complaint or written request is delivered by the employee or provider to the managed care system setting forth the nature of the complaint and remedial action requested.

(b) Time frame to file grievance. The employee or provider shall file a grievance within thirty (30) days of the occurrence of the event giving rise to the dispute.

(c) Resolution. The managed health care system shall render a written decision upon a grievance within thirty (30) days of receipt by

the managed health care system of the grievance.

(d) Arbitration. Managed care plans may provide for alternate means of dispute resolution including arbitration, and mediation. In that event final resolution of a grievance shall not be subject to the time constraints set forth in subsection (c) of this section. In all such cases resolution mechanisms shall be expeditious and where treatment matters are at issue reflect the need for prompt resolution.

(3) Record of grievance proceedings. The managed health care system shall maintain a record for two years of each formal grievance to include the following:

(a) A description of the grievance; the employee's or provider's name and address; names and addresses of the health care providers relevant to the grievance; and the managed care system's and employer's name and address;

(b) A description of the managed health care system's findings, conclusions and disposition of the grievance;

(4) Appeal. Any employee or provider dissatisfied with the managed health care system's resolution of a grievance may apply for review by an administrative law judge by filing a request for resolution within thirty (30) days of the date of the system's final decision. Upon review by an administrative law judge the movant shall be required to prove that the system's final decision is unreasonable or otherwise fails to conform with KRS Chapter 342.

Section 10. Reporting. Annually, each managed health care system having a certified managed care plan shall submit a report to the commissioner containing the following information:

(1) Number of employees treated by the managed care plan.

(2) Number of work-related injuries or diseases by ICD-9 code treated under the managed care plan in the preceding year.

(3) Breakdown by ICD-9 codes of injuries and diseases treated.

(4) Total medical costs.

(5) Average medical cost per injured employee by type of injury.

(6) Average medical cost per diseased employee by type of disease.

(7) Breakdown of medical cost elements as to type of physician utilized, hospital costs, drug costs, and other costs.

(8) Number of grievances filed, and summary of action taken.

(9) Number of days by type of injury and disease for which an employee has been released from work.

Section 11. Treatment Plans. Those sections of 803 KAR 24:096 concerning treatment plans and use of the Form 113 shall to the extent possible, apply to managed care plans. The managed health care system shall retain treatment plans and make them available to the employee, employer special fund, Uninsured Employers' Fund, an administrative law judge, or attorneys representing any of the parties upon request.

Section 12. Provider Verification. (1) Each employer which provides medical services through a managed care plan will provide to the injured employee a written certification of workers' compensation managed care coverage as soon as practicable following notice of a compensable injury or disease requiring continuing medical services. The verification shall contain the following information:

(a) Employer name, address, and phone number;

(b) Name and telephone number of the managed care system to be contacted; and

(c) Employee name and social security number.

(2) Possession of such verification is not to be construed as authorization for medical service or payment.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Oscar Morgan

(1) Type and number of entities affected: This administrative regulation will affect about 300-500 qualified rehabilitation coordinators and QRC interns, as well as employers, insurance carriers, injured workers and others involved in the voluntary provision of rehabilitation services to workers' compensation patients.

(a) Direct and indirect costs or savings to those affected:

1. First year: An amendment to KRS 342.710 made by House Bill 928 provides that rehabilitation services may be provided voluntarily prior to an order from an administrative law judge. Preference shall be given to returning the employee to employment with the same employer or to the same or similar employment. This administrative regulation will not result in any specific cost or savings to those affected, but will permit all concerned to utilize a directory of qualified rehabilitation coordinators and QRC interns maintained by the Department of Workers' Claims.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: QRC's and QRC interns who wish to be included in the directory maintained by the Department of Workers' Claims will have to submit an application containing concerning their credentials.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Since a directory and QRC's and interns was maintained by the Department of Workers' Claims prior to the passage of House Bill 928, there will be no additional costs concerned with maintenance of the directory.

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

3. Additional factors increasing or decreasing costs: Costs may decrease if number of applicants for inclusion in the directory decrease.

(b) Reporting and paperwork requirements: Maintenance of directory of QRC's and QRC interns.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative method: Mandatory certification of facilities or QRC's is no longer required, as a result of House Bill 928.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict since 803 KAR 25:100 is being concurrently repealed, and has already expired as a result of House Bill 928.

(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.

(6) Any additional information or comments: None

TIERING: Is tiering applied? Yes. Qualified rehabilitation facilities that are already fully accredited by CARF (Commission on Accreditation of Rehabilitation Facilities) need not submit an application for inclusion in the directory, and provisional listings of facilities are granted to facilities whose application to CARF for accreditation is pending. There are different registries for QRC's and QRC interns.

STATEMENT OF EMERGENCY
902 KAR 8:040E

This emergency administrative regulation provides definitions of terms that are used in a personnel program applicable to all local health departments except the Louisville-Jefferson County, Lexington-Fayette County, and the Northern Kentucky District Health Departments. House Bill 631 (1994 Ky. Acts ch. 336) which becomes effective July 15, 1994 provides that the Cabinet for Human Resources shall establish policies and procedures for the local health

department personnel program. An emergency regulation is necessary in order to have procedures mandated by House Bill 631 in effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation has been filed with the Regulations Compiler.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:040E. Definition of terms applicable for the personnel program for local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 211.170, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. The purpose of this administrative regulation is to provide for definitions of terms used in administrative regulations 902 KAR 8:050 through 902 KAR 8:140 that describe the various components of a personnel administration program applicable for local health departments established under the provisions of KRS Chapter 212.

Section 1. Definitions. As used in administrative regulations 902 KAR 8:050 through 902 KAR 8:140:

(1) "Agency" is defined by 1994 Acts, ch. 336, Sec. 1. [~~means a local health department established under the provisions of KRS Chapter 212, except for a health department in a county containing a city of the first class, an urban county health department, or an independent district health department.~~]

(2) "Allocate" means assigning a position to an appropriate class on the basis of similarity of work and level of responsibility performed in the position.

(3) "Appeal" means the right, under the provisions of 902 KAR 8:110, to appear before the Local Health Department Employment Personnel [Advisory] Council or a hearing officer appointed by the department and be heard on matters of discrimination or disciplinary actions, provided for under 902 KAR 8:050 through 902 KAR 8:140.

(4) "Appointing authority" means the board of health or other lawfully delegated individual authorized under KRS Chapter 212 to make appointments.

(5) "Available" means an individual on a register for a class of positions willing to accept appointment in specified areas to a particular position of that class.

(6) "Cabinet" means the Cabinet for Human Resources.

(7) "Certification of eligibles" means a list of eligibles issued by the Department for Health Services to the appointing authority of an agency certifying that the individuals meet the established minimum qualifications of the position, passed the required examination, and may be considered for employment.

(8) "Class" means a group of positions similar as to the duties performed; degree of supervision exercised or required; minimum requirements of training, experience, or skill; and other characteristics.

(9) "Classified service" means employment subject to the terms of administrative regulations 902 KAR 8:050 through 902 KAR 8:140 except for:

(a) A health officer or a health department director employed under the provisions of 902 KAR 8:140; or

(b) An employee appointed on a seasonal, temporary, or emergency basis as described in administrative regulation 902 KAR

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8:080.

(10) "Classification plan" is defined by 1994 Acts ch. 336, Sec. 1. ~~[means the system of assigning positions to individual classes based on the duties performed.]~~

(11) "Compensation plan" is defined by 1994 Acts ch. 336, Sec. 1. ~~[means a series of salary ranges to which classes of positions are assigned so that classifications evaluated by the department as approximately equal may be assigned to the same salary range.]~~

(12) "Compensatory time" means accumulation of leave time for time worked on an hour-for-hour basis in excess of thirty-seven and one-half (37.5) hours per week subject to the provisions of KRS Chapter 337 and the Fair Labor Standards Act, 29 USC 206.

(13) "Competitive examination" means a formal process of measuring the qualifications of applicants for employment or promotion.

(14) "Council" is defined by 1994 Acts ch. 336, Sec. 1. ~~[means the Local Health Personnel Advisory Council appointed by the Secretary of the Cabinet for Human Resources under the provisions of 902 KAR 8:060.]~~

(15) "Demotion" means a change of an employee from a position in one (1) class to a position in another class having a lower entrance salary.

(16) "Department" is defined by 1994 Acts ch. 336, Sec. 1. ~~[means the Department for Health Services within the Cabinet for Human Resources.]~~

(17) "Detail to special duty" means the assignment of an employee to a position for not more than twenty-six (26) pay periods to fulfill the responsibilities of an employee on leave or the assumption of additional job duties.

(18) "Disabled veteran" means a veteran who has established by official records of the United States government the present existence of a service connected disability.

(19) "Discrimination" means any administrative decision based in whole or in part on a person's race, sex, age, religion, national origin or disability, except where the ~~[such]~~ decision is supported by a valid occupational qualification.

(20) "Discipline" means any effort to positively instruct or punish an employee concerning inappropriate conduct and behavior or unsatisfactory job performance requiring redirection.

(21) "Eligible" means an individual whose name appears on a register for a particular class.

(22) "Eligible list" means a list of names of persons who have been found qualified through suitable competitive examinations for positions or classes of positions.

(23) "Emergency appointment" means the appointment of a person to a position, for a period not to exceed seven (7) pay periods, when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.

(24) "Excessive absenteeism" means absences from the employee's work station that cause the irregular attendance with or without approval of the agency. Absences may include tardiness, leaving early, abuse in the use of sick leave, abuse in the use of annual leave, violating agency break policy, or ~~[and]~~ violation of agency lunch policy.

(25) "Flagrant violation" means a breach of state law, agency rules, policies, or directives by an employee, which, under the circumstances, constitutes a clear, present or immediately foreseeable threat or danger to the life, safety, health, or welfare of patients, other employees, the subject employee, or general public, or otherwise seriously disrupts the agency's normal course of business.

(26) "Full-time employee" means an employee who is compensated on a salary basis for a standard biweekly pay period.

(27) "Immediate family" means the spouse, parent, child, brother, or sister, ~~[or]~~ the spouse of either of them, grandparent, grandchildren, mother- or father-in-law, or daughter- or son-in-law.

(28) "Job description" means a written description for each classification setting forth the title of the class, the characteristics of

the work, the minimum requirements, and the special requirements, including any physical standards deemed necessary to satisfactorily do the work.

(29) "Local health department" means an agency as defined above subject to the provisions of administrative regulations 902 KAR 8:050 through 902 KAR 8:140.

(30) "Minimum qualifications" means a comprehensive statement setting forth the minimum background required as to education and experience.

(31) "Minimum salary" means the lowest rate of pay in the salary range for a class of positions.

(32) "Nonstatus employee" means a provisional, emergency, temporary, or seasonal employee, or an employee who has not completed the initial probationary period.

(33) "Initial probationary period" means the period an employee is required to serve prior to becoming a permanent employee in an agency.

(34) "Outstanding merit payment" means a lump sum payment made to an employee based on an employee's outstanding job performance.

(35) "Part-time employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked do not average 100 hours of work per month.

(36) "Part-time 100 hour employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked average 100 hours per month.

(37) "Performance evaluation" means a method of evaluating each employee on the employee's capability of performing the duties and responsibilities of the job.

(38) "Probationary employee" means an employee serving the required initial probationary period following appointment.

(39) "Promotional probationary period" means a period during which an employee is required to demonstrate fitness for the duties to which the employee has been promoted by actual performance of the duties of the position.

(40) "Reemployment list" means a list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.

(41) "Register" means an officially promulgated list of eligibles for a job classification in the order of their final ratings on a merit examination.

(42) "Salary range" means the rate and range of pay established for a class of positions.

(43) "Seasonal position" means a position established for a specific seasonal purpose and for a specific period of time not to exceed nineteen (19) pay periods.

(44) "Status employee" means an employee who has satisfactorily completed the required initial probationary period and is afforded the rights and privileges provided by administrative regulation 902 KAR 8:050 through 902 KAR 8:140.

(45) "Temporary appointment" means an appointment for a period not to exceed thirteen (13) pay periods from a register of eligibles for a period not to exceed a six (6) month period.

RICE C. LEACH, MD, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

STATEMENT OF EMERGENCY

902 KAR 8:060E

This emergency administrative regulation provides for the classification and compensation plans for local health departments. The classification plan provides position classification descriptions

which describe the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary or desirable for the satisfactory performance of the duties of the various classes. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the job specifications and provides requirements which must be met for salary adjustments for employees. House Bill 631 (1994 Ky. Acts ch. 336) which becomes effective July 15, 1994 provides that the Cabinet for Human Resources shall establish policies and procedures for the local health department personnel program. An emergency regulation is necessary in order to have procedures mandated by House Bill 631 in effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation has been filed with the Regulations Compiler.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:060E. Classification and compensation plans for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation provides for the classification and compensation plans for local health departments. The classification plan provides position classification descriptions which describe the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary or desirable for the satisfactory performance of the duties of the various classes. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the job specifications and provides requirements which must be met for salary adjustments for employees.

Section 1. Classification Plan. (1) A comprehensive position classification plan shall be established by the department with the advice of the Local Health Department Employment Personnel [Advisory] Council and the local health departments.

(2) The classification plan shall set forth[;] for each class of positions:

- (a) A title; [and]
- (b) A description of the duties and responsibilities; [and]
- (c) The minimum requirements of training and experience; and
- (d) Other qualifications that are necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and used to allocate positions to classes as determined by their duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority which an appointing authority has to change the duties and responsibilities or assign duties to employees which are of similar kind or quality.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate newly established positions to

classes upon receipt of a statement of duties, responsibilities, and requirements of the [each] positions from the appointing authority.

(7) The department shall:

(a) Maintain the position classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and

(b) Conduct a general review of the classification plan at least annually based on the review of job descriptions and other information.

(8) The department shall change the classification of existing positions through a reclassification if a material and permanent change in the duties or responsibilities of a position occurs.

(a) The employee within a position at the time it is reclassified[;] shall serve with the same status obtained before the position was reclassified.

(b) A reclassification shall not be permitted during the initial employment probationary period.

(9) An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary increased to the higher of:

(a) Five (5) percent; or

(b) [Fe] The minimum salary assigned to the reclassified position if the employee's salary is below the minimum of the new grade.

(10) The department shall change the allocation of existing positions if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(11) The department shall maintain a master set of all approved class specifications. The department shall provide each appointing authority with a set of the class specifications.

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel [Advisory] Council and the local health departments. The plan shall take into consideration the following:

- (a) Financial conditions of the agencies; [and]
- (b) Experience in recruiting for positions; [and]
- (c) Prevailing rates of pay for services of similar kind and quality; [and]
- (d) Benefits received by employees; and
- (e) Consistency in application among local health departments.

(2) The compensation plan shall include minimum, intermediate, and maximum rates of pay for the various classes within the classification plan. The compensation plan shall also be used to determine salary adjustments provided for under this administrative regulation.

(3) The department shall annually review and amend as necessary the compensation plan with the advice of the Local Health Department Employment Personnel [Advisory] Council and local health departments. Amendments shall include changes in minimum, midpoint, and maximum salary levels for respective classifications of the classification plan.

(4) The entrance salary of any employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed unless otherwise approved by the department.

(5) A new minimum entrance salary may be established by an agency with the approval of the department if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary. Appointments to the position may be made within the new salary range applicable to the class. If appointments are made at the new established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(6) The department may approve a higher entrance salary for employees entering professional, technical, or clerical positions if the individual possesses qualifications in training and experience above the minimum required for the class.

(a) Employees possessing the same qualifications in the same class of positions, in the same agency, and who are paid below the salary level of the newly appointed employee, shall have their salary adjusted to the approved entrance salary level.

(b) The salary of an individual meeting these requirements shall not exceed the midpoint salary established for the classification.

(7) If a former employee is reinstated or reemployed in a class for which he was previously employed, the appointing authority may make an appointment at the same pay rate the employee had been paid at the termination of service. An appointing authority may reemploy a former employee at a higher salary rate than previously if justified on the basis of:

(a) Additional qualifications acquired by the employee; [or]

(b) Established minimum entrance salary [is] above the former salary; or

(c) Compensation plan changes.

Section 3. Salary Adjustments. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period. The salary adjustment shall take effect the first pay period following completion of the probationary period. An employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

(2) The agency may, with the approval of the department, annually establish a standard salary adjustment rate, not to exceed five (5) percent, for which all employees shall be eligible and given consideration based on documented satisfactory job performance.

(a) The salary adjustment shall be given at the beginning of the first full pay period following twenty-six (26) full pay periods of continuous service since the established anniversary date.

(b) If an agency does not grant an annual increment no outstanding meritorious lump sum payment shall be approved. (3) An appointing authority may deny an annual increment to an employee for the following reasons;

(a) Documented unsatisfactory work performance;

(b) Excessive absenteeism;

(c) Excessive tardiness;

(d) Record of disciplinary action; or

(e) Failure to cooperate.

(4) An employee whose annual increment is denied shall be notified by the appointing authority at least two (2) weeks prior to the anniversary date. The employee action for which the annual increment was denied may lead to disciplinary action if not corrected.

(5) An employee's anniversary date shall be the first day of the first full pay period upon completion of twenty-six (26) pay periods of continuous service after initial employment.

(6) If an employee receives an increase in salary due to a promotion, the anniversary date shall be changed to be effective the first day of the first full pay period following twenty-six (26) pay periods after the effective date of the promotion.

(7) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(8) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave;

(g) Is reclassified.

(9) The appointing authority, with the approval of the department may award any permanent, full-time or part-time employee an outstanding meritorious lump sum payment if:

(a) The employee's acts or ideas resulted in significant financial savings to the local health department, or a significant improvement in service to the citizens; or

(b) The employee's job performance is outstanding.

(10) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year consisting of twenty-six (26) full pay periods based on the annual increment date.

(a) The appointing authority may grant two (2) four (4) percent lump sum payments within the same time period but there shall be at least a thirteen (13) pay period interval between requests.

(b) The appointing authority shall submit written justification to the department for the outstanding merit payment to be effective.

(11) If a new or different salary range is made applicable to a class of position[~~(e)~~], persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum salary of the new range.

(a) An adjustment may be made to an employee's salary level within the new range not to exceed the rate of increase provided in the established new salary range.

(b) An appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(12) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to occupy a position and assume the job duties of an employee on an approved leave of absence or assume additional job duties for a temporary time period.

(a) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(b) After completion of the special assignment, the employee shall be transferred back to the former classification with the employee's salary reduced to the salary rate received prior to the detail assignment following completion of the special assignment. An employee shall be entitled to all salary increases he would have received had he not been on special assignment.

(13) If an above minimum entrance rate is established by an agency for a specified class based on documented recruitment needs, the department may approve a salary adjustment for employees in the same class. The adjustment shall not exceed the rate of increase to the newly established minimum. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(14) The department may approve other salary adjustments with the advice of the Local Health Department Employment Personnel [Advisory] Council. Salary adjustments may address special working conditions, after hours adjustment where working hours cannot be adjusted or other specific circumstances.

(15) An appointing authority may request a four (4) percent in range salary adjustment if an employee is assigned permanent job duties and responsibilities which are more difficult than current job duties, but are less than those indicated through a reclassification.

(16) An in-range adjustment shall be calculated by multiplying the percentage amount of the in-range adjustment times the difference between the minimum and maximum of the respective grade of the employee's classification and adding to the employee's salary.

RICE C. LEACH, MD, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:070E

This emergency administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments. House Bill 631 (1994 Ky. Acts ch. 336) which becomes effective July 15, 1994 provides that the Cabinet for Human Resources shall establish policies and procedures for the local health department personnel program. An emergency regulation is necessary in order to have procedures mandated by House Bill 631 in effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation has been filed with the Regulations Compiler.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:070E. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Recruitment of Eligible Individuals. (1) An agency that desires to fill a position, shall announce the position as provided by the provisions of this section, and may announce the position through additional means that are best suited to attract qualified persons.

(2) An announcement shall be placed in the local newspaper of general circulation. Additional announcements may be posted in important centers throughout the local area and copies sent to newspapers of local, regional or statewide circulation, radio stations, educational institutions, professional and vocational societies, public officials, ~~and~~ other organizations and individuals as deemed necessary.

(3) A public announcement of a position shall specify:

(a) The title and salary range of the class of position; ~~and~~

(b) Information as to the rates of pay at which appointments are expected to be made; ~~and~~

(c) The types of duties to be performed; ~~and~~

(d) The minimum qualifications required; ~~and~~

(e) The final date on which applications are to be received in the department; ~~and~~

(f) Veteran's preference; ~~and~~

(g) The date, time and place of an examination for the position if required; ~~and~~

(h) All other conditions of competition, including the fact that failure in one (1) part of the examination shall disqualify an applicant; and

(i) Other special requirements of federal and state legislation such as the American with Disabilities or Civil Rights Act.

(4) An application for employment, form CH-36, "Application for Employment", revised [dated] April 1, 1993, shall be required of each individual seeking potential employment with an agency. [The application for employment] Form CH-36, "Application for Employ-

ment", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday during the office hours of 8 a.m. and 4:30 p.m.

(5) Except in continuous recruitment programs, an application for employment shall be mailed to the department on or before the closing date specified in the announcement as published by the agency or postmarked before midnight on that date.

(6) The department shall be the custodian of all applications.

(7) The department~~;~~ shall refuse to examine an applicant, disqualify an applicant, remove the applicant's name from a register, refuse to certify any eligible on a register, or may consult with the appointing authority in taking steps to remove such person already appointed, if:

(a) The applicant is found to lack specific requirements established for the examination for the class or position; ~~or~~

(b) The applicant is unable to perform duties of the class; ~~or~~

(c) The applicant has been convicted of a felony, a job related misdemeanor, or a misdemeanor for which a jail sentence may be imposed; ~~or~~

(d) The applicant has previously been dismissed from any public service for delinquency, misconduct, or other similar cause; ~~or~~

(e) The applicant made a false statement of material fact in the application; ~~or~~

(f) The applicant has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment; ~~or~~

(g) The applicant has directly or indirectly obtained information regarding examinations that the applicant was not entitled; ~~or~~

(h) The applicant has failed to submit a complete application; ~~or~~

(i) An applicant has failed to submit the application within the prescribed time limits as prescribed by the agency in the published announcement; ~~or~~

(j) The applicant has taken part in the compilation, administration, or correction of the examination; or

(k) The applicant has otherwise failed to meet the provisions of this administrative regulation.

(8) A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 2. Examinations. (1) Examinations shall be practical in nature, constructed to reveal the capability of the applicant for the particular position as well as general background and related knowledge. The various parts of the examination may be written, oral, physical, or an evaluation of experience and training, a demonstration of skill, or any combination of types so long as applicants for a position are given the same examination.

(2) Examinations shall be conducted on an open competitive basis and scheduled simultaneously in as many places as are necessary for the convenience of the applicants and as are practicable for proper administration.

(3) The department, in conjunction with an agency, may designate ~~such~~ monitors as necessary to conduct examinations, and may arrange for the use of public buildings in which to conduct the examinations. The department shall provide for the compensation of monitors.

(4) If an oral examination is a part of a total examination for a position, the department~~;~~ may appoint one (1) or more impartial oral examination boards as needed.

(5) The department shall notify each applicant by mail of the final rating as soon as the rating of the examination has been completed and the register established. An eligible, upon written request and presentation of proper identification, shall be entitled to information concerning his relative position on a register.

(6) The selection method for the following classes is 100 percent qualifying. If the applicant meets the minimum requirements, his name shall be placed on the appropriate register.

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1001 Public Health Director III
 1002 Public Health Director II
 1003 Public Health Director I
 1103 Director of Administrative Services
 1106 Personnel Specialist
 1110 Senior Administrative Assistant
 1301 Finance Administrator
 1305 Purchasing Specialist
 1405 Telephone Operator/Receptionist
 1410 Data System Coordinator
 1411 Data Operator
 1501 Program Director
 1502 Program Coordinator
 1430 Cooperative Vocational Education Student
 2001 Director of Community Health Nursing
 2002 Community Health Nursing Supervisor
 2010 Community Health Nursing Administrator
 2101 Community Health Nurse
 2103 Senior Community Health Nurse
 2104 Nurse Specialist
 2111 Advanced Registered Nurse Practitioner
 2110 Registered Nurse Applicant
 2120 Community Health Nurse Intern
 2151 Licensed Practical Nurse Applicant
 2152 Licensed Practical Nurse
 2153 Senior Licensed Practical Nurse
 2201 Aging Services Coordinator
 2301 Home Health Aide Trainee
 2302 Home Health Aide
 2303 Senior Home Health Aide
 2401 Social Work Coordinator
 2403 Senior Social Worker
 2404 Director of Social Services
 2501 Director of Nutrition Services
 2502 Nutrition Coordinator
 2504 Clinical Nutritionist
 2602 Speech and Hearing Pathologist
 2606 Audiologist
 2608 X-ray Technician
 2610 Occupational Therapist
 2612 Physical Therapist
 2701 Laboratory Supervisor
 2702 Medical Technologist
 2703 Laboratory Technician
 2705 Laboratory Assistant
 2801 Health Education Coordinator
 2803 Senior Health Educator
 2806 Director of Health Education
 2901 Support Services Coordinator
 3001 Director of Environmental Health
 3003 Environmental Health Supervisor
 3005 Senior Health Environmentalist
 4001 Public Health Clinician
 4002 Health Officer
 4003 Medical Director
 4004 Physician VI
 4005 Physician V
 5001 Maintenance Supervisor
 5002 Maintenance Technician
 5004 Maintenance Person
 5003 Janitor
 6001 Food Service Supervisor
 6002 Cook
 6003 Driver
 6004 Meal Deliverer

(7) A vacancy in an agency may be filled by promotion of a

qualified permanent employee.

(8) Promotions shall be based upon individual performance, with due consideration for length of service[;] and capability of the individual to perform the duties and responsibilities of the new position. A candidate for promotion shall be certified by the department as meeting the qualifications for the position.

(9) A promotional competitive examination shall be given under the direction of the department if an agency determines to fill a vacancy by promotional competitive examination. An employee shall meet the minimum qualifications of the position to be eligible to compete for promotion. A promotional competitive examination shall consist of any combination of the following: written tests, rating of training and experience, evaluation of recorded service ratings and seniority, performance tests, and oral examinations. The same examination shall be administered to all candidates for promotion.

Section 3. Certification of Eligibles. (1) The department shall prepare a register of eligible persons who made a passing score of seventy (70). The names of eligible persons shall be placed on the register in order of their final ratings. If two (2) or more eligibles have final ratings which are identical, their names shall be arranged in the order of their ratings on the written part of the examination, if any or in order of the date of receipt of application. If applications of eligibles have ratings which are identical are received on the same day, the names shall be placed on the certification in alphabetical order.

(2) If a vacancy exists in a class of positions for which there is no appropriate register, the department[;] may prepare an appropriate register for the class from one (1) or more existing related registers.

(3) The life of each register shall be one (1) year from the date of its establishment. A register may be deemed to be exhausted by the department if fewer than three (3) eligibles remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(4) The department may remove the name of an eligible from a register:

(a) For any of the causes stipulated for disqualifying an applicant provided for under Section 3 of this administrative regulation; [er]

(b) If the eligible cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked no forwarding address; [er]

(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position; [er]

(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible; [er]

(e) An eligible receives a probationary appointment; [er]

(f) Declines an offer of appointment for which the eligible previously indicated acceptance; [er]

(g) The eligible fails to report for a scheduled interview without valid reason; [er]

(h) An eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or

(i) An eligible has been certified three (3) times to an appointing authority and has not been offered employment.

(5) An eligible who is appointed on a probationary basis may request in writing to the department to have his name reinstated to any register at any time before its expiration[; upon his request].

(6) The department shall notify the eligible by mail to his last known address of this action and the reasons therefore.

(7) For positions requiring an examination and upon receipt of a request, the department shall certify and submit in writing to the appointing authority the names of available persons.

(a) If one (1) position is involved, the names of the persons whose scores fall within the highest ten (10) scores earned on the examination for that class of position shall be certified.

(b) If there are fewer than the above specified number of eligibles, the available number shall be certified and appointment will be made

if there are as many as three (3) available eligibles for each vacancy.

(c) If more than one (1) position is involved, the department shall certify an additional eligible for each position in excess of one (1).

(d) The department shall certify and submit the five (5) highest available scores on the appropriate promotional register, if one exists.

(8) For positions which do not require an examination the department shall certify all names of eligibles to the appointing authority.

(9) The appointing authority may request, in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(10) An employee with status, placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which laid off.

(a) A status employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(b) No examination shall be required for reemployment in the same job classification from which the employee was laid off.

(c) If a laid-off employee with status desires reemployment in a different job classification, the employee shall [must] meet the requirements and pass the required examinations for the job classifications in which he seeks reemployment.

(d) The life of the reemployment register is one (1) year or until the employee is reemployed.

RICE C. LEACH, MD, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

STATEMENT OF EMERGENCY

902 KAR 8:080E

This emergency administrative regulation describes the various categories of employment and types of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. The emergency administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay off is also addressed. House Bill 631 (1994 Ky. Acts ch. 336) which becomes effective July 15, 1994 provides that the Cabinet for Human Resources shall establish policies and procedures for the local health department personnel program. An emergency regulation is necessary in order to have procedures mandated by House Bill 631 in effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation has been filed with the Regulations Compiler.

BRERETON C. JONES, Governor

MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES

Department for Health Services

902 KAR 8:080E. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170,

1994 Ky. Acts ch. 336

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation describes the various categories of employment and types of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. This administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay off is also addressed.

Section 1. Initial Appointments. The appointing authority of a local health department shall make an initial appointment of an eligible only from a certification of eligibles issued by the department. The appointing authority or other designated supervisory staff[-] shall interview and examine applicants certified and shall report the final selection to the department.

Section 2. Provisional Appointments. (1) If there are urgent reasons for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) No provisional appointment shall be made until the position has been classified and minimum qualifications established for the class of position. The provisional appointment shall not exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to original appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a permanent employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position without examination, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve a probationary period. The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement. Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for provisional appointment, the appointing authority may appoint, with the approval of the department, a person or persons at the minimum entrance salary for the class. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make

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[such] investigations as necessary to determine if [whether] an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, a certification may be issued by the department of those eligibles, who have indicated a willingness to accept temporary employment in the order of their places on an appropriate register.

(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.

(3) The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or eligibility for a probationary appointment.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) Successive temporary appointments of an employee to the same position shall not be made.

Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a seasonal basis for up to nineteen (19) pay periods to accommodate the following:

(a) Increased work activity of a seasonal nature; [or]

(b) Work study or job training programs; [or]

(c) Special projects; or [and]

(d) Summer employment.

(2) Only an applicant meeting the established minimum requirements for the position may be appointed to a seasonal position.

(3) Successive appointments to the same seasonal position shall not be made.

Section 7. Performance Appraisal. (1) The appointing authority, or designated supervisory staff, shall conduct a performance appraisal for each permanent employee on an annual basis, and for each probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(3) Performance appraisals shall be considered in determining annual and probationary salary advancements and in requesting and approving promotions, demotions, dismissals, and in determining the order of separations due to reduction of work force.

(4) Performance appraisals shall be prepared and recorded on Form [the Employee Performance Appraisal form numbered] CH-40, "Employee Performance Appraisal", revised [dated] April 1993. [The Employee Performance Appraisal] Form CH-40, "Employee Performance Appraisal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

Section 8. Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall be thirteen (13) pay periods except as provided in subsection (3) of this section.

(3) The appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period as to

one (1) of the following actions:

(a) The employee has satisfactorily completed the initial probationary period based on a performance evaluation, and permanent status has been confirmed; [or]

(b) The employee has not successfully performed the duties and completed the probationary period as evidenced by the required performance evaluation, and shall be dismissed without the right of appeal and hearing; or

(c) If the initial probationary period will be extended because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period.

(4) The department, with the advice of the Local Health Department Employment Personnel [Advisory] Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications, for example, the health environmentalist classification.

(5) If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise.

(6) The employee[;] serving a probationary period may be eligible for promotion to a position in a higher class, provided the employee is certified from an appropriate register. If an employee is promoted during a probationary period, the probationary period shall begin with the date of the most recent appointment.

Section 9. Probation Period Following Promotion. (1) A promotional probationary period of thirteen (13) full pay periods shall be required of an employee upon promotion.

(2) If an employee is granted leave in excess of twenty (20) consecutive work days during the promotional probationary period, his initial probation shall be extended for the same length of time as the granted leave to cover the absence.

(3) A performance evaluation shall be completed for the employee prior to completing the probationary period[;] to determine the employee's ability to perform successfully the job duties.

(4) If approved by the appointing authority, a promoted employee may request to be reverted to a position in the former class during the probationary period.

(5) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position of his former class. If there is no vacancy in the former class the employee may be reverted to a position in a different class if qualified and certified by the department.

(6) Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department.

(7) If a permanent employee is dismissed for cause while serving a promotional probationary period the employee has the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 10. Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) Failure of an employee to give fourteen (14) calendar day notice shall, unless otherwise approved by the appointing authority, result in the employee forfeiting payment for accrued annual leave.

Section 11. Layoffs. (1) An appointing authority may lay off an

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employee in the classified service if necessary because of shortage of funds, abolishment of a position, or other material change in the duties or the organization of the agency.

(2) The agency shall submit a plan to the department for approval prior to layoff. The plan shall identify the factors considered and identify the employee~~(s)~~ proposed to be laid off. The agency shall consider at least the following factors:

- (a) Seniority of employees; ~~and~~
- (b) Results of employee performance evaluation~~(s)~~; ~~and~~
- (c) Qualification of employees; and
- (d) Type of appointment or source of funding.

(3) The employee shall be notified of the effective date and given written notice of the reasons for the layoff and the right to be placed on a reemployment register.

(4) No permanent employee shall be separated by layoff if there are provisional, temporary, emergency, seasonal, or probationary employees serving in the agency in the same class.

RICE C. LEACH, MD, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

STATEMENT OF EMERGENCY 902 KAR 8:090E

This emergency administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees. House Bill 631 (1994 Ky. Acts ch. 336) which becomes effective July 15, 1994 provides that the Cabinet for Human Resources shall establish policies and procedures for the local health department personnel program. An emergency regulation is necessary in order to have procedures mandated by House Bill 631 in effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation has been filed with the Regulations Compiler.

BRERETON C. JONES, Governor

MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES Department for Health Services

902 KAR 8:090E. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if he meets the minimum requirements of the position having a higher salary and is certified by the department.

(2) The employee shall serve a probationary period to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.

(3) An employee who is promoted shall have his salary raised to

the greater of the following:

(a) The amount required to raise the salary of the employee to the minimum established for the class; ~~or~~

(b) Three (3) percent of the employee's current salary if the promotion is to a class having a one (1) grade higher salary range; or

(c) Six (6) percent of the employee's current salary if the promotion is to a class having a salary range which is two (2) or more grades higher.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(5) A permanent employee promoted from a classified position to an unclassified position retains his status in the classified service. If separated from an unclassified position following promotion, an employee shall revert to the class in which he previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department. Time served in an unclassified position shall count towards years of service and seniority.

Section 2. Transfers. (1) A transfer of a permanent employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency, may be made at any time by the appointing authority.

(2) A transfer of a permanent employee from a position in one class to a position in another class~~;~~ within an agency~~;~~ having the same entrance salary may be made only with the approval of the appointing authority and upon certification of the department. The department may require a qualifying examination.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority.

(a) Accumulated annual and sick leave shall be transferred.

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency.

(c) The annual increment date shall be retained by the employee.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period; ~~or~~

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties; ~~or~~

(c) Documented disciplinary problems or the inability of an employee to perform the duties and responsibilities required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) The salary of an employee who voluntarily requests demotion shall be reduced by five (5) percent if the demotion is to a classification having a one (1) grade or two (2) lower salary.

(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.

(4) Except as provided in subsection (6) of this section, the salary of an employee who is demoted because of documented disciplinary problems or inability to perform the duties and responsibilities required of the position, shall be reduced to a salary level determined by adding the total percentage difference, as described by the compensation plan, between the employee's current grade level and the grade of the classification to which the employee is demoted.

(5) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

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(6) If an employee is demoted during the initial probationary period, the employee shall continue in his probationary period as if the original appointment had been to the position of the lower class.

(7) An employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall have his salary reduced to the level prior to promotion.

RICE C. LEACH, MD, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

STATEMENT OF EMERGENCY 902 KAR 8:100E

This emergency administrative regulation governs separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, due process considerations, and an appeal process. House Bill 631 (1994 Ky. Acts ch. 336) which becomes effective July 15, 1994 provides that the Cabinet for Human Resources shall establish policies and procedures for the local health department personnel program. An emergency regulation is necessary in order to have procedures mandated by House Bill 631 in effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation has been filed with the Regulations Compiler.

BRERETON C. JONES, Governor

MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES Department for Health Services

902 KAR 8:100E. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. The administrative regulation governs separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, pre-disciplinary action procedures, and an appeal process.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for lack of good behavior or the unsatisfactory performance of job duties.

(2) A classified employee with status shall not be disciplined except for cause.

(3) Situations that may warrant disciplinary action are situations such as (include, but are not limited to the following):

- (a) Inefficiency or incompetency in the performance of duties;
- (b) Negligence in the performance of duties;
- (c) Careless, negligent, or improper use of local health department property or equipment;
- (d) Failure to maintain satisfactory and harmonious working relationships with the public and coworkers;
- (e) Habitual improper use of sick leave and other leave privileges;
- (f) Habitual pattern of failure to report for duty at the assigned time and place;

(g) Failure to obtain or maintain a current license or certificate or other qualifications required by law or rule as a condition of continued employment;

(h) Gross misconduct or conduct unbecoming an employee;

(i) Willful abuse or misappropriation of funds, property, or equipment;

(j) Conviction of a felony;

(k) Falsification of an official document relating to or affecting employment;

(l) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or that would interfere with the ability of management to manage;

(m) Damage or destruction of agency property;

(n) Abuse towards patients, coworkers, or the public in the performance of duties;

(o) Refusal to carry out a reasonable and proper assignment from an authorized supervisor (insubordination);

(p) Reporting to work under the influence of alcohol or illegal drugs, or partaking on the job;

(q) Sleeping or failure to remain alert during working hours;

(r) Violation of confidential information policies of the agency;

(s) Prohibited political activity; and

(t) Unauthorized absence or absence for any period of working without notifying supervisor.

Section 2. Predisciplinary Action Hearing. (1) Except as provided in subsection (7) of this section, prior to demotion, suspension, or dismissal, a classified employee with status shall be notified in writing of the intent of the agency to demote, suspend, or dismiss the employee. The notice shall also state the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

1. The statutory, regulatory, or agency policy violation; or
2. The specific action or activity on which the intent to demote, suspend, or dismiss is based; and
3. The date, time, and place of the action or activity; and
4. The name of the parties involved.

(b) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) No later than five (5) working days after receipt of the notice of intent to demote, suspend, or dismiss, excluding the day the employee receives the notice, the employee may request to appear to reply to the appointing authority.

(3) The meeting shall be held six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5)(a) If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be notified in writing fourteen (14) days prior to the action of:

1. [(a)] The effective date of the demotion, suspension, or dismissal; and
2. [(b)] The statutory, regulatory, or agency policy violation; or
3. [(c)] The specific action or activity on which the demotion, suspension, or dismissal is based; and
4. [(d)] The date, time, and place of the [such] action or activity; [and]
5. [(e)] The name of the parties involved; [and]
6. [(f)] That the employee may appeal the demotion, suspension, or dismissal to the Local Health Department Employment Personnel

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Advisory Council no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.

(b) The appointing authority shall provide the employee with the appeal request form.

~~[(6) If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be provided with the Appeal Request Form at the same time of the notification contained in subsection (5) of this section.]~~

(6) ~~[(7)]~~ All appeals shall be submitted on Form CH-41, "Request for Appeal", ~~[the appeal request form,]~~ dated April 1, 1993. Form CH-41, "Request for Appeal", ~~[The appeal request form]~~ is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

(7) ~~[(8)]~~ Upon determining that an employee has committed a flagrant violation and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken. A pretermination hearing shall be provided as soon as practicable after removal. The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

STATEMENT OF EMERGENCY 902 KAR 8:110E

This emergency administrative regulation provides for a process whereby employees may appeal specific disciplinary actions to the Local Health Personnel Advisory Council for reconsideration. House Bill 631 (1994 Ky. Acts ch. 336) which becomes effective July 15, 1994 provides that the Cabinet for Human Resources shall establish policies and procedures for the local health department personnel program. An emergency regulation is necessary in order to have procedures mandated by House Bill 631 in effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation has been filed with the Regulations Compiler.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES Department for Health Services

902 KAR 8:110E. Disciplinary appeal process applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 211.090, 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation provides for a process whereby employees may appeal specific disciplinary actions.

Section 1. Appeals. (1) An employee with status who is demoted, suspended, or dismissed shall have the right to appeal the action.

The appeal shall be in writing and mailed to the department no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.

(2) An applicant who has taken an examination may appeal his rating in any part of an examination to assure rating procedures have been applied fairly and equitably. The appeal shall be in writing and mailed to the department no later than thirty (30) days after the date on which notification of the results of the examination was mailed to the applicant.

(3) An eligible whose name has been removed from a register for any of the reasons specified in administrative regulation 902 KAR 8:070, Section 1(7); may appeal the action. The appeal shall be mailed to the department within thirty (30) days after the date on which the notification of removal was mailed to the eligible.

(4) An applicant or employee who has reason to believe that he has been discriminated against because of sex, religious, or political opinions or affiliations, race, [er] national origin, disability, or age in any personnel action may appeal within thirty (30) days of the date of the alleged discrimination.

(5) A request for an appeal, provided for under this section, shall be submitted in writing using Form CH-41, "Request for Appeal" (July 1, 1994), ~~[the appeal request form,]~~ incorporated by reference in administrative regulation 902 KAR 8:100, Section 2(6).

(6) All appeals shall be conducted in accordance with procedures as set forth in Section 2 of this administrative regulation.

Section 2. Hearing Process. (1) The department shall schedule a formal hearing before the Local Health Department Employment Personnel [Advisory] Council or a hearing officer designated by the department within sixty (60) days following receipt of the request.

(2) The hearing may be continued at the request of [either] the employee or the appointing authority.

(3) At the hearing the employee and the appointing authority shall have the right to present witnesses, to be represented by counsel, and to give evidence.

(4) If a hearing officer is designated to hear the appeal, the hearing officer shall make findings of fact, conclusions of law, and recommend a final order to the Local Health Department Employment Personnel [Advisory] Council at its next meeting. The Local Health Department Employment Personnel [Advisory] Council may adopt the report as submitted, amend the findings and recommendations based on evidence contained, or remand the appeal to the hearing officer for further action as appropriate or rehear the appeal.

(5) The Local Health Department Employment Personnel [Advisory] Council shall allow the employee or employee's attorney and the appointing authority to file exceptions to the hearing officers report or grant oral arguments before the Local Health Department Employment Personnel [Advisory] Council.

(6) The Local Health Department Employment Personnel [Advisory] Council shall, within a reasonable period of time after the hearing, make findings of fact, conclusions of law, and based on the record and recommendations, recommend a final order to the Commissioner of the Department for Health Services. The Commissioner of the Department for Health Services shall make a final decision based on the recommendations of the Local Health Department Employment Personnel [Advisory] Council. The department shall promptly notify the employee and the appointing authority of the decision. The decision of the commissioner shall be considered a final order and binding upon the employee and appointing authority.

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 115:010E

Emergency regulation 902 KAR 115:010E is necessary in order for the Cabinet for Human Resources to implement a water fluoridation program as required by Senate Bill 170 in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Regulations Compiler on or before July 15, 1994.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Maternal and Child Health

902 KAR 115:010E. Water fluoridation for the protection of dental health.

RELATES TO: KRS Chapter 211

STATUTORY AUTHORITY: KRS 211.190, 211.190(10)

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: KRS 211.190(10) directs the Cabinet for Human Resources to provide public health services that include water fluoridation programs for the protection of dental health. This administrative regulation sets forth the requirements for the programs.

Section 1. Community Implementation. (1) All community water systems serving a population of 3,000 or more, including consecutive supplies, shall adjust fluoride deficient waters to protect the dental health of the people served by the supply. For the purposes of this administrative regulation, consecutive supply shall mean a supply that purchases its water from another public water system. The population served by a community water system shall include its own population, as well as the population served by all of its consecutive supplies.

(2) Community water systems serving a population between 1,500 and 3,000 shall provide supplemental fluoridation only if adequate fluoride feed equipment is available from the Cabinet for Human Resources, Department for Health Services.

(3) Although not required to provide supplemental fluoridation, community water systems serving a population of less than 1,500 that choose to provide supplemental fluoridation shall do so only if adequate fluoride feed equipment is available from the Cabinet for Human Resources, Department for Health Services, and there are competently trained or certified personnel at the community water system.

Section 2. Approval. All community water systems shall obtain the written approval of the Cabinet for Human Resources before adding fluorides to a public water system. Approval by the cabinet shall be contingent upon the presentation of evidence satisfactory to the cabinet that the plant facilities and operation will provide for adequate control and supervision, safe operation and maintenance, the keeping of operational records, and compliance with this regulation and 401 KAR Chapter 8:010 through 8:700 relating to public water systems.

Section 3. Equipment, Facilities, and Services. The equipment, facilities, and services shall meet the requirements set forth below:

(1) Feeding. Reliable feeding equipment with an accuracy within five (5) percent shall be provided to feed the proper dosage of fluoride. The rate of feed shall be in a manner that will give a fluoride content between eight-tenths (0.8) ppm and one and four-tenths (1.4) ppm in the treated water. Based on an evaluation of Kentucky climatological information, a fluoride concentration of no less than nine-tenths (0.9) ppm is recommended in the finished water. The

point of application shall be selected so that fluoride will be evenly mixed with the water leaving the treatment plant.

(2) Method of measurement.

(a) Saturator tanks. If solution feed equipment is to be used, the water plant shall have a corrosion-resistant solution tank, and an accurate means for weighing the stock chemical (fluoride) available. A metering device for measuring the water for the solution shall also be provided.

(b) Dry feed hoppers. Dry feed hoppers shall be mounted on scales.

(c) Acid systems (H_2SiF_6). Scales shall be available to measure the weight loss each day or some other appropriate method of measuring the amount of acid being used each day.

(3) Protection of operator. Special precautions shall be taken to protect the operators. Precautions may vary with the type of installation, but, at a minimum, should include an approved respirator or approved rubber gloves, eye shield, and apron as indicated by the type of fluoride being used (dry or liquid). An adequate exhaust or ventilation system shall be provided for all fluoride feeding equipment.

(4) Storage. Separate storage areas shall be provided for all fluoride chemicals.

(5) Laboratory facilities. Laboratory facilities shall be provided for the determination of the fluoride content of the water by competent personnel in accordance with the procedures outlined by the Standard Methods for the Examination of Water and Wastewater, 18th Edition (1992). The Standard Methods for the Examination of Water and Wastewater, 18th Edition (1992), is jointly prepared and published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, and is incorporated by reference. This publication may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, or may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(6) Samples. Raw water and plant tap water samples shall be examined at least once per day and the results shall be included on the standard monthly operation report submitted to the cabinet. Additional finished water samples shall be analyzed by a laboratory certified by the Cabinet for Natural Resources and Environmental Protection in accordance with 401 KAR 8:040 for fluoride determination, with the results being forwarded to the cabinet. This sampling shall be at a rate of two (2) samples per month. The first sample shall be collected from the plant tap during the first week of the month and the second sample collected from the distribution system, at a point of maximum retention, during the third week of the month. Evaluation of the results of these analyses shall be within the province of the cabinet.

(7) Siphon breakers. Fluoride feeders shall be equipped with siphon breakers to prevent back siphonage of concentrated fluoride solution into the distribution system.

(8) Notification of cabinet when fluoridation begins. The cabinet shall be notified of the date on which fluoridation is to commence in order that a representative of the cabinet may be present to calibrate and check the fluoridation equipment and instruct the operating personnel concerning tests, records, operation, and safety precautions.

(9) Notice when fluoride is interrupted. The owner or operator of the water plant shall immediately notify the cabinet of any interruption to the addition of fluoride to the water supply.

Section 4. Procedure for Obtaining Approval. A system shall submit, in support of an application for approval, the following:

(1) Detailed plans showing the method and point of application of fluorides and storage facilities for stock chemicals;

(2) Information concerning technical supervision of the treatment process; and

(3) Provisions for laboratory facilities.

ADMINISTRATIVE REGISTER - 905

RICE C. LEACH, Commissioner
MASTEN CHILDERS, II, Secretary
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: July 15, 1994 at 2 p.m.

STATEMENT OF EMERGENCY 905 KAR 1:010E

These emergency and proposed amendments implement provisions of HB 191 enacted during the 1994 General Assembly, relating to adoption proceedings. This regulation sets forth the procedures for the application for permission to place or receive a child, the disposition of a child proceeding the granting or denying of permission to place or receive a child, the investigation of circumstances surrounding the biological parents of a child to be placed or received under the law of independent adoption and the determination of suitability of the proposed adoptive parents to receive the child. It is necessary to promulgate an emergency regulation to implement provisions of HB 191 defining placement services, adoption worker and providing that prospective independent adoptive parents may contract with private child placing agencies for completion of a home and family background section of the placement investigation and providing clarification regarding the Interstate Compact on the Placement of Children approval, if required. This emergency regulation should be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about July 15, 1994.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES Department for Social Services Division of Family Services

905 KAR 1:010E. Application for permission to place or receive child.

RELATES TO: KRS 199.011, 199.470(4), 199.471, 199.472, 199.473, 199.480, 199.490(3), 199.500, 199.520, 199.572, 199.590, 199.990, 615.030, Chapter 635, 1994 Ky. Acts ch. 242

STATUTORY AUTHORITY: KRS 194.050, 199.472

EFFECTIVE: July 15, 1994

NECESSITY AND FUNCTION: This administrative regulation shall ~~is to~~ provide procedures for the application for permission to place or receive a child, the disposition of a child preceding the granting or denying of permission to place or receive a child, the investigation of the circumstances surrounding the biological ~~natural~~ parents of a child to be placed or received under the law of independent adoption and the determination of suitability of the proposed adoptive parents to receive the child. The ~~function of this~~ administrative regulation ~~is to~~ sets forth the procedure in independent adoptions from the filing ~~point~~ of an application to place or receive a child to the ~~point of the~~ filing of the petition to adopt. The administrative regulation includes provisions relating to obtaining health history from the biological parents and to determining the biological and legal parents' feelings about possible future contact with the adopted person.

Section 1. The application for permission to place or receive a child, the DSS-187 herein incorporated by reference, shall be filed in duplicate, in writing with the Secretary of the Cabinet for Human Resources in care of the Commissioner of the Department for Social Services, by means of certified or registered mail. A certified or cashier's check payable to the Kentucky State Treasurer for a nonrefundable fee of \$150 shall be filed with the written application for permission to place or receive a child. The DSS-187 may be

obtained at the various local Department for Social Services offices or at the central office in Frankfort.

Section 2. The application for permission to place or receive a child shall be considered officially filed when received in the office of the Commissioner of the Department for Social Services. The returned receipt of certified or registered mail shall be proof of the filing of the application. However, the application shall not be considered filed unless it contains the required information and is received together with the \$150 fee pursuant to KRS 199.473(6) ~~(45)~~.

Section 3. Limitations to Filing. (1) In the case of twins who are available and suitable for adoption, an application shall not be accepted unless the proposed adoptive parents apply to receive both children.

(2) When an application for a child has been filed, subsequent applications for the same child shall not be accepted unless the previous application has been withdrawn by a written request to the cabinet by one (1) of the parties involved.

Section 4. The application for permission to place or receive a child shall contain:

(1) Name and address of a person wishing to receive a child;

(2) Names and addresses of the biological mother and father and legal father of the child to be placed or received. If the identity of the father is unknown, that fact shall be stated;

(3) The name and date of birth or expected date of birth of the child to be placed or received;

(4) Present address of the child to be placed or received;

(5) A statement of whether custody of the child has been awarded to an agency or person other than the biological parents; and, if applicable, a copy of the custody order; ~~and~~

(6) Names and addresses of attorneys, intermediaries or agents representing the respective parties involved in the proposed placement; and

(7) If the proposed receiving parent or parents reside in Kentucky, a statement as to whether the investigation of the proposed placement shall be completed by an adoption worker with the Department for Social Services or a licensed child placing adoption agency in Kentucky.

Section 5. The application for permission to place or receive a child shall be signed by the person wishing to receive a child, the person wishing to place the child, or by both parties involved.

Section 6. An application for permission to place or receive a child shall not be processed if, prior to the receipt of the application, the child was committed to the Cabinet for Human Resources by order of the district or circuit court.

Section 7. An application for permission to place or receive a child may be made prior to the birth of the child.

Section 8. If the custodial parent or parents of the child to be placed or the persons wishing to receive the child reside out of state, the requirements of KRS 615.030, Interstate Compact on the Placement of Children, shall be met before the cabinet can give approval for the child's placement.

Section 9. The child shall not be in the physical care, control or custody of the proposed adoptive family until the written approval of the Secretary of the Cabinet for Human Resources or his designee is received by the adoptive family. Upon a finding by the circuit court of circumstances that warrant the child shall be placed prior to the secretary's written decision on the application, the circuit court may grant the applicant temporary custody of the child pending the cabinet's decision. This provision shall not be used to circumvent the

requirements of KRS 615.030, Interstate Compact on the Placement of Children. If either the child's custodial parent or parents or the persons wishing to receive the child reside out of state, the written approval of the compact administrator shall be given before the child's placement with the proposed receiving family can occur.

Section 10. [9-] The Cabinet for Human Resources may cooperate with the parents of the child in finding suitable temporary placement for the child, pending the disposition of the application for permission to place or receive a child.

Section 11. [40-] During the time between the filing of the application for permission to place or receive a child and the decision of the Cabinet for Human Resources granting or denying the application, the responsibility for providing for the care of the child shall not rest with the Cabinet for Human Resources unless a court has placed the child with the cabinet, with the agreement of the cabinet, after the filing of the application. The responsibility shall remain with the parents of the child.

Section 12. [44-] The child shall not be physically placed in the care, control or custody of the proposed receiving parents until final written permission to receive the child has been granted by the Secretary of the Cabinet for Human Resources or his designee; however, if the child is found in the physical care of the proposed adoptive family without a circuit court order of temporary custody as provided by KRS 199.473(2), it is the responsibility of the applicants to arrange for the child's placement in a neutral setting within forty-eight (48) hours. If the child's custodial parent resides out of state and the child is found in Kentucky without the approval of the Interstate Compact on the Placement of Children, the child shall be removed from Kentucky and a neutral setting arrangement made within the state of the custodial parent's residence.

Section 13. [42-] When an application for permission to place or receive a child has been filed with the Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Social Services shall cause an investigation to be made of the proposed receiving home, the best interest of the child. The investigation shall be completed by an adoption worker of the Department for Social Services, unless the applicant's state at the time of filing the DSS-187 that an adoption worker with a licensed child-placing agency will complete the placement investigation and submit the required report to the Secretary of the Cabinet for Human Resources.

Section 14. Investigation by Adoption Worker with a Child-Placing Adoption Agency. (1) Prior to filing an application for permission to receive a child, the person or persons wishing to receive a child may contract for a licensed child-placing adoption agency to complete a preliminary investigation pertaining to the home and background of the person or persons who wish to receive a child for an independent adoption. The preliminary investigation shall include:

(a) The DSS-190, Information to be Obtained from Receiving Parents, and the DSS-190A, Supplemental Information, herein incorporated by reference, from the prospective adopter;

(b) Verification of current marriage, prior divorce, or death of a prior spouse of the prospective adopter;

(c) The DSS-106, Child's Medical Record, and DSS-107, Medical Information for Foster and Adoptive Applicants, herein incorporated by reference, which provides documentation of a physical examination, current to within one (1) year, of all members of the applicant's household and a recommendation from the applicant's physician regarding the applicant's ability to parent;

(d) A minimum of three (3) personal references, including one (1) from a relative of the applicant;

(e) A minimum of two (2) financial references;

(f) A district court record search completed in the applicant's

county of residence;

(g) Documentation by the adoption worker of a minimum of one (1) home visit and face-to-face interview with each applicant and members of the applicant's household; and

(h) Section I of the Independent Adoption Placement Investigation Report completed by the adoption worker in regard to the applicant's home and family background. The adoption worker shall include a determination of the applicant's suitability to proceed with an independent adoption.

(2) If an adoption worker for a licensed child-placing adoption agency determines at the completion of a preliminary investigation that the applicant does not appear suitable to proceed with an independent adoption, the worker shall notify the Department for Social Services, Adoption Section, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The applicants may contract with a licensed child-placing adoption agency for the completion of the independent adoption placement investigation required by the filing of the DSS-187, Application for the Permission to Place or Receive a Child. If the agency adoption worker had completed the preliminary investigation of the home and family background prior to the filing of the DSS-187, the worker shall meet with the proposed adoptive family to insure that the requirements remain valid and current within one (1) year. The placing parents shall be interviewed to determine their knowledge, understanding, and acceptance of the proposed placement and to obtain health and background information. The agency adoption worker shall discuss the child's background and proposed placement with the prospective receiving parent or parents and make a determination of the applicant's ability to meet the needs of the specific child and provide the child with a suitable home. The agency adoption worker shall complete the Independent Adoption Placement Investigation Report, herein incorporated by reference, for review and processing with the Interstate Compact, if applicable, and the secretary's placement decision.

Section 15. [43-] Interviews. (1) When the biological parents or legal father reside in Kentucky, the adoption worker [a representative of the Cabinet for Human Resources] shall make a diligent effort to interview the custodial biological parent of the child to be placed and the noncustodial, biological parent and legal father for the following purposes:

(a) To determine whether or not the biological mother and father are aware and accepting of the ethnic and religious background of the receiving parents;

(b) To determine whether or not they agree to the placement of the child with the proposed receiving parents;

(c) To obtain health history and sociological information on the child's family; and

(d) To determine the biological mother and father's feelings about possible future contact with the adopted person.

(2) The Cabinet for Human Resources may deny the application if the child's custodial parent refuses to be interviewed by the Cabinet for Human Resources representative or the appropriate Kentucky or out-of-state adoption worker [out-of-state agency representative].

(3) Efforts shall be made to have the biological mother and father and legal father, if different than the biological father [parents] interviewed, for the purposes specified in Section 13(1)(a) through (d) [or to have home evaluations completed through interstate procedures] when the parents [or prospective adoptive families] live out of state. The [home evaluation for out-of-state prospective adoptive families and] interviews with out-of-state biological [birth] parents or legal father shall be accepted if conducted by the out-of-state public agency or by a licensed private adoption agency in the respective state if the public agency is unable or unwilling to provide the service.

(4) If after diligent efforts of the out-of-state public or private agency, the biological parents, legal father, or legal custodian of the

child cannot be interviewed, or if the information and material cannot be obtained, the Secretary of the Cabinet for Human Resources or his designee shall not be precluded from approving the placement provided the other conditions of KRS 615.030, the Interstate Compact on the Placement of Children, have been met.

Section 16. [14-] The Cabinet for Human Resources may deny the application if the custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family.

Section 17. The home evaluation for an out-of-state prospective adoptive family shall be accepted if conducted by the out-of-state public agency or by a licensed child-placing adoption agency in the respective receiving state if the public agency is unable or unwilling to provide the service.

Section 18. Upon completion of the investigation of the proposed placement [15. When the cabinet's investigation has been completed], the applicants shall be notified by registered or certified mail of the decision of the Secretary of the Cabinet for Human Resources or his designee, either granting or denying permission for the placement or receiving of the child. If the permission is granted, the child may be placed in the home of the receiving parents forthwith, if other requirements, including the requirements of the Interstate Compact on the Placement of Children, if applicable, have been met. If the permission is denied, the receiving parents or the birth parents may, within ten (10) days after notice of denial, appeal the decision to the circuit court of the county in which the adoption is proposed.

Section 19. At the time [16. When] a child has been placed in a proposed receiving home with the permission of the Secretary of the Cabinet for Human Resources or his designee, the proposed receiving parents may file the petition for adoption in the circuit court in the county of their residence [three (3) months after the date of the child's placement in their home] with the secretary's or his designee's written approval in accordance with KRS 199.470(3) [(4)] and 199.473. Subsequent to the filing of a petition in Kentucky to finalize an independent adoption made with the written approval of the secretary, the agency which completed the independent adoption placement investigation shall be responsible for the preparation of the confidential report to the court.

Section 20. [17-] Material Incorporated by Reference. (1) Forms necessary to implement this administrative regulation are herein incorporated by reference. [The application to place or receive a child is being incorporated by reference.]

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MASTEN CHILDERS II, Secretary

PEGGY WALLACE, Commissioner

APPROVED BY AGENCY: July 8, 1994

FILED WITH LRC: July 15, 1994 at 2 p.m.

ADMINISTRATIVE REGULATIONS AS AMENDED BY THE PROMULGATING AGENCY
AND THE REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on August 10, 1994, unless otherwise noted.

**HIGHER EDUCATION ASSISTANCE AUTHORITY
(As Amended)**

11 KAR 3:005. Lender participation.

RELATES TO: KRS 164.740(6), (16), 164.748(5), (13), 20 USC 1078(B)(1)(U), 1085(d), 34 CFR 682.401(b)(17)(i)(A), (B) [(+0)(A)]
STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 20 USC 1078(B)(1)(U), 34 CFR 401(b)(17)(i)(A), (B) [(+0)(A)]

NECESSITY AND FUNCTION: KRS 164.748(1) authorizes the board to "provide loan guarantees, upon such terms and conditions as the board may prescribe within the limitations provided by KRS 164.740 to 164.785, and the federal act in respect of loans to eligible students." KRS 164.748(5) authorizes the board to "enter into contracts with eligible lenders approved by the state to lend moneys, upon such terms and conditions as may be agreed upon between the authority and the eligible lender, to provide for the administration of student financial assistance programs, including, but not by way of limitation, the authority's program of insured student loans." The authority is the designated guarantor for the state of Kentucky under the Robert T. Stafford Federal Student Loan Program, the Federal Plus Program, the Federal Consolidation Loan Program, and the Federal Supplemental Loans to Students Program pursuant to the federal act of 1965, as amended (20 USC 1071 et seq.) and agreements with the secretary. Section 428(b)(1)(U) of the federal act requires the authority to provide for the eligibility of all lenders described in 435(d)(1) of the federal act under reasonable criteria. 34 CFR 682.401(b)(17) [(+0)] (A) requires the authority to establish and disseminate the criteria for lender eligibility. This regulation sets forth the criteria for approval of lender participation and execution of a contract of insurance with eligible lenders. This amendment is necessary to eliminate a geographic limitation on organizations that may participate as lenders, and eliminate definitions now contained in 11 KAR 3:001.

Section 1. [Definitions. (1) The definition of "authority" is governed by KRS 164.740(1).

(2) The definition of "board" is governed by KRS 164.740(2).

(3) The definition of "eligible lender" is governed by KRS 164.740(6).

(4) The definition of "federal act" is governed by KRS 164.740(9).

(5) The definition of "insured student loan" is governed by KRS 164.740(12).

(6) The definition of "loan guarantee" is governed by KRS 164.740(14).

(7) The definition of "participating lender" is governed by KRS 164.740(16).

(8) The definition of "secretary" is governed by KRS 164.740(20).

Section 2. (1) In order to be considered for participation in the authority's insured student loan program, a lender shall submit to the authority, if requested, information sufficient to enable the authority to determine the eligibility of the lender and whether it meets the following criteria. In determining whether to enter into a contract of insurance with an applicant, and, if so, what the terms of the contract will be, the authority considers:

(a) Whether the applicant is an organization described in, and not disqualified pursuant to, 435(d) of the federal act (20 USC §1085(d));

(b) Whether the applicant is capable of complying with federal regulations and 11 KAR Chapter 3 as they apply to lenders participating in the authority's insured student loan program;

(c) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting insured student loans;

(d) Whether the applicant has had prior experience with a similar federal, state, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(e) The financial resources of the applicant; and

(f) In the case of a school that is seeking approval as a lender, whether it is accredited.

Section 2. [3.] (1) The authority may enter into a contract of insurance with an eligible lender approved by the secretary [that is located in any state], if the lender is:

(a) Capable of complying with federal regulations and 11 KAR Chapter 3 as they apply to lenders participating in the authority's insured student loan program;

(b) Capable of implementing adequate procedures for making, servicing, and collecting insured student loans; and

(c) Located in any state [and, except for the exclusive purpose of holding insured student loans acquired by transfer from another eligible lender, the organization directly or through a subsidiary maintains an office within Kentucky in which it offers the full range of financial services (in addition to insured student loans) that cause the lender to be an organization described in 435(d) of the federal act].

(2) The authority shall issue loan guarantees for lenders under contracts described in Section 3 [4] of this administrative regulation without regard to the residency of the borrower or the state in which the educational institution is located.

(3) In the event that loan guarantees are issued pursuant to subsection (2) of this section, and none of the principal parties (lender, educational institution or borrower) are located in the Commonwealth, then, for purposes of the federal act, the authority shall deem the state in which the participating lender is located to be the area served by the authority.

Section 3. [4.] The Contract of Insurance. (1) In order to participate, an eligible lender shall execute a contract of insurance with the authority. No loan guarantee shall be issued by the authority unless it is covered by such an agreement.

(2) In general, under a contract of insurance, the participating lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender. In return the authority agrees to insure each eligible loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The authority may include in a contract of insurance a limit on the duration of the contract and the number or amount of loans the participating lender may make or hold.

(4) Except as otherwise approved by the authority, a contract of insurance with a school lender limits the loans made by that school lender that will be covered by the loan guarantee to those loans made to students, or to parents borrowing on behalf of students, who are:

(a) In attendance at that school;

(b) In attendance at other schools under the same ownership as that school; or

(c) Employees or dependents of employees, or whose parents are

employees, of that school lender or other schools under the same ownership, under circumstances the authority considers appropriate for loan guarantees.

(5) A limit imposed under subsection (4) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools may be imposed on a school-by-school basis.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 1994 Ky. Acts ch.

163

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 1994 Ky. Acts ch. 163 [Acts 1992, c. 462, Part 1, F., 42., p. 1978]

NECESSITY AND FUNCTION: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) prescribes certain standards for scholarship programs. [House Bill 799 appropriated funds for a new program of teacher scholarships.] The General Assembly has expressed a desire, in 1994 Ky. Acts ch. 163 Section 1(6)(c) and in previous [a] budget memoranda [memorandum] prepared under KRS 48.300(2) to accompany previous biennial budgets [House Bill 799], that prior recipients of loans pursuant to KRS 156.611, 156.613, 164.768 and 164.770 should be eligible for benefits under this [new] program. This administrative regulation delineates eligibility criteria and repayment obligations related to scholarships provided under the [new] program [and establishes a capability for refinancing of prior loans]. This amendment is necessary to reflect changes in the program made by 1994 Ky. Acts ch. 163 [provide a method of selection of applicants within applicant groups in the event of insufficient funds].

Section 1. Definitions. As used in this administrative regulation, the terms listed below shall have the following meanings:

(1) The definition of "critical shortage area" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(a). [means an understaffing of teachers for particular subjects, grade levels, or geographic locations as determined by the authority from any sources considered reliable, including, but not limited to, consultation with local and state school officials.]

(2) The definition of "eligible program of study" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(b). [means an undergraduate or graduate program of study which is preparatory to initial teacher certification or recertification, and which does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.]

(3) "Minority" means American Indian, Alaskan native, African-American, Hispanic (including persons of Mexican, Puerto Rican, Cuban, and South or Central American descent), Pacific Islander, or other ethnic group that constitutes eight (8) percent or less of the population of the Commonwealth. [underrepresented in a local school district.] ["Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school or a private school certified pursuant to KRS 156.160(3), of the Commonwealth.]

(4) The definition of "participating institution" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(c). ["Semester" means a period of about eighteen (18) weeks, which usually makes up one half (1/2) of a school year or one half (1/2) of a participating institution's academic year.]

(5) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, and secondary instruction. ["Participating institution" means an institution of higher education located in Kentucky, which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.]

(6) The definition of "qualified teaching service" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(d).

(7) The definition of "semester" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(e).

(8) "Teaching" means performing classroom instruction in a position for which teacher certification is a prerequisite to perform such instruction.

Section 2. Selection Process. [Eligibility:] (1) Ineligibility of any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 may be waived by the executive director of the authority. [The authority may, to the extent of appropriations and other funds available to it for this purpose, award teacher scholarships to persons enrolled or accepted for enrollment at participating institutions, who declare an intention to render qualified teaching service, and who are eligible under subsections (3) and (4) of this section.]

(2) The authority shall, except for limitations imposed by subsection (5) of this section, cancel the repayment obligation of recipients of teacher scholarships who render qualified teaching service in accordance with Section 5 of this administrative regulation.

(3) Kentucky residents who are enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution and who agree to render qualified teaching service upon completion of the program of study shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for teacher scholarships if they meet the following criteria:

(a) High school graduates with no college hours must rank academically in the top ten (10) percent of their high school graduating class or score at or above the 80th percentile on an instrument approved by the Council on Higher Education for admission to Kentucky's institutions of higher education.

(b) Certified teachers seeking recertification in order to teach in a critical shortage area must have a cumulative grade-point average of at least the equivalent of 2.5 on a 4.0 scale on prior undergraduate studies or a 3.0 on a 4.0 scale on prior graduate studies. A certified teacher, who initially enrolls for recertification to teach in a designated critical shortage area, shall continue to benefit from that designation for so long as the teacher pursues that recertification, notwithstanding a change in the critical shortage area designation subsequent to the initial enrollment.

(c) Applicants with earned college hours must have attained at least the equivalent of a 2.5 grade-point average on a 4.0 scale for all undergraduate work and a 3.0 on a 4.0 scale for all graduate work and must be currently enrolled or accepted for enrollment in a postsecondary institution.

(4) Persons enrolled full-time at a participating institution in an eligible program of study who have previously received a teacher loan or a mathematics and science incentive loan, pursuant to KRS 156.611, 156.613, 164.768 or 164.770, or a teacher scholarship pursuant to this section, not in excess of the aggregate limit prescribed by Section 3 of this administrative regulation, shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for additional teacher scholarships if they:

(a) Have maintained continuous full-time enrollment, exclusive of periods of approved deferment, in an eligible program of study;

(b) Have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution; and

(c) Have attained a cumulative grade-point average of at least the equivalent of 2.5 on a 4.0 scale on all prior undergraduate studies

and at least 3.0 on a 4.0 scale on all prior graduate studies.

~~(5) No teacher scholarship shall be awarded nor promissory note cancellation granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until such financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the executive director of the authority at the recommendation of a designated staff review committee, for cause.~~

~~(2) [(6) Selection process.] Applicants shall be considered and teacher scholarships shall be awarded to recipients who agree to render qualified teaching service in the following descending order until funds are depleted:~~

~~(a) Qualified renewal applicants who have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution. [pursuant to subsection (4) of this section.] If funds are insufficient to award full scholarships to all renewal applicants each scholarship shall be reduced by a percent necessary to prevent overexpenditure of funds;~~

~~(b) Certified teachers seeking recertification in a critical shortage area, ranked in descending order by cumulative postsecondary grade point average;~~

~~(c) Initial applicants (including currently enrolled postsecondary students and high school seniors [who have been admitted to a teacher education program, ranked in descending order by cumulative postsecondary grade point average as of the application date;~~

~~(d) Currently enrolled postsecondary students who have not yet been admitted to a teacher education program, ranked in descending order by cumulative postsecondary grade point average as of the application date; and~~

~~(e) High school seniors] ranked by weighted selection scores that include rank in high school class (thirty (30) percent), high school grade point average (forty (40) percent), and American College Test (ACT) Composite Standard Score (thirty (30) percent).~~

~~(3) Following the selection pursuant to subsection (2)(a) of this section, awards shall be made, pursuant to subsection (2)(b) and (c) of this section, to minority applicants, identified based upon information provided by the applicant on the application, in at least the same ratio to all awards made pursuant to subsection (2)(b) and (c) of this section as the ratio of initial applications by minority applicants bears to all initial applications.~~

Section 3. Award Maximums. The maximum teacher scholarship award shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session). ~~[Awards shall not exceed the student's total cost of attendance less other aid received as determined by the participating institution. The aggregate maximum of teacher scholarship awards shall not exceed \$20,000 per individual.]~~

Section 4. Disbursements. Disbursement of teacher scholarships shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. ~~(1) If [Recipients shall render one (1) semester of qualified teaching service as repayment for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Once an area is designated as a critical shortage area,] a recipient [who] renders [uninterrupted] qualified teaching service in a [that] designated critical shortage area, then, as long as the recipient continues to render qualified teaching service in that area, the recipient shall continue to~~

benefit from the designation, notwithstanding a subsequent change in the critical shortage area designation. A recipient of a teacher scholarship pursuant to Section 2(2)(b) of this administrative regulation, who obtained recertification to teach in an area designated as a critical shortage area at the time of the teacher scholarship award to that recipient, shall receive cancellation of the repayment obligation only if the recipient renders qualified teaching service in that designated area or in another area designated as a critical shortage area at the time the qualified teaching service is rendered.

~~(2) [Recipients who have outstanding mathematics and science incentive loans or teacher loans pursuant to KRS 156.611, 156.612, 164.768 or 164.770 may execute a new promissory note under the terms of this program in full satisfaction of the outstanding balance of prior promissory notes. The new promissory notes shall be cancelled in accordance with subsection (1) of this section.~~

~~(3) In the event that a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, such teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.~~

~~(3) [(4)] Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.~~

Section 6. Repayment. (1) If a recipient ceases to be enrolled on a full-time basis in an eligible program of study at a participating institution prior to completion of the program of study or otherwise fails to attain certification after completion of the eligible program of study, he shall immediately become liable to the authority to pay the sum of all teacher scholarships received and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(2) Recipients failing to render qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all outstanding teacher scholarships and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

~~(3) [Persons liable for repayment of teacher scholarships under this section shall be liable for interest accruing on each promissory note from the respective dates on which the teacher scholarships were disbursed.~~

~~(4) The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum, except that promissory notes shall provide that if a judgment is rendered to recover payment, the judgment shall bear interest at a rate five (5) percent greater than the rate actually charged on the promissory note].~~

Section 7. Notifications. Recipients shall notify the authority within thirty (30) days of:

- (1) Change in enrollment status;
- (2) Cessation of full-time enrollment in an eligible program of study;
- (3) Employment in a qualified teaching service position; or
- (4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

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Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of students receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's published refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. Participating institutions shall provide assurances that program information will be disseminated to students enrolled at their institutions. Participating institutions shall actively recruit students from minority population groups for participation in this program.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: May 27, 1994
FILED WITH LRC: June 15, 1994 at 11 a.m.

DEPARTMENT OF THE TREASURY (As Amended)

20 KAR 1:010. Access to public records of State Treasury.

RELATES TO: KRS 61.870 to 61.884
STATUTORY AUTHORITY: KRS 61.876

NECESSITY AND FUNCTION: KRS 61.876 requires that each public agency shall adopt rules and administrative regulations to provide full access to public records, to protect public records from damage and disorganization, to prevent excess disruption of its essential functions, to provide assistance and information upon request and to ensure efficient and timely action in response to application for inspection of public records. This administrative regulation proposes to fulfill this statutory requirement.

Section 1. The principal office location for the State Treasury is the first floor of the Capitol Annex, Frankfort, Kentucky 40601. Regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, prevailing time in Frankfort, Kentucky.

Section 2. The title of the official custodian of the records of the State Treasury is the State Treasurer of the Commonwealth of Kentucky, whose address is Capitol Annex, Frankfort, Kentucky 40601.

Section 3. Fees to be charged for copies of public records shall be ten (10) cents for each photocopy.

Section 4. The procedure to be followed in requesting inspection of public records shall be as follows:

(1) Requests for inspection of public records shall be made directly to the State Treasurer or to the designee; ~~[chief assistant to the State Treasurer. The name of the chief assistant shall be posted with these regulations in the Office of the State Treasury.]~~

(2) Requests to inspect public records shall ~~[may]~~ be made ~~[orally or]~~ in writing, describing in reasonably sufficient detail the records to be inspected. Inspection may be denied if the request is unreasonably burdensome or vague pursuant to KRS 61.822(6). Social Security, bank account, credit card, insurance policy, bond and stock certificate numbers shall not be available for inspection; [Every reasonable

~~attempt shall be made by the State Treasury to respond to oral requests; however, oral requests which are found to be vague, long or complex shall be required to be submitted in writing in letter form.]~~

(3) Records shall be inspected and copied in the presence of a member of the State Treasury to protect the records from damage or disorganization, to lessen disruption of office procedure, to provide timely assistance and information upon request to the person requesting inspection, and to provide full access to public records;

(4) Suitable facilities shall be made available for inspection of public records.

~~[Section 5. These records which are available for inspection and these records which are unavailable for inspection are defined in KRS 61.870 to 61.884. A copy of this Act shall be displayed with this regulation in the State Treasury.]~~

Section 5. ~~[6.]~~ A copy of KRS 61.870 to 61.884 and this administrative regulation shall be displayed in the main reception room of the State Treasury on the first floor of the Capitol Annex.

FRANCES JONES MILLS, Treasurer

APPROVED BY AGENCY: May 24, 1994

FILED WITH LRC: May 31, 1994 at 10 a.m.

KENTUCKY REVENUE CABINET Office of General Counsel Division of Tax Policy and Research (As Amended)

103 KAR 15:070. Electronic funds transfer.

RELATES TO: 1994 Ky. Acts ch. 4, Sec. 1
STATUTORY AUTHORITY: 1994 Ky. Acts ch. 4, Sec. 1 [KRS Chapter 139A]

NECESSITY AND FUNCTION: Under the authority of 1994 Ky. Acts ch. 4, Sec. 1 [KRS Chapter 139A], this administrative regulation prescribes the electronic funds transfer requirements for certain payments of tax.

Section 1. Definitions. "Lookback period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year. For example, the lookback period for calendar year 1994 is the period beginning on January 1, 1993 and ending on December 31, 1993.

Section 2. Reporting and Payment Requirements. (1) Any taxpayer whose average monthly liability during the lookback period for the sales and use tax required to be collected or paid under KRS Chapter 139 exceeds \$25,000 or any employer whose average monthly liability during the lookback period for the income tax required to be withheld under KRS 141.310 exceeds \$25,000 shall pay the tax by electronic funds transfer.

(2) Execution of any electronic funds transfer transaction shall conform to the guidelines and procedures of each participating financial institution.

(3) Any taxpayer or employer may volunteer to pay the tax by electronic funds transfer by making a written request to the cabinet and, if approved by the cabinet, shall be subject to the same requirements as any taxpayer or employer required to electronically transfer the tax.

Section 3. Procedures. (1) Due date of electronic funds transfer.

(a) The due date of any electronic funds transfer for any tax shall be [is] governed by the applicable law and regulations pertaining to that tax.

(b) The initiation date recorded in the automated clearing house

system by the originating financial depository institution for any electronic funds transfer shall be the payment date.

(2) Manner of electronic funds transfer. Separate electronic fund transfers shall be made [are required] for each type tax electronically transferred under the provisions of KRS Chapter 131.

(3) Overpayment or underpayment of tax. Any overpayment of tax may be applied to the next amount electronically transferred or may be refunded upon request by the taxpayer or employer. If the amount of tax liability for a taxable period exceeds the total amount electronically transferred for the same period, the taxpayer or employer shall pay the additional tax due as determined on the applicable reconciliation return. The taxpayer or employer shall not pay the additional tax due electronically.

Section 4. Change in Reporting and Payment Requirements for Electronic Funds Transfer. After [On] the cabinet makes a determination regarding a [the] taxpayer's or employer's reporting and payment requirements for electronic funds transfer, the taxpayer or employer shall comply with the requirements until a written request to change is filed with and approved by the cabinet.

Section 5. Penalties and Interest. Any taxpayer or employer who fails [failing] to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and interest as provided in KRS 131.183.

Section 6. [Effective Date.] This administrative regulation shall apply [applies] to any taxable or payroll period beginning after December 31, 1994.

KIM BURSE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at noon

KENTUCKY REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research
(As Amended)

103 KAR 18:150. Employer's withholding reporting requirements.

RELATES TO: KRS 141.330, 1994 Ky. Acts ch. 4, Sec. 1
STATUTORY AUTHORITY: KRS 141.330, 1994 Ky. Acts ch. 4, Sec. 1 [Chapter 13A]

NECESSITY AND FUNCTION: Under authority of 1994 Ky. Acts ch. 4, Sec. 1, and KRS 141.330, this administrative regulation prescribes the reporting and payment requirements for employers withholding Kentucky income tax.

Section 1. Definitions. [As used in this administrative regulation,] "Lookback period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year. For example, the lookback period for calendar year 1994 is the period beginning on January 1, 1993 and ending on December 31, 1993.

Section 2. Reporting and Payment Requirements. Unless otherwise required or allowed by Section 3 of this administrative regulation:

(1) Any employer who withheld income tax of less than \$400 during the lookback period shall report and pay the tax annually using Revenue Form K-3, "Employer's Annual Reconciliation Return." Revenue Form K-3 and the income tax withheld shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(2) Any employer who withheld income tax of \$400 or more but less than \$2,000 during the lookback period shall report and pay the tax quarterly using Revenue Form K-1, "Employer's Return of Income Tax Withheld." Revenue Form K-1 and the income tax withheld each quarter shall be filed and paid on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31). Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the fourth quarter shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(3) Any employer who withheld income tax of \$2,000 or more but less than \$50,000 during the lookback period shall report and pay the tax monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld." Revenue Form K-1 and the income tax withheld each month shall be filed and paid on or before the 15th day of the following month for each of the first eleven (11) months of the calendar year. Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the last month shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(4)(a) Except as provided in paragraph (b) of this subsection, any employer who withheld income tax of \$50,000 or more during the lookback period shall report and pay the tax twice monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld." Revenue Form K-1 and the income tax withheld during the first through the 15th day of each month of the calendar year shall be reported and paid on or before the 25th day of that month. Revenue Form K-1 and the income tax withheld during the 16th through the last day of each month of the calendar year shall be reported and paid on or before the tenth day of the following month. However, Revenue Form K-1 and the income tax withheld during the first calendar month shall be filed and paid on or before the tenth of the following month (February 10), and the income tax withheld for the period beginning December 16 and ending on December 31 shall be paid with Revenue Form K-3, "Employer's Annual Reconciliation Return," which shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(b) Any employer who withheld income tax during the lookback period of \$50,000 or more and whose average monthly income tax withheld during the lookback period is more than \$25,000 shall pay the tax withheld by electronic funds transfer and shall report the tax withheld in accordance with Section 3(3) of this administrative regulation.

(5) The cabinet shall provide written notification of the reporting and payment requirements to any employer who does not have a lookback period.

Section 3. Electronic Fund Transfers. (1) If, on any day during a reporting period, an employer accumulates \$100,000 or more of total income tax withheld before a current electronic transaction is otherwise due, the employer shall pay the tax withheld by electronic funds transfer. The employer shall electronically transfer the tax withheld as provided by 103 KAR 15:070 by the close of the first banking day after the first day the employer accumulates \$100,000 or more of income tax withheld and shall report the tax withheld in accordance with subsection (3) of this section.

(2)(a) Any employer not required to pay the tax by electronic funds transfer may make a written request to the cabinet and, if approved by the cabinet, shall be subject to the same requirements as those employers required to electronically transfer the tax.

(b) Any employer permitted to pay by electronic funds transfer shall continue to pay the tax withheld by electronic funds transfer until the cabinet authorizes the employer in writing to change his reporting and payment method.

(3) Any employer paying the tax withheld by electronic funds

transfer shall do so in accordance with 103 KAR 15:070 and shall file a quarterly report with the cabinet using Revenue Form K-1-E, "Employer's EFT Return of Income Tax Withheld." Revenue Form K-1-E shall be filed with the cabinet on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31). Revenue Form K-3, "Employer's Annual Reconciliation Return," shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

Section 4. Authority to Change Reporting and Payment Requirements. Pursuant to the provisions of Section 2 of this administrative regulation:

(1) The cabinet ~~may [shall have the authority to]~~ change annually the reporting or payment requirements of any employer upon written notice to the employer.

(2) Upon written request by any employer and approval by the cabinet, the cabinet may change the reporting or payment frequency prescribed by this administrative regulation.

Section 5. Penalties and Interest. Any employer who fails [failing] to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and interest as provided in KRS 131.183.

Section 6. ~~[Effective Date.]~~ The provisions of this administrative regulation shall apply to [be effective for] any payroll period beginning after December 31, 1994.

Section 7. 103 KAR 18:030, 103 KAR 18:040, and 103 KAR 18:141 shall:

(1) Apply to payroll periods ending on or before December 31, 1994; and

(2) Be repealed January 31, 1995. [are hereby repealed upon the effective date of this administrative regulation.]

KIM BURSE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at noon

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended)

201 KAR 17:010. Application for licensure.

RELATES TO: KRS 334A.030, 334A.130

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY AND FUNCTION: This regulation is necessary to clarify the procedure for submitting an application for licensure.

Section 1. Application for Speech-Language Pathologist, Speech-Language Pathology Assistant, and Audiologist License. (1) No person shall practice or represent himself as a speech-language pathologist, speech-language pathology assistant, or audiologist in this state unless he is licensed in accordance with the provisions of KRS Chapter 334A, and the provisions of the regulations adopted thereunder.

(2) An application for license to practice as a speech-language pathologist, speech-language pathology assistant, or audiologist [pathology or audiology] shall be made to the Kentucky Board of Speech-Language Pathology and Audiology [upon forms provided by the board upon request and shall contain such information as the board may reasonably require].

(3) Each application for license shall be accompanied by the application fee, established in 201 KAR 17:030, which is nonrefund-

able.

(4) The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary.

(5) All applications shall be signed by the applicant ~~[and notarized].~~

(6) ~~[All applications shall include a recent photograph of the applicant.]~~

(7) If the board so directs, an applicant shall personally appear before the board or a member thereof for a personal interview, concerning his application.

JOAN DANCE, Board Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended)

201 KAR 17:025. Requirements for an interim license as a speech-language pathology assistant.

RELATES TO: KRS 334A.035(2), 1994 Ky. Acts ch. 32, Sec. 4

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY AND FUNCTION: 1994 Ky. Acts ch. 32, Sec. 4 establishes the guidelines for licensure as a speech-language pathology assistant. KRS 334A.035(2) requires an applicant for licensure as a speech-language pathology assistant to complete postgraduate professional experience in order to become licensed. This administrative regulation establishes the requirements for interim licensure.

Section 1. Education. (1) In order to receive an interim license to become a speech-language pathology assistant, the applicant shall possess a baccalaureate degree in speech-language pathology.

(2) A baccalaureate degree in speech-language pathology shall be a baccalaureate degree from a regionally accredited institution in communication sciences or disorders or its equivalent.

(3) In order to be considered as equivalent, the applicant shall have obtained a baccalaureate degree and a minimum of twenty-seven (27) hours in the core areas of communication sciences or disorders including ~~[but not limited to]~~ the following:

- (a) Anatomy and physiology;
- (b) Phonetics and speech science;
- (c) Speech and language development;
- (e) Communication disorders in children;
- (f) Audiology;
- (g) Aural rehabilitation; and
- (h) Intervention for children with communication disorders.

Section 2. Supervision. (1) The interim licensee shall function under the supervision of an appropriate supervisor during the period of interim licensure.

(2) It shall be the responsibility of the supervisor to design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(3) Additional supervision may be required, based on the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(4) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

(5) Treatment for the pupils served remains the responsibility of the supervisor. Therefore, the level of supervision required is considered the minimum level necessary for the supervisor to retain

direct contact with the pupils.

(6) Each speech-language pathology assistant shall be required to receive no less than three (3) hours per full-time week of documented direct supervision. Supervision shall be adjusted proportionally for less than full-time employment. This ensures that the supervisor will have direct contact time with the speech-language pathology assistant as well as with the pupil.

(7) Direct supervision means on-site, in-view observation and guidance as a clinical activity is performed.

(8) Supervision shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(9) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;

(b) Agreement between the assistant and the supervisor on correct or incorrect judgment of target behavior;

(c) Accuracy in recording data; and

(d) Ability to interact effectively with the pupil.

(10) Indirect supervision shall be required no less than three (3) hours per full-time week. Supervision shall be adjusted proportionally for less than full-time employment. Indirect supervision may include:

(a) Demonstration;

(b) Record review;

(c) Review and evaluation of audio or videotaped sessions; or

(d) Supervisory conferences that may be conducted by telephone.

(11) A minimum total of six (6) hours of direct and indirect supervision per full-time week shall be required for each speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

(12) A speech-language pathology assistant shall not at any time [At no time may a speech-language pathology assistant] provide direct services when a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

(13) If for any reason (i.e., maternity leave, illness, change of jobs) the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant may not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

(14) Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, a supervisor shall not [no supervisor may] be listed as the supervisor of record for more than two (2) speech-language pathology assistants. When multiple supervisors are used, one (1) shall be designated as the supervisor of record.

(15) The maximum number of pupils served by the speech-language pathology assistant shall not exceed the caseload established for a speech-language pathologist by administrative regulation.

Section 3. Postgraduate Professional Experience. (1) The applicant shall obtain the equivalent of not less than nine (9) months of full-time professional experience with full-time employment defined as a minimum of thirty (30) clock hours of work a week. This requirement also may be fulfilled by part-time employment as follows:

(a) Work of fifteen (15) through nineteen (19) hours per week over eighteen (18) months;

(b) Work of twenty (20) through twenty-four (24) hours per week over fifteen (15) months; or

(c) Work of twenty-five (25) through twenty-nine (29) hours per week over twelve (12) months.

(2) In the event that part-time employment is used to fulfill a part of the postgraduate professional experience, 100 percent of the

minimum hours of the part-time work per week requirement must be spent in direct professional experience.

(3) The postgraduate professional experience shall [must] be completed within a maximum period of thirty-six (36) consecutive months.

Section 4. Evaluation and Recommendation. Within thirty (30) days after completion of the postgraduate professional experience, the applicant and his supervisor shall submit a written report to the board verifying the successful completion of postgraduate professional experience.

Section 5. Examination for Licensure as a Speech-language Pathology Assistant. (1) During the period of interim licensure, an applicant for licensure shall submit to an examination composed of the Praxis Series, Professional Assessments for Beginning Teachers, specialty area test in speech-language pathology and administered by the Educational Testing Service (ETS).

(2) The passing score on the examination for licensure as a speech-language pathology assistant shall be 480.

(3) If an applicant fails the examination, the applicant may, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date.

Section 6. Licensure as a Speech-language Pathology Assistant. Upon successful completion of each requirement set forth in this administrative regulation, completion of the required application, and payment of the required fee, the holder of an interim license shall be eligible to be licensed as a speech-language pathology assistant and shall immediately apply for licensure.

JOAN DANCE, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

GENERAL GOVERNMENT CABINET

Board of Speech-Language Pathology and Audiology (As Amended)

201 KAR 17:027. Supervision requirements for a speech-language pathology assistant.

RELATES TO: 1994 Ky. Acts ch. 32, Sec. 4

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY AND FUNCTION: 1994 Ky. Acts, ch. 32, Sec. 4 establishes the requirements for licensure as a speech-language pathology assistant. One (1) of the requirements is that the speech-language pathology assistant may only practice under supervision. This administrative regulation establishes the supervisory requirements.

Section 1. The supervision requirements specified in these guidelines are minimum requirements.

(1) It shall be the responsibility of the supervisor to design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(2) Additional supervision may be required, based on the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(3) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

Section 2. Treatment for the pupils served remains the responsibility of the supervisor. Therefore, the level of supervision required is considered the minimum level necessary for the supervisor to retain

direct contact with the pupils.

Section 3. Each speech-language pathology assistant shall be required to receive no less than two (2) hours per full-time week of documented direct supervision. This ensures that the supervisor will have direct contact time with the speech-language pathology assistant as well as with the pupil.

(1) Direct supervision means on-site, in-view observation and guidance as a clinical activity is performed.

(2) Supervision shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(3) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;

(b) Agreement between the assistant and the supervisor on judgment of target behavior;

(c) Accuracy in recording data; and

(d) Ability to interact effectively with the pupil.

Section 4. Indirect supervision shall be required no less than two (2) hours per full-time week and may include:

(1) Demonstration;

(2) Record review;

(3) Review and evaluation of audio or videotaped sessions; or

(4) Supervisory conferences that may be conducted by telephone.

Section 5. A minimum total of four (4) hours of direct and indirect supervision per full-time week shall be required for each speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

Section 6. **A speech-language pathology assistant shall not at any time** ~~[At no time may a speech-language pathology assistant]~~ provide direct services when a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

Section 7. If for any reason (i.e., maternity leave, illness, change of jobs) the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant may not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

Section 8. Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, **a supervisor shall not** ~~[no supervisor may]~~ be listed as the supervisor of record for more than two (2) speech-language pathology assistants. When multiple supervisors are used, one (1) shall be designated as the supervisor of record.

Section 9. The maximum number of pupils served by the speech-language pathology assistant shall not exceed the caseload established for a speech-language pathologist by administrative regulation.

JOAN DANCE, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 15, 1994 at 10 am.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended)

201 KAR 17:030. License fees.

RELATES TO: KRS 334A.160, 334A.170

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY AND FUNCTION: This regulation is necessitated by KRS 334A.160 and sets forth in detail all fees charged by the board.

Section 1. Fee Schedule. The following fees shall be paid in connection with speech-language pathologist and audiologist applications, examinations, renewals, and penalties.

(1) Application fee for a speech-language pathologist license, \$25.

(2) Application for an audiologist license, \$25.

(3) Combined application fee for a speech-language pathologist and audiologist license, \$25.

(4) Application fee for a speech-language pathology assistant license ~~[Examination fee for a speech-language pathologist license]~~, \$25.

(5) ~~[Examination fee for an audiologist license, \$25.~~

(6) ~~[Examination fee for a speech-language pathologist and audiologist license, \$50.~~

(7) Initial speech-language pathologist license fee, \$50.

(8) ~~[(9)]~~ Initial audiologist license fee, \$50.

(9) ~~[(9)]~~ Combined speech-language pathologist and audiologist license fee, \$100.

(10) Initial speech-language pathology assistant license fee, \$25.

(11) ~~[(10)]~~ Renewal fee for speech-language pathologist license, \$25.

(12) ~~[(11)]~~ Renewal fee for audiologist license, \$25.

(13) ~~[(12)]~~ Combined renewal fee for speech-language pathologist and audiologist license, \$50.

(14) Renewal fee for speech-language pathology assistant, \$10.

(15) Renewal fee for grace period extending from January 31 to March 2:

(a) For speech-language pathologist license, \$30.

(b) For audiologist license, \$30.

(c) Combined fee for speech-language pathologist and audiologist license, \$60.

(d) For speech-language pathology assistant, \$15.

(16) Delinquency renewal after March 2 shall be:

(a) For speech-language pathologist license, \$35.

(b) For audiologist license, \$35.

(c) Combined fee for speech pathologist and audiologist license, \$70.

(d) For speech-language pathology assistant, \$20.

(17) Application fee for interim licensure for a speech-language pathologist, \$25.

(18) Application fee for interim licensure for an audiologist, \$25.

(19) Combined fee for speech-language pathologist and audiologist interim licensure, \$50.

(20) Application fee for interim licensure for a speech-language pathology assistant, \$25.

(21) There shall be no renewal fee for interim licensure, and the application fee of twenty-five (25) dollars for full licensure shall be waived for persons who have been duly licensed as interim licensees.

Section 2. **A person shall not** ~~[No person shall]~~ practice as a speech-language pathologist, speech-language pathology assistant, or audiologist ~~[pathology or audiology]~~ in this state unless the ~~[such]~~ license has been renewed as provided by law and upon payment of the prescribed fee. All licenses not renewed by March 2 following the date of issuance shall be deemed expired and no person shall engage in such practice.

Section 3. (1) Where an application is filed during the period of December 17 to January 30 and a license issued ~~[pursuant thereto]~~, the board waives the renewal of the ~~[such]~~ license for the ensuing licensing year.

(a) The inactive license fee for a speech-language pathologist for a licensing year shall be, \$5.

(b) The inactive license fee for an audiologist for a licensing year shall be, \$5.

(c) The inactive license fee for a speech-language pathologist and audiologist for a licensing year shall be, \$10.

(2) The holder of an inactive license shall not actively engage in the practice of speech-language pathology or audiology. Reactivation of an inactive license to practice speech-language pathology or audiology may be obtained by:

(a) Filing the proper application with the board for reactivation; and

(b) Payment of the current renewal fee; and

(c) Compliance with the continuing education requirements found in 201 KAR 17:091, Section 2.

(3) Application for an inactive license shall be made to the board prior to March 2 and be accompanied by the prescribed fee of five (5) dollars or ten (10) dollars for such licensing year.

Section 4. A person who fails to renew his license within the five (5) years after its expiration may not renew it, and it may not be restored, reissued or reinstated thereafter, but such persons may apply for and obtain a new license if he meets the requirements of KRS Chapter 334A and the regulations adopted thereunder including successful passage of an examination.

JOAN DANCE, Board Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended)

201 KAR 22:031. Therapist's licensing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to define clearly the procedure for issuing licenses. This administrative regulation standardizes the administrative procedures involved in granting a physical therapy license through the various means of qualifying.

Section 1. Any candidate for licensure by examination shall first satisfy all application requirements, including payment of application and examination ~~[applicable]~~ fees established in 201 KAR 22:135.

(1) The initial examination ~~[application]~~ fee covers the first scheduled examination.

(2) The cost of the examination to the board plus an administrative fee of twenty-five (25) dollars ~~[forty-seven (47) dollars and fifty (50) cents]~~ shall be paid by the applicant for reexamination or for an examination which was obtained by the board upon application by a candidate but was not completed by the candidate.

(3) Upon approval as a candidate by the board, the candidate for licensure by examination shall be notified of the date, place and time of the examination to be held at the time and location set by the board.

(4) ~~[(4)]~~ The board shall administer the National Physical Therapy Examination (NPTE) to those candidates permitted to sit for the examination. Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE.

(5) ~~[(2)]~~ An examination candidate may make a written request to the board to be granted a one (1) time exemption from taking their scheduled examination due to an undue hardship. If the request is granted, the candidate may continue to practice until the next regularly scheduled examination.

Section 2. The examination filing deadline shall be eight (8) weeks prior to ~~[If an applicant becomes a candidate for licensure by examination before forty-five (45) days preceding the date that]~~ the next examination. If by that time the ~~[is to be held and]~~ credentials of the applicant are in order, application and examination fees submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary permit shall be issued to be in force until the results of that examination are received by the candidate, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first.

Section 3. (1) A temporary permit requires that the physical therapist applicant shall work only under the supervision of a physical therapist licensed and practicing in Kentucky.

(2) Supervision requires the responsible therapist to be available and accessible by telecommunications at all times during the working hours of the person with a temporary permit.

(3) The supervising therapist shall be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit including cosigning all evaluations and physical therapy recordings within fourteen (14) days.

(4) The date of the record review shall be noted.

(5) The board may issue a temporary permit only to:

(a) ~~[(4)]~~ Graduates who have applied for licensure by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.

(b) ~~[(2)]~~ Foreign-trained physical therapist applicants who have met all requirements for licensure application provided for in KRS 327.060(2), except that the applicant has not yet taken the NPTE or has not yet begun or completed one (1) year of board approved, supervised employment as a physical therapist.

(c) ~~[(3)]~~ Graduates who have been accepted as a candidate for licensure by examination in another state and who have met all requirements for Kentucky application but who have not yet taken or been notified of the results of that examination.

(6) The board may require any applicant for a temporary permit to submit, or cause to be submitted, a NPTE test verification history service report with the board before the applicant is eligible to receive a temporary permit.

Section 4. The following candidates shall be ineligible ~~[are not eligible]~~ to practice as a physical therapist in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:

(1) A person who has failed the NPTE in this or another state or country.

(2) A person who had qualified as an examination candidate but who did not sit for or complete the scheduled examination; and

(3) An endorsement candidate whose NPTE scores do not meet Kentucky's requirements.

Section 5. Candidates examined by boards of other states and territories shall have registered with the Interstate Reporting Service of the Professional Examination Service to have their examination results submitted to the board.

Section 6. The candidate for licensure by endorsement shall submit the regular license application form and pay the application fee established in 201 KAR 22:135.

(1) The Kentucky State Board of Physical Therapy shall endorse

a candidate who has taken the NPTE prepared before July 7, 1989 or beginning in 1993 by the Professional Examination Service, or between November 1989 and December 1992 by Assessment Systems, Incorporated, whose score meets the board's requirements and whose physical therapy license has never been revoked or suspended, and is currently not on probation or under disciplinary review in another state.

(2) To be considered for licensure, a person examined prior to July 1, 1993 shall have achieved a score on the NPTE at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600.

(3) Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE.

Section 7. The candidate for licensure through reinstatement may receive renewal of his license without further examination upon requesting reinstatement, furnishing all information required of a license renewal applicant in 201 KAR 22:040, payment of the reinstatement fee established in 201 KAR 22:135. Therapists who have not been licensed for three (3) years shall, in addition, be required to show evidence of professional competency, and provide verification that any license to practice in another state has not been disciplined or is not under current disciplinary review. Reinstatement of the candidate will be at the board's discretion after evaluation of said evidence.

Section 8. A license, which shall be in effect until March 31st of the next uneven numbered year shall be issued by the board when it receives notice from the Professional Examination Service that the candidate by examination has received a passing grade which shall be set based on the criterion referenced passing point set equal to a scaled score of 600, and when candidates by endorsement and foreign trained candidates have met all requirements.

Section 9. The executive secretary of the board may function administratively to review, process and interpret all applications received by the board and correspond with the applicants accordingly.

TOM A. PENNINGTON, Chairman
APPROVED BY AGENCY: May 13, 1994
FILED WITH LRC: June 10, 1994 at 2 p.m.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended)

201 KAR 22:106. Assistant's certification procedure.

RELATES TO: KRS 327.040

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: Because certification may be achieved in several ways, this administrative regulation defines the types of candidates, and procedure for making application to the State Board of Physical Therapy as a candidate for certification as a physical therapist's assistant.

Section 1. The fee for application for certification and the [by] examination fee are [is] established in 201 KAR 22:135. Upon approval as a candidate by the board, the candidate for certification by examination shall be notified of the date, place and time of the examination to be held at the time and location set by the board. The board shall administer the National Physical Therapy Examination (NPTE). Other examinations as determined by the board may be

administered in lieu of, or in addition to, the NPTE to those qualified candidates permitted to sit for the examination.

Section 2. The examination filing deadline shall be eight (8) weeks prior to [if an applicant becomes a candidate for certification by examination before forty-five (45) days preceding the date that] the next examination. If by that time the [is to be held and] credentials of the applicant are in order, application and examination [correct] fees submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary permit shall be issued to be in force until the results of that examination are received, processed, and the candidate has been notified of the results, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first.

(1) A temporary permit requires that the physical therapist's assistant candidate work only with on-site supervision of a physical therapist licensed in Kentucky who shall cosign and date all of the physical therapist's assistant's physical therapy patient records within seven (7) days of the recording.

(2) The board may issue a temporary permit to:

(a) [(4)] Graduates who have applied for certification by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.

(b) [(2)] Graduates who have been accepted as a candidate for certification by NPTE in another state and who have met all requirements for Kentucky application, and are sitting for the next examination, or who have taken the examination but have not yet been notified of the results.

(3) The board may require any applicant for a temporary permit to submit, or cause to be submitted, a NPTE test verification history service report with the board before the applicant is eligible to receive a temporary permit.

Section 3. (1) The following candidates shall be ineligible [are not eligible] to practice as a physical therapist's assistant in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:

(a) A person who has failed the NPTE in this or another state or country.

(b) A person who had qualified as an examination candidate but who failed to take or complete the scheduled examination; and

(c) An endorsement candidate whose NPTE results do not meet Kentucky's requirements.

(2) An examination candidate may make a written request to the board to be granted one (1) time exemption from taking the scheduled examination without loss of practice privileges. The board shall consider requests which document undue hardship.

(3) To be examined, or reexamined in Kentucky, any candidate listed in subsection (1) of this section shall [above-must] have applied for certification by examination and have met all application requirements, including payment of the applicable examination and application fees. The original examination [application] fee covers the first scheduled examination. The cost of the examination to the board plus an administrative fee of twenty-five (25) dollars [forty-seven (47) dollars and fifty (50) cents] shall be paid by the applicant for reexamination or for an examination not completed.

Section 4. Candidates examined by boards of other states or territories shall have registered with the Interstate Reporting Service of the Professional Examination Service to have their examination results submitted to the board.

Section 5. The candidate for certification by endorsement shall submit the regular application form.

(1) The Kentucky State Board of Physical Therapy shall endorse a candidate who [has paid an application fee proper for the period

within the biennial licensure term in which he is applying,] has taken the NPTE prepared before July 7, 1989 and beginning in 1993 by the Professional Examination Service (PES) or between November 1989 and December 1992 by Assessment Systems, Incorporated (ASI), has achieved an examination score which meets the Kentucky board's requirements, and has never had a physical therapist's assistant certificate revoked or suspended or whose certificate is currently not on probation or under disciplinary review in another state.

(2) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993 shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600.

(3) The application fee, which shall be submitted to the executive secretary of the board is established in 201 KAR 22:135.

(4) Other examinations as determined by the board can be administered in lieu of, or in addition to, the NPTE.

Section 6. The candidate for reinstatement may have his certificate reinstated without further examination upon payment of the reinstatement fee established in 201 KAR 22:135, and furnishing all information required of a certification renewal applicant in 201 KAR 22:110 to the executive secretary of the board.

(1) Assistants applying for reinstatement who have not been certified for three (3) or more years and who have not been lawfully employed as an assistant in another state shall, in addition, be required to work with on-site supervision for a maximum period of time of up to six (6) months, and after an evaluation of the period of supervision, the board may require the applicant to be reexamined.

(2) An assistant who has been licensed and working in another state shall be required to provide verification that his license to practice in that state has not been disciplined or is not under current disciplinary review.

(3) Reinstatement of the candidate shall be at the board's discretion after evaluation of all evidence.

Section 7. Physical therapist candidates who fail to pass the physical therapists' licensure examination may become special candidates for physical therapist's assistant certification by applying for certification by examination and successful completion of that examination.

Section 8. Certification, which shall be in effect until March 31 of the next uneven numbered year shall be issued by the board when candidates for certification by endorsement and reinstatement have met all requirements and the board has received notice from the Professional Examination Service that the candidate by examination has received a passing grade of at least the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600.

TOM A. PENNINGTON, Chairman

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: June 10, 1994 at 2 p.m.

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

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 224.99-010

STATUTORY AUTHORITY: KRS [224.01-110,] 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This administrative regulation sets forth the conditions applicable to all KPDES permits and the procedures for establishing and calculating permit conditions.

Section 1. Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits shall [will] be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these administrative regulations shall [must] be given in the permit. In addition to conditions required in all KPDES permits, the cabinet shall [director will] establish conditions as required on a case-by-case basis under Section 2 of this administrative regulation and 401 KAR 5:070.

(1) Duty to comply.

(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit revocation [termination], revocation and reissuance, or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions established under 40 CFR Part 129 [revised] as of July 1, 1991 [1996], as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, [is hereby incorporated by reference,] for toxic pollutants within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Any person who violates a permit condition as set forth in the KPDES administrative regulations is subject to penalties under KRS 224.99-010(1) and (4).

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5:060, Section 1.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed

or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked and reissued, or revoked [terminated] for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation [termination], or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the cabinet [director], within a reasonable time, any information which the cabinet [director] may request to determine whether cause exists for modifying, revoking and reissuing, or revoking [terminating] this permit, or to determine compliance with this permit. The permittee shall also furnish to the cabinet [director], upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the cabinet [director], or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet [director] at any time.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individuals [(e)] who performed the sampling or measurements;

3. The dates [(e)] analyses were performed;

4. The individuals [(e)] who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of the [(e)] analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

(11) Signatory requirement. All applications, reports, or information submitted to the cabinet [director] shall be signed and certified as indicated in 401 KAR 5:060, Section 9 [3]. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compli-

ance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

(12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the cabinet [director] as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in 401 KAR 5:080, Section 5; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject either [neither] to effluent limitations in the permit, or or [neor] to notification requirements under 401 KAR 5:080, Section 5.

(b) Anticipated noncompliance. The permittee shall give advance notice to the cabinet [director] of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the cabinet [director]. The cabinet [director] may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS Chapter 224.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported as follows:

1. Monitoring results shall [must] be reported on a Discharge Monitoring Report (DMR).

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data [date] submitted in the DMR.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the cabinet [director] in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

(f) Twenty-four (24) hour reporting. The permittee shall follow the provisions of 401 KAR 5:015 and shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet [director] may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which shall [must] be reported within twenty-four (24) hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (13) of this section.

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the cabinet [director] in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this administrative regulation.

(g) Other noncompliance. The permittee shall report all instances

of noncompliance not reported under paragraphs (d), (e), and (f) of this subsection, when ~~[at the time]~~ monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the cabinet ~~[director]~~, it shall promptly submit these ~~[such]~~ facts or information.

(13) Occurrence of a bypass.

~~[(a) Definitions.~~

~~1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.~~

~~2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.]~~

~~[(a) [(b)] Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. This type of bypass is not subject to the provisions of paragraphs (b) and (c) [and (d)] of this subsection.~~

~~[(b) [(e)] Notice.~~

~~1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 1.~~

~~2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in [paragraph (f)] of subsection (12)(f) of this section, twenty-four (24) hour notice. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.~~

~~[(c) [(d)] Prohibition of a bypass.~~

~~1. Bypassing is prohibited, and the cabinet [director] may take enforcement action against a permittee for bypass, unless:~~

~~a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;~~

~~b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and [-]~~

~~c. The permittee submitted notices as required under paragraph (b) [(e)] of this subsection.~~

~~2. The cabinet [director] may approve an anticipated bypass, after considering its adverse effects, if the cabinet [director] determines that it will meet the three (3) conditions listed in subparagraph 1a, b, and c of this paragraph.~~

(14) Occurrence of an upset.

~~[(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.]~~

~~[(b) [(b)] Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with [such] technology-based permit effluent limitations if the requirements of paragraph (b) [(e)] of this subsection are met.~~

~~[(b) [(e)] Conditions necessary for a demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous~~

operating logs, or ~~[or]~~ other relevant evidence that:

1. An upset occurred and that the permittee can identify the causes ~~[(a)]~~ of the upset;

2. The permitted facility was at the time being properly operated;

3. The permittee submitted notice of the upset as required in ~~paragraph (f) of~~ subsection (12)(f) of this section; and

4. The permittee complied with any remedial measures required under subsection (4) of this section.

~~[(c) [(d)] Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.~~

(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this administrative regulation, apply to all KPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the cabinet ~~[director]~~ as soon as it knows or has reason to know ~~[believe]~~:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

a. 100 micrograms per liter (100 ug/l ~~[mg/l]~~);

b. 200 micrograms per liter (200 ug/l ~~[mg/l]~~) for acrolein and acrylonitrile; 500 micrograms per liter (500 ug/l ~~[mg/l]~~) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2 [4] ~~[7]~~;

d. The level established by the cabinet ~~[director]~~ in accordance with Section 2(6)(2) of this administrative regulation.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

a. 500 micrograms per liter (500 ug/l);

b. One (1) milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2 [4] ~~[7]~~; or

d. The level established by the cabinet ~~[director]~~ in accordance with Section 2(6) of this administrative regulation.

(b) POTWs.

1. POTWs shall provide adequate notice to the cabinet ~~[director]~~ of the following:

a. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the KPDES administrative regulations if it were directly discharging those pollutants; or ~~[and]~~

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

2. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTWs and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate

each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this administrative regulation each KPDES permit shall [will] include conditions meeting the following requirements as applicable.

(1) Technology-based effluent limitations and standards; new source performance standards; and pretreatment requirements and standards, as required by 40 CFR Chapter I, Subchapter N (Part 401 et seq.), adopted without change [are incorporated by reference as specified] in Section 4 of this administrative regulation, or case-by-case effluent limitations and standards and pretreatment requirements or based on a combination of those standards in accordance with 401 KAR 5:080, Section 1(2) shall [will] be included, as applicable.

(2) Other effluent limitations and standards of KRS Chapter 224 shall be included as applicable. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in the [such] effluent standard or prohibition, is promulgated by EPA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the cabinet shall [director will] institute proceedings under these administrative regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener clause. For any discharger within a primary industry category, as listed in [401 KAR 5:060] Section 4(2) of this administrative regulation [401 KAR 5:060] requirements under the KPDES administrative regulations shall [will] be incorporated as applicable, as follows:

(a) On or before June 30, 1981.

1. If applicable standards or limitations have not yet been promulgated, the permit shall [will] include a condition stating that if an applicable standard or limitation is promulgated by EPA and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall [will] be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall [will] include those standards or limitations.

(b) After June 30, 1981, any permit issued shall [will] include effluent limitations and a compliance schedule to meet the applicable requirements indicated in Section 1(1)(b) of this administrative regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. These permits need not incorporate the reopener clause required by paragraph (a) of this subsection.

(c) The cabinet shall [director will] promptly modify or revoke and reissue any permit containing the clause required under paragraph (a) of this subsection to incorporate an applicable EPA effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitations guidelines or standards shall [will] be included, when necessary to:

(a) Achieve water quality standards established under KRS Chapter 224 and administrative regulations promulgated pursuant thereto, including any narrative criteria contained in 401 KAR 5:031. [i]

1. Limitations shall control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the cabinet determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the cabinet shall use procedures which account for existing

controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing, when evaluating whole effluent toxicity, and where appropriate, the dilution of the effluent in the receiving water.

3. When the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a numeric criteria within a water quality standard for an individual pollutant, the permit shall contain effluent limits for that pollutant.

4. When the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit shall contain effluent limits for whole effluent toxicity.

5. Except as provided in this subparagraph, when the cabinet determines, using the procedures in subparagraph 2 of this paragraph, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit shall contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the cabinet demonstrates in the fact sheet or statement of basis of the KPDES permit, using the procedures in subparagraph 2 of this paragraph, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality standards.

6. If 401 KAR 5:031 does not specify a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable water quality standard, the cabinet shall establish effluent limits using one (1) or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the cabinet demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using administrative regulation interpreting the narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, September 1993, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

b. Establish effluent limits on a case-by-case basis, using water quality criteria listed in 401 KAR 5:031, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, if:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(ii) The fact sheet required by 401 KAR 5:075 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the cabinet to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the cabinet shall ensure that:

a. The level of water quality to be achieved by limits on point

sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the cabinet;

(b) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of CWA (33 USC Section 1312);

(c) Conform to applicable water quality requirements when the discharge affects a state other than Kentucky;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or administrative regulations in accordance with Section 301(b)(1)(c) of CWA (33 USC Section 1311(b)(1)(c)).

(e) Ensure consistency with the requirements of any Kentucky Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 401 KAR 5:080, Section 3.

(5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of this subsection shall [will] be included in the permit, if applicable. Limitations shall [will] be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations shall [will] be included in the fact sheet under 401 KAR 5:075, Section 4.

(a) Limitations shall [will] control all toxic pollutants which:

1. The cabinet [director] determines, based on information reported in a permit application under 401 KAR 5:060, Section 2(7) [4(7) or (11)], or in a notification under Section 1(15)(a) of this administrative regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c); or

2. The discharger does or may use or manufacture as an intermediate or final product or by-product.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection shall [will] be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the cabinet [director], will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401 KAR 5:080, Section 1(2)(c).

(6) Notification level. A "notification level" which exceeds the notification level of Section 1(15)(a)1a,b, or c of this administrative regulation, upon a petition from the permittee or on the cabinet's [director's] initiative shall [will] be incorporated as a permit condition, if applicable. This new notification level shall [may] not exceed the level which can be achieved by the technology-based treatment requirements appropriated to the permittee under 401 KAR 5:080, Section 1(2)(c).

(7) Twenty-four (24) hour reporting. Pollutants for which the permittee shall [will] report violations of maximum daily discharge limitations under Section 1 [3](12)(f) of this administrative regulation (twenty-four (24) hour reporting) shall be listed as such in the permit. This list shall [will] include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring requirements. The permit shall [will] incorporate, as applicable in addition to Section 1(12) of this administrative regulation, the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor:

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall; and

3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(8) of this administrative regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this administrative regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this administrative regulation.

(b) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(c) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but not [in no case] less than once a year with the following exceptions:

1. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but not less than once a year.

2. Requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in subparagraph 1 of this paragraph shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge shall require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. The report and certification be signed in accordance with 401 KAR 5:060, Section 9; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three (3) years by a professional engineer that the facility is in compliance with the permit, or alternative requirements.

3. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under Section 1(12)(g) of this administrative regulation at least annually.

(9) Pretreatment program for POTWs. If applicable to the facility the permit shall [will] incorporate as a permit condition requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the KPDES administrative regulations.

(b) Submit a local program when required by and in compliance with 401 KAR 5:057 [5:055, Section 9], to assure compliance with pretreatment standards to the extent applicable in the KPDES administrative regulations. The local program shall [will] be incorporated into the permit as described in 401 KAR 5:057 [5:055, Section 9]. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Applicable under KRS Chapter 224 and the KPDES administrative regulations for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible; or

(c) The practices are reasonably necessary to achieve effluent

limitations and standards or to carry out the purposes and intent of KRS Chapter 224.

(11) Reissued permits.

(a) The permit shall [will] include a condition concerning reissued permits, as applicable. When a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit shall [will] be incorporated unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6. [This requirement applies to those permits which were issued pursuant to CWA Section 402(a)(1) (33 USC Section 1242(a)(1)), unless one (1) of the following exceptions apply:]

(b) For effluent limitations established on the basis of 401 KAR 5:080, Section 1(2)(c)2, a permit shall not be renewed, revoked and reissued, or modified on the basis of effluent guidelines promulgated under CWA Section 304(b) subsequent to the original issuance of the permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

1. Exceptions. A permit to which paragraph (a) of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. Information is available which was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and which would have justified the application of a less stringent effluent limitation at the time of permit issuance;

c. The cabinet determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under 401 KAR 5:080, Section 1(2)(c)2;

d. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

e. The permittee has received a permit modification under 401 KAR 5:055, Section 3; or

f. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification.

2. Limitations. A permit to which paragraph (a) of this subsection applies shall not be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect when the permit is renewed, reissued, or modified. Such a permit to discharge into waters shall not be renewed, issued, or modified to contain less stringent effluent limitation if the implementation of the limitation would result in a violation of a water quality standard under 401 KAR 5:031 applicable to those waters.

[a] If the discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved, but will not be less stringent than required by the subsequently promulgated effluent limitations guidelines;

(b) If the subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (BCT);

(c) If the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or

revocation and reissuance under 401 KAR 5:070, Section 6;

(d) If there is increased production at the facility which results in significant reduction in treatment efficiency, then the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event will permit limitations be less stringent than those required by subsequently promulgated standards and limitations;

(12) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited copermitee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this administrative regulation shall [will] be imposed as applicable. Alternatively, the cabinet [director] may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The cabinet's [director's] decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits or to require separate applications, and the basis for that decision shall [will] be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants or loans. Any conditions imposed in grants or loan made by the cabinet [director] to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations shall [will] be required as applicable.

(14) Sewage sludge. Requirements shall [will] be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 40 CFR Part 503 [404 KAR 47:060].

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit shall [will] be conditioned as applicable. A condition that the discharge shall comply with any applicable federal regulations promulgated by the secretary of the department in which the Coast Guard is operating which establish specifications for safe transportation, handling, carriage, and storage of pollutants shall be imposed if applicable.

(16) Navigation. Any conditions that the Secretary of the United States Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 401 KAR 5:075, Section 9, shall [will] be included as applicable.

(17) Duration of permits shall be imposed, as set forth in 401 KAR 5:070, Section 1.

Section 3. Calculating KPDES Permit Conditions. The following provisions shall [will] be used to calculate terms and conditions of the KPDES permit.

(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions shall [will] be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this administrative regulation; with BMPs where limitations are infeasible; and under subsection (8) of this section, limitations on internal waste streams.

(2) Production-based limitations.

(a) In the case of POTWs, permit limitations, standards, or prohibitions shall [will] be calculated based on design flow.

(b)1. Except in the case of POTWs or as provided in subparagraph 2a(ii) of this paragraph, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

2.a.(i) The cabinet [director] may include a condition establishing

alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(ii) For the automotive manufacturing industry only, the cabinet [director] may establish a condition under subparagraph 2a(i) of this paragraph if the applicant satisfactorily demonstrates to the cabinet [director] at the time the application is submitted that its actual production, as indicated in subparagraph 2a(i) of this paragraph, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

b. If the cabinet [director] establishes permit conditions under subparagraph 2a(i) of this paragraph:

(i) The permit shall require the permittee to notify the cabinet [director] at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(ii) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the cabinet [director] under subparagraph 2b of this paragraph, then [in which case] the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(iii) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as described [defined] in 40 CFR Part 136 unless:

(a) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; [or]

(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1(2), it is necessary to express the limitation on the metal in the dissolved or valent total form to carry out the provisions of KRS 224.16-050; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable shall [will] be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Noncontinuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:001 [5:050, Section 1(7)], shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency: for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass: for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge: for example, not to exceed two (2) kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure: for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams

(0.25 kilogram) of zinc in any discharge.

(6) Mass limitations.

(a) All pollutant limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If in establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharges of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall [will] require the permittee to comply with both limitations.

(7) Pollutants in intake water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in 40 CFR Chapter I, Subchapter N, Part 401 et seq., specifically provide that they may be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitations or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The cabinet [director] may waive this requirement if the cabinet [director] finds that no environmental degradation will result.

(e) This subsection shall [of this regulation does] not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal waste streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this administrative regulation shall also be applied to the internal waste streams.

(b) Limits on internal waste streams shall [will] be imposed only when the fact sheet under 401 KAR 5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 5:055, Section 6.

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(10) Secondary treatment information. Permit conditions that involve secondary treatment shall [will] be written as provided in 401 KAR 5:045.

Section 4. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are published by the Office of the Federal Register, National Archives and Government Services, General Services Administration, and are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(1) Toxic Pollutant Effluent Standards, 40 CFR Part 129, revised as of July 1, 1991;

(2) Test Procedures for the Analysis of Pollutants, 40 CFR Part 136, revised as of September 11, 1992;

(3) Federal Effluent Limitations and Standards and New Source Performance Standards, [Incorporations. (4)] 40 CFR Chapter I, Subchapter N, Parts 401 et seq., revised as of July 1, 1993; and

(4) Standards for the Use or Disposal of Sewage Sludge, 40 CFR Part 503, revised as of July 1993. [1986, as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference.

(2) Federal Registers incorporated. In addition to subsection (1) of this section, also incorporated by reference are additions, amendments and corrections to this codification, as published in the following Federal Registers:

Industry	40 CFR Part	Federal Register	Date
Aluminum Forming	467	48 FR 49126	10-24-83
		corrected by	
		40 FR 17629	03-27-84
Battery Manufacturing	461	40 FR 8108	03-09-84
		corrected by	
		40 FR 13879	04-09-84
		corrected by	
		40 FR 27946	07-09-84
Coal mining	434	47 FR 45382	10-13-82
		corrected by	
		48 FR 50321	11-01-83
		amended by	
		50 FR 41296	10-09-85
Coil coating (Phase I)	465	47 FR 54232	12-01-82
		amended by	
		48 FR 31403	07-08-83
		amended by	
		48 FR 41409	09-15-83
		corrected by	
		49 FR 33648	08-24-84
(Phase II, Can making)	465	48 FR 52380	11-17-83
		amended by	
		48 FR 31403	07-08-83
		corrected by	
		49 FR 14104	04-10-84
Copper Forming	468	48 FR 36942	08-15-83
		amended by	
		48 FR 41409	09-15-83
		amended by	
		50 FR 34242	08-23-85
		amended by	

Electrical/Electronic Components (Phase I)	469	51 FR 7568	03-05-86
		48 FR 15382	04-08-83
		amended by	
		40 FR 5921	02-16-84
(Phase II)	469	48 FR 55690	12-14-83
		corrected by	
		40 FR 1056	01-09-84
Electroplating (Pretreatment)	413	44 FR 52590	09-07-79
		amended by	
		48 FR 32462	07-15-83
		corrected by	
		48 FR 41409	09-15-83
		48 FR 43680	09-26-83
		amended by	
Inorganic Chemicals (Phase I)	415	47 FR 28260	06-20-82
		amended by	
		47 FR 55226	12-08-82
(Phase II)	415	49 FR 33402	08-22-84
		corrected by	
		49 FR 37504	09-25-84
Iron & Steel Manufacturing	420	47 FR 23258	05-27-82
		corrected by	
		47 FR 24554	06-07-82
		corrected by	
		47 FR 41738	09-22-82
		corrected by	
		48 FR 51773	11-14-83
		amended by	
		49 FR 21024	05-17-84
		corrected by	
		49 FR 24726	06-15-84
		corrected by	
		49 FR 25634	06-22-84
Leather tanning and finishing	425	47 FR 52848	11-23-82
		amended by	
		48 FR 30115	06-30-83
		amended by	
		48 FR 31403	07-08-83
		corrected by	
		48 FR 32346	07-15-83
		corrected by	
		48 FR 35640	08-05-83
		amended by	
		48 FR 41409	09-15-83
Metal Finishing	433		
	413	48 FR 32462	07-15-83
		amended by	
		48 FR 41409	09-15-83
		corrected by	
		48 FR 43680	09-26-83
Metal Molding and Casting	464	50 FR 45212	10-30-85
Nonferrous Metals (Phase I)	421	40 FR 8742	03-08-84
		corrected by	
		40 FR 26738	06-20-84
		corrected by	
		40 FR 29792	07-24-84
		corrected by	
		50 FR 12252	03-28-85
		amended by	
		50 FR 38276	09-02-85
		corrected by	
		50 FR 41144	10-09-85
		corrected by	
		50 FR 52775	12-26-85
(Phase III)	471	50 FR 34242	08-23-85
		corrected by	

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Oil and Gas	51 FR 2884	01-22-86
Extraction	435	41 FR 44042 10-13-76 amended by 44 FR 22069 04-13-79 amended by 47 FR 31654 07-21-82
Ore mining	440	47 FR 54598 12-03-82
Pesticides	455	50 FR 40672 10-04-85
Petroleum		
refining	410	47 FR 46434 10-18-82 amended by 50 FR 28516 07-12-85 corrected by 50 FR 32414 08-12-85
Pharmaceuticals	430	48 FR 49808 10-27-83 corrected by 48 FR 50322 11-01-83 amended by 50 FR 18486 05-01-85
Plastics	463	49 FR 49026 12-17-84 corrected by 50 FR 18248 04-30-85
Porcelain	466	47 FR 52172 11-24-82
enameling		amended by 48 FR 31403 07-08-83 amended by 48 FR 41409 09-15-83
Pulp and paper	430	
	431	47 FR 52006 11-18-82 corrected by 48 FR 13176 03-30-83 amended by 48 FR 31403 07-08-83
Steam electric	423	47 FR 52290 11-18-82 amended by 48 FR 31403 07-08-83
Textile mills	410	47 FR 33810 09-02-82 corrected by 48 FR 30624 09-01-83
Timber	429	46 FR 8260 01-26-81 amended by 46 FR 57287 11-23-81

Section 5. Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES administrative regulations whether or not applicable effluent limitations guidelines have been promulgated.

- (1) Adhesives and sealants.
- (2) Aluminum forming.
- (3) Auto and other laundries.
- (4) Battery manufacturing.
- (5) Coal mining.
- (6) Coil coating.
- (7) Copper forming.
- (8) Electrical and electronic components.
- (9) Electroplating.
- (10) Explosives manufacturing.
- (11) Foundries.
- (12) Gum and wood chemicals.
- (13) Inorganic chemicals manufacturing.
- (14) Iron and steel manufacturing.
- (15) Leather tanning and finishing.
- (16) Mechanical products manufacturing.
- (17) Nonferrous metals manufacturing.
- (18) Ore mining.

- (19) Organic chemicals manufacturing.
- (20) Paint and ink formulation.
- (21) Pesticides.
- (22) Petroleum refining.
- (23) Pharmaceutical preparations.
- (24) Photographic equipment and supplies.
- (25) Plastics processing.
- (26) Plastic and synthetic materials manufacturing.
- (27) Porcelain enameling.
- (28) Printing and publishing.
- (29) Pulp and paper mills.
- (30) Rubber processing.
- (31) Soap and detergent manufacturing.
- (32) Steam electric power plants.
- (33) Textile mills.
- (34) Timber products processing.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: July 13, 1994
FILED WITH LRC: July 13, 1994 at noon

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health (As Amended)

803 KAR 2:180. Recordkeeping; statistics.

RELATES TO: KRS 338.161, 29 CFR Part 1904

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Department of Workplace Standards by KRS 338.161, this regulation provides for recordkeeping and reporting by employers covered under KRS Chapter 338 as necessary and appropriate for the enforcement of KRS Chapter 338, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

Section 1. Definitions. (1) "Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).

(2) ~~[(The definitions and interpretations contained in KRS 338.015 shall be applicable to such terms when used in this administrative regulation.)]~~

(3) "Recordable occupational injuries or illnesses" means ~~[are]~~ any occupational injuries or illnesses which result in:

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness; or

(b) Lost workday cases, other than fatalities, that result in lost workdays; or

(c) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve loss of consciousness or restrictions of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(3) ~~[(4)]~~ "Medical treatment" means ~~[includes]~~ treatment administered by a physician or by registered professional personnel under the standing orders of a physician but ~~[-Medical treatment]~~ does not include first aid treatment even though provided by a physician or registered professional personnel.

(4) ~~[(5)]~~ "First aid" means ~~[is]~~ any one (1) time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one (1) time treatment, and follow-up visit(s) for the purpose of observation, is considered first aid even though

provided by a physician or registered professional personnel.

(5) ~~(6)(a)~~ "Establishment" means ~~[-]~~ a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumberyard), each activity shall be treated as a separate establishment. ~~[(b)]~~ For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day. ~~[(e)]~~ Records for personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

(6) ~~[(7)]~~ "Lost workdays" means ~~[-]~~ the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

Section 2. Standard Industrial Classification Codes. (1) ~~[(8)]~~ "Establishments classified in standard industrial classification codes (SIC) 52-89 shall include: ~~[-]~~"

(a) Establishments classified in SIC's 52-59 whose primary activity constitutes retail trade, finance, insurance, real estate and services ~~[are classified in SIC's 52-89]~~.

(b) Retail trades establishments ~~[are]~~ classified as SIC's 52-59 which are ~~[and for the most part include establishments]~~ engaged in selling merchandise to the general public for personal household consumption. Some examples are: ~~[of the retail trades are:]~~ automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

(c) Finance, insurance, and real estate establishments ~~[are]~~ classified as SIC's 60-67 ~~[and include establishments]~~ which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(d) Service establishments ~~[Services are]~~ classified as SIC's 70-89 ~~[and include establishments]~~ which provide a variety of services for individuals, businesses, government agencies, and other organizations. Those include personal, business, legal, educational, social, and cultural services, as well as membership organizations. ~~[Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural, and membership organizations.]~~

(2) ~~[(e)]~~ The primary activity of an establishment is determined in the following way ~~[as follows]~~:

(a) For finance, insurance, real estate, and service establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity.

(b) In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue shall ~~[will]~~ identify the primary activity.

(c) In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll shall ~~[should]~~ be used in place of the normal basis for determining the primary activity.

Section 3. [2-] [4-] Log and Summary of Occupational Injuries and Illnesses. (1) Each employer shall, except as provided in subsection (2), (3), and (4) ~~[(2)]~~ of this section, Section 15 ~~[(14)]~~, and Section 16 ~~[(15)]~~ of this regulation: maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that

establishment; and enter each recordable injury and illness on the log and summary as early as practicable but not later than six (6) working days after receiving information that a recordable injury or illness has occurred. For this purpose, Occupational Safety and Health Administration OSHA Form No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions on Form OSHA No. 200.

(2) Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data processing equipment, or both, under the following circumstances:

(a) There is available at the place where the log and summary are maintained sufficient information to complete the log and summary to a date within six (6) working days after receiving information that a recordable case has occurred, as required by subsection (1) of this section.

(b) At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within forty-five (45) calendar days.

(3) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

(4) Records for personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

Section 4. [3-] [2-] Period Covered. Records shall be established on a calendar year basis.

Section 5. [4-] [3-] Supplementary Record. In addition to the log and summary of occupational injuries and illnesses provided for under Section 2 ~~[(4)]~~ of this administrative regulation, each employer shall have available at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101. Workers' Compensation, insurance, or other reports are acceptable alternative records if they contain the information required by Form OSHA No. 101. If no acceptable alternative record is maintained for other purposes, Form OSHA No. 101 shall be used or the necessary information shall be otherwise maintained. The Kentucky workers' compensation form SF-1 is an acceptable alternative record for those employers covered by the Workers' Compensation Act.

Section 6. [5-] [4-] Annual Summary. (1) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the Form OSHA No. 200 and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A Form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeroes must be entered on the totals line, and the form must be posted.

(2) The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on Form OSHA No. 102.

(3) Each employer, or the officer or employee of the employer

who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the summary certifying that the summary is true and complete.

(4)(a) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under 803 KAR 2:060. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report for work at a single establishment, or who do not report to any fixed establishment on a regular basis, employer shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multiestablishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

(b) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to KRS 338.991.

Section 7. ~~[6.] [6.]~~ Retention of Records. Records provided for in Sections 3, 5, and 6 [2, 4, and 5] [1, 3, and 4] of this regulation (including Form OSHA No. 200 and its predecessor Form OSHA No. 100 and OSHA No. 102, which are incorporated herein by reference) shall be retained in each establishment for five (5) years following the end of the year to which they relate.

Section 8. ~~[7.] [6.]~~ Access to Records. (1) Each employer shall provide, upon request, records provided for in Sections 3, 5, and 6 [2, 4, and 5] [1, 3, and 4] of this regulation for inspection and copying by:

(a) Compliance safety and health officers of the Occupational Safety and Health Program, Kentucky Department of Labor, during an inspection or by other representatives of the Commission of the Department of Workplace Standards authorized to make statistical compilations, pursuant to the authority of KRS Chapter 338;

(b) Representatives of the Bureau of Labor Statistics, United States Department of Labor; and

(c) Representatives of the Secretary of Health, Education, and Welfare during any investigation under Section 20(b) of the Williams-Steiger Occupational Safety and Health Act of 1970.

(2) The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in Section 1 of this regulation shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

(3) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(4) Access to the log, provided under this section, shall pertain to all logs retained under the requirements of Section 5 of this regulation.

Section 9. ~~[8.] [7.]~~ Reporting of Fatality or Multiple Hospitalization Accidents. (1) Within eight (8) [forty-eight (48)] hours after the death of any employee from a work-related incident or the inpatient

hospitalization of three (3) or more employees as a result of a work-related incident [occurrence of an employment accident which is fatal to one (1) or more employees or which results in hospitalization of five (5) or more employees], the employer of any employees so affected [injured or killed] shall orally report the fatality/multiple hospitalization by telephone or in person [accident either orally or in writing] to the Commission of the Department of Workplace Standards, or to the Occupational Safety and Health Administration (OSHA) by using the OSHA toll-free central telephone number. [The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The commissioner may require such additional reports, in writing or otherwise, as he deems necessary concerning the accident.]

(2) This requirement applies to each such fatality or hospitalization of three (3) or more employees which occurs within thirty (30) days of an incident.

(3) Exception: If the employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (1) and (2) of this section, the employer shall make the report within eight (8) hours of the time the incident is reported to any agent or employee of the employer.

(4) Each report required by this section shall relate the following information: establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

Section 10. ~~[9.] [8.]~~ Falsification, or Failure to Keep Records or Reports. ~~[(1) KRS 338.991(8) provides that "whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment, for not more than six (6) months or both."]~~

~~(2) Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in KRS 338.991.~~

Section 11. ~~[10.] [9.]~~ Change of Ownership. Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under Section 5.

~~[Section 10. Definitions. (1) "Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).]~~

~~(2) The definitions and interpretations contained in KRS 338.015 shall be applicable to such terms when used in this regulation.~~

~~(3) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:~~

~~(a) Fatalities, regardless of the time between the injury and death, or the length of the illness; or~~

~~(b) Lost workday cases, other than fatalities, that result in lost workdays; or~~

~~(c) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve loss of consciousness or restrictions of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.~~

~~(4) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing~~

orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(5) "First aid" is any one (1) time treatment, and any follow up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one (1) time treatment, and follow up visit(s) for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(6)(a) "Establishment": a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumberyard), each activity shall be treated as a separate establishment.

(b) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

(c) Records for personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

(7) "Lost workdays": the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

(8) "Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89."

(a) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

(b) Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

(c) Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(d) Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

(e) The primary activity of an establishment is determined as follows: for finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.]

Section 12. [44-] Petitions for Recordkeeping Exceptions. (1) Petitions for recordkeeping exceptions shall be filed in accordance with the provisions of 29 CFR Part 1904.13.

(2) Any employer filing a petition for recordkeeping exceptions in accordance with CFR Part 1904.13 shall notify the Commissioner of the Department of Workplace Standards that he is making such application and the results thereof;

(3) Exceptions granted pursuant to 29 CFR Part 1904.13 shall be recognized by the commissioner.

Section 13. [42-] Employees not in Fixed Establishments. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of Sections 2, 4, and 5 [4, 3, and 4] of this regulation with respect to such employees by:

(1) Maintaining the required records for each operation or group of operations, which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(2) Having the address and telephone number of the central place available at each worksite; and

(3) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

Section 14. [43-] Duties of Employer. Upon receipt of an occupational injuries and illnesses survey form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

Section 15. [44-] Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

(1) Obligation to report under Section 8 [7] of this regulation concerning fatalities or multiple hospitalization accidents; and

(2) Obligation to maintain a log and summary of occupational injuries and illnesses under Section 2 [4] of this regulation and to make reports under Section 13 of this regulation upon being notified in writing by the Bureau of Labor Statistics or the Kentucky Department of Workplace Standards that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

Section 16. [45-] Private Sector Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80). A private sector employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

(1) Obligation to report under Section 8 [7] of this regulation concerning fatalities or multiple hospitalization accidents; and

(2) Obligation to maintain a log of occupational injuries and illnesses under Section 13 of this regulation, upon being notified in writing by the Bureau of Labor Statistics or the Kentucky Department of Workplace Standards that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

Section 17. [46-] Public Notice. (1) In accordance with KRS Chapter 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

ADMINISTRATIVE REGISTER - 930

CABINET FOR HUMAN RESOURCES Department for Health Services (As Amended)

902 KAR 2:111. Repeal of 902 KAR 2:110 and 902 KAR 2:120.

RELATES TO: KRS 211.180, 214.010, 214.020, 333.130

STATUTORY AUTHORITY: KRS 214.460, 214.462

NECESSITY AND FUNCTION: 902 KAR 2:110, which defines reportable communicable diseases and sexually transmitted diseases which are transmissible through blood, and 902 KAR 2:120, standardized risk factor history form, are no longer required because KRS 214.460 and 214.462, the enabling statutes, have been repealed pursuant to 1994 Ky. Acts ch. 325.

Section 1. 902 KAR 2:110, Reportable communicable diseases and sexually transmitted diseases which are transmissible through blood, is hereby repealed.

Section 2. 902 KAR 2:120, Standardized risk factor history form, is hereby repealed.

RICE C. LEACH, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: May 24, 1994
FILED WITH LRC: June 15, 1994 at 11 a.m.

CABINET FOR HUMAN RESOURCES Department for Medicaid Services (As Amended)

907 KAR 1:026. Dental services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to dental services for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-hospital Services. Payment for services shall be [is] limited to those procedures listed in the cabinet's dental benefit schedule which are included in the following categories:

- (1) Diagnostic;
- (2) Preventive;
- (3) Oral surgery;
- (4) Endodontics;
- (5) Orthodontics;
- (6) Prosthetics;
- (7) Operative;
- (8) Crown; and
- (9) Other services.

Section 2. Dental Services Manual. (1) The policies and methods by the cabinet in covering dental services are specified in the cabinet's "Dental Services Manual" dated June 1, 1994, which is incorporated by reference in this administrative regulation.

(2) The Dental Services 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. [2-] Limitations for Those Under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):

(1) Dental prophylaxis, to include application of stannous fluoride, shall be [is] limited to one (1) treatment per year.

(2) Bitewing x-rays shall be [are] limited to four (4) x-rays per patient per year per dentist.

(3) Full mouth radiograph shall be [is] limited to one (1) per patient per every two (2) years per dentist.

(4) The following orthodontic procedures shall be [are] limited per twelve (12) month period to any combination totaling two (2) per patient: fixed space maintainer, band type; removable space maintainer, acrylic; removable appliance for tooth guidance; and fixed or cemented appliance for tooth guidance. Effective with regard to services provided on or after July 1, 1989, the following orthodontic procedures shall be [are] available upon appropriate preauthorization by the cabinet (except orthodontic consultation, which need not be preauthorized) when services are medically necessary to correct handicapping malocclusions, with limitations as specified for the individual procedure:

(a) Orthodontic consultation shall be [is] limited to one (1) per recipient per twelve (12) month period;

(b) Preauthorized orthodontia services for moderately severe handicapping malocclusions;

(c) Preauthorized orthodontia services for severe handicapping malocclusions;

(d) Retention visit or stabilization visit shall be [is] allowable as a separate procedure only when a patient is referred to another practitioner in another service area and is limited to one (1) per month per recipient with a maximum of twenty-four (24) retention visits and with a maximum of ten (10) stabilization visits per lifetime.

(5) The following prosthetic procedures shall be [are] limited as specified for the individual procedure:

(a) Transitional appliance, includes one (1) tooth on appliance, upper appliance, shall be [is] limited to one (1) per twelve (12) month period, per patient;

(b) Transitional appliance, includes one (1) tooth on appliance, lower appliance, shall be [is] limited to one (1) per twelve (12) month period, per patient;

(c) Repair of fracture of transitional appliance and space maintainer shall be [is] limited to three (3) per twelve (12) month period, per patient;

(d) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance and space maintainer shall be [is] limited to three (3) per twelve (12) month period, per patient;

(e) Repairing broken complete denture with no teeth damaged shall be [is] limited to three (3) per twelve (12) month period, per patient; and

(f) Repairing broken complete denture and replacing one (1) broken tooth shall be [is] limited to three (3) per twelve (12) month period, per patient.

(g) Relining upper denture (flask cured only) shall be [is] limited to one (1) per twelve (12) month period per patient.

(h) Relining lower denture (flask cured only) shall be [is] limited to one (1) twelve (12) month period per patient.

Section 4. [3-] Inpatient Hospital Services. (1) Payment shall be made for all hospital inpatient services rendered by oral surgeons subject to the general physician limitations shown in 907 KAR 1:009, Physicians' services.

(2) Payment shall be provided for services rendered by general dentists for hospital inpatient care for patients termed to be "medically

a high risk," defined as:

- (a) Heart disease;
- (b) Respiratory disease;
- (c) Chronic bleeder;
- (d) Uncontrollable patient, i.e., retardate, emotionally disturbed;
- (e) Other, e.g., car accident, high temperature, massive infection.

Section 5. [4-] Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982 except as otherwise specified in this regulation.

(1) Oral surgery, as follows:

(a) Extraction, single tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987;

(b) Extraction, each additional tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987; and

(c) Root removal (but not payable on the same day the same tooth was extracted).

(2) Operative, as follows:

(a) Amalgam filling for one (1) surface cavity;

(b) Amalgam filling for two (2) surface cavity;

(c) Amalgam filling for cavity involving three (3) or more surfaces;

(d) Silicate cement filling;

(e) Acrylic, plastic, or composite filling; and

(f) Buildup to repair a fractured incisal or anterior tooth.

(3) Diagnostic services, as follows:

(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;

(b) Intraoral periapical radiograph, single view; and

(c) Full mouth radiograph, single panoramic film limited to one (1) per patient per every two (2) years per dentist.

(4) Preventive services as follows: adult dental prophylaxis, effective with regard to services provided on or after August 1, 1986.

(5) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

Section 6. [6-] Other Provisions, Limitations and Clarifications. (1) Intraoral periapical radiograph, single view, shall be [is] limited to fourteen (14) per patient, per year, per dentist.

(2) The procedure code for stainless steel crown shall [will] also include polycarbonate (acrylic) and full composite crown for anterior teeth. However, should a provider choose to provide crowns for anterior teeth, the usual and customary charge for a stainless steel crown shall [must] be billed.

(3) Bonded veneers shall not be [are not] covered as a separate entity, nor shall [should] they be provided and billed under any existing procedure code.

(4) The Sargenti method of root canal treatment shall not be [is not] covered under the present root canal procedure codes.

(5) The Medicaid [Medical Assistance] Program recognizes five (5) surfaces of a tooth (buccal or labial, mesial, distal, lingual, occlusal or incisal). Only one (1) filling may be billed per surface with a maximum of five (5) per tooth.

(6) Nitrous oxide shall not be [is not] covered under the procedure for general anesthesia or any other procedure.

(7) Effective with regard to services provided on or after May 1, 1989, the following procedures shall be covered for all age groups:

(a) Alveoplasty (alveoloplasty) in conjunction with extractions per quadrant;

(b) Apicoectomy (per tooth) - first root;

(c) Apicoectomy (per tooth) each additional root;

(d) Gingivectomy or gingivoplasty - per quadrant;

(e) Gingivectomy or gingivoplasty - per tooth;

(f) Biopsy - excision of benign tumor - lesion diameter up to 1.25 cm.;

- (g) Frenulectomy (frenotomy or frenectomy - separate procedure);
- (h) Suture of recent small wounds up to five (5) cm.;
- (i) Incision and drainage - intraoral soft tissue;
- (j) Incision and drainage - extraoral soft tissue;
- (k) Removal of foreign body, skin, or subcutaneous areolar tissue;
- (l) Hospital call;
- (m) Emergency call (intermediate level of service); and
- (n) Comprehensive oral examination (limited to one (1) per provider per recipient per year).

Section 7. 907 KAR 1:414, Incorporation by reference of the Dental Services Manual, is repealed.

MASTEN CHILDERS II, Commissioner, Secretary

APPROVED BY AGENCY: May 23, 1994

FILED WITH LRC: May 26, 1994 at 3 p.m.

ADMINISTRATIVE REGISTER - 932

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR WRITTEN COMMENTS RECEIVED

GENERAL GOVERNMENT CABINET
Board of Respiratory Care
(Amended After Hearing)

201 KAR 29:070. Scope of practice.

RELATES TO: KRS 314A.100

STATUTORY AUTHORITY: KRS 314A.205(3)

NECESSITY AND FUNCTION: This administrative regulation clarifies the types of activities which are permissible by persons holding certification as a respiratory care practitioner.

Section 1. Definitions. "Agency or facility guidelines" [~~"Established institutional protocol"~~] shall mean a written set of guidelines for initiating, adjusting or discontinuing care which have been approved by the medical director.

(1) The "agency or facility guidelines" [~~"established institutional protocol"~~] shall also describe the specific training or education necessary to enable the respiratory care practitioner to competently perform each of these procedures.

(2) "Agency or facility guidelines" shall not include the activities of another licensed profession if those activities are specifically protected by Kentucky law governing that profession.

Section 2. In addition to those procedures set forth specifically in KRS 314A.100[~~(+)~~], a respiratory care practitioner may perform other procedures not specifically prohibited by KRS 314A.100[~~(+)~~]. In the performance of these procedures the respiratory care practitioner shall practice in accordance with "agency or facility guidelines". [~~"established institutional protocol"~~]

Section 3. (1) Respiratory care practitioners shall at all times be responsible for practicing within their level of competence. [~~Failure to do so or by engaging in those procedures specifically prohibited by KRS 314A.100(1) or by performing procedures not listed in the established institutional protocol shall constitute unprofessional conduct in the practice of respiratory care.~~]

(2) The following conduct by a respiratory care practitioner shall constitute unethical conduct in the practice of respiratory care:

(a) Failure to practice within their level of competence;

(b) Engaging in those procedures specifically prohibited by KRS 314A.100;

(c) Engaging in practices specifically protected by the statutes governing other licensed professions; or

(d) Performing procedures not listed in the agency or facility guidelines.

JAMES RAVENCRAFT, Chairman

APPROVED BY AGENCY: July 26, 1994

FILED WITH LRC: August 10, 1994 at 10 a.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 50:035. Permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.10-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 52, 60, 70, 72, 73, 75, 76, 77, 78, 42 USC 7401-7671q, July 21, 1993 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation combines construction and operating permits into one (1) permit and provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as [otherwise] provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o and 40 CFR Parts 72, 73, 75, 76, 77, and 78. 40 CFR Parts 72, 73, 75, 76, 77, and 78 are incorporated by reference in Section 11 of this administrative regulation.

(2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by PL 101-549 (November 15, 1990).

(3) "Administrative permit amendment" means a revision to a permit that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source if the cabinet determines that no other change in the permit is necessary and if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the cabinet;

(e) Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those prescribed in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in Section 4(3) of this administrative regulation.

(4) "Affected source" means a source that includes one (1) or more affected units.

(5) "Affected states" means those states:

(a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to the federally enforceable requirements of this administrative regulation; or

(b) That are within fifty (50) miles of the proposed permitted source.

(6) "Affected unit" means a unit that is subject to the acid rain program.

(7) "Applicable requirement" means a federally enforceable requirement or a state-origin requirement or standard.

(8) "Classification date" means the date on which the U.S. EPA publishes a final rule granting full or interim ~~[-partial, or conditional]~~ approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661 through 7661f (Title V of the Act).

(9) ~~[(9)]~~ "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.

(10) "Conditional major source" means a source that accepts a limit made federally enforceable as a permit condition ~~for a~~ federally enforceable permit which prevents it from being classified as a major source as defined in this administrative regulation, if the limit is not a federally enforceable requirement.

(11) ~~[(11)]~~ "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the acid rain program, means the "designated representative."

(12) ~~[(12)]~~ "Draft permit" means the version of a permit which the cabinet offers for the applicable public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.

(13) ~~[(13)]~~ "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(14) ~~[(14)]~~ "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038, made effective November 29, 1993.

(15) ~~[(15)]~~ "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the acid rain program.

(16) ~~[(16)]~~ "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to November 29, 1993 ~~[the effective date of this administrative regulation;]~~ or source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.

(17) ~~[(17)]~~ "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable.

(18) ~~[(18)]~~ "Federally enforceable requirement" means all of the following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 through 7515 (Title I of the Act).

(c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7429 (Section 129 of

the Act) governing solid waste incineration.

(d) A standard or other requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act) ~~including a requirement for accidental release prevention pursuant to 42 USC 7412(r) (Section 112(r) of the Act)].~~

(e) Standards or requirements of the acid rain program.

(f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification.

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act).

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act).

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act).

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.

(19) ~~[(19)]~~ "Final permit" means:

(a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.

(b) For a state-origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(20) ~~[(20)]~~ "Fugitive emissions" means those emissions which could not reasonably ~~[do not]~~ pass through a stack, chimney, vent, or other functionally-equivalent opening.

(21) ~~[(21)]~~ "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(22) ~~[(22)]~~ "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.

(a) On or after the classification date, a stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061, made effective November 29, 1993, or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources.

(b) A stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of an air pollutant. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one (1) he following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;

7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plant;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or

27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

(c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:

1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"

2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and

3. For particulate matter (PM₁₀) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM₁₀.

(23) [(24)] "Minor source" means a stationary source that is required to obtain a permit pursuant to this administrative regulation and that is not a major source.

(24) [(22)] "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.

(25) [(23)] "Phase II" means the acid rain program period beginning January 1, 2000, and continuing thereafter.

(26) [(24)] "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable [by the U.S. EPA]. This term does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the acid rain program.

(27) [(25)] "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(28) [(26)] "Regulated air pollutant" means the following:

(a) For sources subject to 40 CFR Part 70:

1. Nitrogen oxides;
 2. [(b)] Volatile organic compounds;
 3. [(e)] A pollutant for which a national [an] ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act) [in 401 KAR 53:010];

4. [(d)] A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);

5. [(e)] A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act); and

(b) For state origin requirements:

1. A pollutant for which a state ambient air quality standard has been promulgated in 401 KAR 53:010; and

(2) [(f)] A pollutant listed in 401 KAR 57:061; and

(g) A pollutant listed in [401 KAR 63:020;] 401 KAR 63:021, made effective November 11, 1986, or 401 KAR 63:022, made effective November 11, 1986.

(29) [(27)] "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5(7) of this administrative regulation.

(30) [(29)] "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(31) [(29)] "Section 502(b)(10) changes" means changes that contravene an express permit term. These changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(32) [(30)] "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.

(33) [(31)] "State implementation plan (SIP)" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been submitted by the cabinet and approved by the U.S. EPA.

(34) [(32)] "State-origin permit" means a permit that contains only state-origin requirements, or that contains federally enforceable requirements but is not required by the U.S. EPA to be a federally enforceable permit [permit conditions. If the permit contains one (1) or more federally enforceable permit conditions it is a federally enforceable permit];

(35) [(33)] "State-origin requirement [permit condition]" means an applicable requirement that is not mandated by [a provision in the permit that is not required pursuant to] 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not

federally enforceable.

(36) [(34)] "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated air pollutant.

(37) "Synthetic minor source" means a source that accepts a limit made federally enforceable as a permit condition [on a federally enforceable permit] which prevents it from being classified as a major source as defined in either 401 KAR 51:017 or 401 KAR 51:052, if the limit is not a federally enforceable requirement.

(38) [(35)] "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

(1) A source shall be exempt from this administrative regulation if:

(a) The source is a minor source pursuant to 40 CFR Part 70 and is not subject to an applicable requirement; or

(b) The source is a minor source that:

1. Has uncontrolled emissions of less than twenty-five (25) tons per year and potential emissions of five (5) tons per year or less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010, or a lesser amount if specified in an applicable requirement; and

2. Has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 or a lesser amount specified in an applicable requirement; and

3. Is not subject to a requirement in 40 CFR Parts 60, 61, or 63; [60, 40 CFR Part 61, 401 KAR 63:020,] 401 KAR 63:021; [;], or 401 KAR 63:022; and

4. Is not required by the U.S. EPA to obtain a permit.

(2) The following activities and affected facilities shall be exempt from the requirement to obtain a permit pursuant to this administrative regulation. These exemptions shall not relieve a source from the requirements of any other applicable requirement. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements. [at a source shall be exempt from this administrative regulation if the activity is not the same or similar to the primary activity of the source.]

(a) an asbestos demolition or renovation operation subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042, made effective November 6, 1987; [Activities involving the routine maintenance and repair of a facility, including cleaning, painting, welding, sweeping, vacuuming, steam cleaning, washing, coating, or sandblasting.]

(b) An activity subject only to the provisions of 40 CFR Part 60, Subpart AAA; [Feed preparation for on-site consumption.]

(c) An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement; [Heating, ventilation, air conditioning, and refrigeration systems.]

(d) Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984; [Clerical activities, including the use of office supplies and equipment.]

(e) Vehicles used for the transport of passengers or freight; and [Sewer line vents constructed to meet building codes or safety requirements.]

(f) Publicly owned roads.

(3) Insignificant activities shall be exempt from permitting requirements pursuant to the following criteria: [The following activities and affected facilities shall be exempt from this administrative regulation, but they shall not be exempt from compliance with applicable standards in other administrative regulations in 401 KAR Chapters 60 through 63. The cabinet may require the owner or operator to demonstrate compliance with all applicable administrative regulations.]

(a) The activity shall be included in the permit application

with a request that the activity be exempt from permitting; [An asbestos demolition or renovation operation which is subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042.]

(b) The activity shall not be subject to an applicable requirement; [An affected facility which is subject only to the provisions of 40 CFR Part 60, Subpart AAA.]

(c) The potential or actual emissions from the activity shall not cause the source to be subject to an applicable requirement to which the source would not otherwise be subject; [A vehicle used for the transport of passengers or freight.]

(d) The activity shall have a potential to emit of less five (5) tpy of any regulated air pollutant, not including a hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) or a toxic pollutant listed in 401 KAR 63:021 or 401 KAR 63:022. [An affected facility subject only to the provisions of 401 KAR 63:006.]

(e) The potential to emit of all activities exempted pursuant to this subsection shall be less than two (2) tpy of any hazardous air pollutant and less than five (5) tpy of any combination of hazardous air pollutants, or a lesser amount if specified by the U.S. EPA; [Emiters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement.]

(f) The potential to emit of all activities exempted pursuant to this subsection shall be less than the significance level of any toxic air pollutant listed in 401 KAR 63:021 or 401 KAR 63:022. [Fire schools or fire training activities.]

(g) The activity shall not be the incineration of medical waste. [The installation of air pollution control equipment if none is required. The owner or operator shall notify the cabinet in writing prior to installing the equipment.]

(h) Alteration or modification of air pollution control equipment to provide an equivalent or more efficient control of air pollution. The owner or operator shall notify the cabinet in writing for the cabinet's concurrence at least forty-five (45) days before installation of the control equipment.]

(4) The cabinet shall maintain an updated list of those activities submitted and approved pursuant to subsection (3) of this section and shall provide this list to any person upon request. [If requested by a source, the following affected facilities may also be exempt from this administrative regulation. The cumulative emissions from the units exempted in this paragraph shall not exceed five (5) tons per year. The emissions from these units shall not be excluded from the permit application for a source if the emissions are necessary to determine compliance with an applicable requirement or to determine if a requirement is applicable.]

(a) An incinerator with a charging rate of less than 500 pounds per hour, unless it is subject to 401 KAR 51:017, 401 KAR 51:052, Title 401 Chapter 57, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

(b) One (1) or more indirect heat exchangers, with a rated total heat input capacity of less than eight (8) million BTU per hour which use natural gas or liquid petroleum gas as a main fuel and which use only distillate fuel oil as a standby fuel, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(c) An individual addition of a natural gas or liquid petroleum gas-fired boiler having an individual rated heat input capacity of less than eight (8) million BTU per hour, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(d) An internal combustion engine, except as provided in 401 KAR 59:010.

(e) A feed grain mill having a hammermill with a rated capacity of ten (10) tons per hour or less, if the source does not include a grain dryer.

(f) A sawmill which produces only rough cut or dimensional lumber from logs and which has a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an administrative

regulation in 401 KAR Chapters 59 or 61.

(5) Owners or operators of a source may petition the cabinet to exempt other activities or affected facilities, subject to approval by the cabinet and the U.S. EPA.]

(5) [(6)] The following de minimis changes shall be exempted from the requirement to obtain a permit or permit revision.

(a) [Prior to the classification date,] Affected facilities which are part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of a pollutant for which an ambient air quality standard has been promulgated in 401 KAR 50:010 [each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide], if the increase does not subject the source to an applicable requirement [administrative regulation].

1. The owner or operator shall notify the cabinet in writing of the increases and construction projects thirty (30) days prior to commencing construction.

2. This exemption shall not apply to affected facilities which are subject to a regulation promulgated pursuant to 40 CFR Parts 60, 61, or 63; 401 KAR 63:021 or [in 401 KAR Chapter 57; 40 CFR 60; 401 KAR 63:020;] 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for the pollutants in 401 KAR 51:010; or to incinerators.

(b) After the issuance of a draft permit [classification date], the exemption in paragraph (a) of this subsection shall not apply to sources that are required to obtain a federally enforceable permit pursuant to 40 CFR Part 70.

[(1)] A source shall be exempt from this administrative regulation if:

(a) The source is a minor source and is not subject to an applicable requirement; or

(b) 1. The source is subject only to the requirements of 401 KAR 53:010 and has uncontrolled emissions of less than twenty-five (25) tons per year and potential emissions of five (5) tons per year or less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010, or less than the significant net emissions rate pursuant to 401 KAR 51:017, whichever is less; and

2. The source has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061; and

3. The source is not subject to 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

(2) The following affected facilities and activities shall also be exempt from this administrative regulation, but they shall not be exempt from compliance with applicable standards in other administrative regulations in 401 KAR Chapters 50 through 63. The cabinet may require the owner or operator to demonstrate compliance with all applicable administrative regulations:

(a) An asbestos demolition or renovation operation which is subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042.

(b) An affected facility which is subject only to the provisions of 40 CFR Part 60, Subpart AAA.

(c) A vehicle used for the transport of passengers or freight.

(d) An affected facility subject only to the provisions of 401 KAR 63:005.

(e) A publicly owned road.

(f) The installation of air pollution control equipment where none is required. The owner or operator shall notify the cabinet in writing prior to installing the equipment.

(g) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement.

(h) An incinerator with a charging rate of less than 500 pounds per hour, unless it is subject to an administrative regulation in 401 KAR Chapters 50 through 63.

(i) A direct-fired source used for heating and ventilating.

(j) One (1) or more indirect heat exchangers, with a rated total heat input capacity of less than fifty (50) million BTU per hour which use natural gas or liquid petroleum gas as a main fuel and which use only distillate fuel oil as a standby fuel, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(k) An individual addition of a natural gas or liquid petroleum gas-fired boiler having an individual rated heat input capacity of less than fifty (50) million BTU per hour, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(l) An internal combustion engine, except as provided in 401 KAR 59:010.

(m) A feed grain mill having a hammermill with a rated capacity of ten (10) tons per hour or less, if the source does not include a grain dryer.

(n) A sawmill which produces only rough cut or dimensional lumber from logs and which has a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an administrative regulation in 401 KAR Chapters 59 or 61.

(3) The total emissions from the affected facilities and activities at a source, which are exempted from this administrative regulation pursuant to subsection (2)(h) through (n) of this section, shall not exceed five (5) tons per year. These emissions shall not be excluded from the permit application to the extent that the emissions are necessary to determine compliance with an applicable requirement or to determine if a requirement is applicable.]

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.

(a) Timely applications.

1. Existing major sources.

a. Sources proposing to accept permit limitations to become synthetic minor or conditional major sources shall file a complete application to obtain a permit. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5 of this administrative regulation. [One-third (1/3) of the existing major sources with the lowest score, as determined pursuant to Section 40 of this administrative regulation, shall file a complete application for a permit within twelve (12) months after the effective date of this administrative regulation. The cabinet shall notify these sources within fifteen (15) days after the effective date of this administrative regulation.]

b. All other existing major sources shall file a complete application for a permit within twelve (12) months after the classification date or within twelve (12) months after the source is required to obtain a federally enforceable permit pursuant to 40 CFR Part 70, whichever date is earlier. [date the U.S. EPA publishes a final rule approving the state permit program.]

[c.] The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(b) [(2)] of this administrative regulation.

2. Existing minor sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. An existing minor source shall file a complete application for a permit within twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit or within five (5) years after the classification date, whichever date is earlier. These applications shall be processed as federally enforceable permits pursuant to Section 5(1)(b) and (2)(b) [(2)] of this administrative regulation.

3. Existing minor sources required to have a state origin permit [subject to a state origin requirement]. An existing source that is [Sources which are] required to have a state origin permit shall file a

complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state origin [enforceable] permits pursuant to Section 5(1)(c) [(3)] of this administrative regulation[~~unless the source requests to have the permit processed as a federally enforceable permit~~].

4. An existing source that constructs, reconstructs an affected facility, alters, or modifies prior to the date the source receives a permit for the entire source, if a timely and complete application is filed, [is required to submit a complete application for the entire source] shall file an application using Form DEP 7007 to obtain a permit for the proposed change prior to commencing construction or modification. [A source constructing, reconstructing, or modifying after the effective date of this administrative regulation shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, or modification, except as provided in Section 6 of this administrative regulation.

a.] The applications for these sources [that are required by the U.S. EPA to obtain federally enforceable permits] shall be processed by the cabinet pursuant to Section 5(2) of this administrative regulation.

[b. The applications for sources that are required to obtain state origin permits shall be processed by the cabinet pursuant to Section 5(3) of this administrative regulation.]

5. A source constructing, reconstructing, altering or modifying after November 29, 1993, shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, alteration, or modification, except as provided in subparagraph 4 of this paragraph and Section 6 of this administrative regulation. The cabinet shall process these applications pursuant to Section 5(3) of this administrative regulation.

6. [6.] A source that is required to open an existing permit pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.

7. [6.] For permit renewal, an application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5(7) of this administrative regulation.

8. [7.] Applications for initial Phase II acid rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(b) Complete application.

1. To be deemed complete, an application shall provide all information required pursuant to subsection (3) of this section, except that applications for a permit revision shall supply the information only if it is related to the proposed change. This information shall be sufficient to evaluate the source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information pursuant to subsection (4) of this section.

2. The cabinet shall promptly provide notice to the applicant if the application is complete. Unless the cabinet mails a request for additional information or a notice of incompleteness to the applicant within sixty (60) days of receipt of an application, the application shall be deemed complete.

3. If, while processing an application that has been determined or deemed to be complete, the cabinet determines that additional information is necessary, it may require [request] the information in writing and set a reasonable deadline for response.

4. For permit revisions processed through minor permit revision procedures, pursuant to Section 6(2)(a) of this administrative regulation, a completeness determination shall not be required.

(c) Confidential information. A source that submits to the cabinet an application for a federally enforceable permit containing a claim of confidential information shall authorize the cabinet to submit the

information to the U.S. EPA, or shall submit a copy of the information directly to the U.S. EPA.

(2) Duty to supplement or correct application. An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it filed a complete application but prior to issuance of a draft permit. Failure to supplement or correct the application shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

(3) Standard application form and required information.

(a) Applications for required permits shall be made on Form DEP 7007 which is incorporated by reference in 401 KAR 50:034. The applicant may submit the application using computer software if the cabinet has provided for the electronic preparation of applications.

(b) An application shall include all information needed to determine the applicability of or to impose an applicable requirement and to evaluate the required fee amount pursuant to 401 KAR 50:038.

(c) The application and attachments shall include the company name and address or, if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products by Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017, including any associated with alternate scenarios identified by the source; and all of the elements specified in paragraphs (d) through (j) below:

(d) The application shall provide the following emissions-related information:

1. All emissions for which the source is major and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from an emissions unit, unless the units are exempted in Section 2[(2)] of this administrative regulation. The applicant shall also provide any additional information related to the emissions of air pollutants necessary to verify which requirements are applicable to the source, and other information necessary to collect permit fees owed under the fee schedule approved pursuant to 401 KAR 50:038.

a. For major sources, the applicable requirements for all emissions units shall be identified in the permit application.

b. For minor sources required to obtain a permit, all applicable requirements for the emissions units that cause the source to be subject to 40 CFR Part 70 [79] [this administrative regulation] shall be identified in the permit application. The cabinet may identify the applicable requirements for other minor sources prior to determining completeness of the application pursuant to subsection (1)(b) of this section.

c. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included [identified] in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(22) [(20)](b) of this administrative regulation.

2. Identification and description of all points of emissions described in subparagraph 1 of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.

3. Emissions rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method. These methods are incorporated by reference in 401 KAR 50:015 or in the applicable administrative regulations.

4. Fuels, fuel use, raw materials, production rates, and operating schedules, to the extent needed to determine or limit emissions.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants at the source.

7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042.

8. Calculations on which the information in subparagraphs 1 through 7 of this paragraph is based.

(e) The application shall identify the following air pollution control requirements, except as provided in paragraph (d)1b of this subsection:

1. Citation and description of all applicable requirements; and

2. Description of or reference to the applicable test method for determining compliance with each applicable requirement.

(f) The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.

(g) The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.

(h) The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)(j) of this administrative regulation.

(i) The application shall provide a compliance plan containing the following:

1. A description of the compliance status of the source for all applicable requirements as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.

b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.

2. A compliance schedule as follows:

a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

4. In Phase II of the acid rain program, the compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as provided in the acid rain program for the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.

(j) The application shall identify requirements for compliance certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (4) of this section;

2. A statement of methods used for determining compliance,

including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(4) Certification by responsible official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(28) of this administrative regulation, of truth, accuracy, and completeness. The certifications required in this administrative regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content. (1) Standard permit requirements. A permit issued pursuant to this administrative regulation shall include the following elements:

(a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:

1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;

2. A statement that the source shall comply with all applicable requirements;

3. If the state implementation plan (SIP) allows the determination of an alternative emission limit that is equivalent to the limit contained in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be permanent, quantifiable, accountable, enforceable, and based on replicable procedures. The cabinet shall not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise federally enforceable;

4. For major sources, all applicable requirements for emissions units;

5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and

6. Fugitive emissions from a source subject to 40 CFR part 70 shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(22) [(20)](b) of this administrative regulation.

7. The permit shall state that if an applicable requirement of 42 USC 7401 through 7671q is more stringent than an applicable requirement promulgated pursuant to 42 USC 7651 through 7651o, both provisions shall be placed in the permit and shall be federally enforceable.

(b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(7) of this administrative regulation.

(c) Monitoring and related recordkeeping and reporting requirements.

1. Each permit shall contain the following monitoring requirements:

a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements including those specified in 42 USC 7414(a)(3) or 7661c(b) (Sections 114(a)(3) or 504(b) of the Act);

b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring

sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3 of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this sentence; and

c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.

2. Each permit shall incorporate the following recordkeeping requirements, if applicable:

a. Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The dates analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

(vi) The operating conditions at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

3. Each permit shall incorporate the following reporting requirements, if applicable:

a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

b. Prompt reporting of deviations from permit requirements, including those attributed to upset conditions, the probable cause of the deviations, and corrective actions or preventive measures taken. The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.

(d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the acid rain program.

1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the acid rain program if the increases do not require a permit revision in another applicable requirement.

2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.

3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section 11 of this administrative regulation.

(e) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.

(f) Provisions stating the following:

1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and, for federally enforceable permits, is also a violation of 42 USC 7401 through 7671q (the Act) and is grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.

3. The permit may be revised, revoked, reopened, and reissued,

or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

4. The permit shall not convey property rights or exclusive privileges.

5. The permittee shall furnish to the cabinet information that the cabinet may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.

(g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 50:038.

(h) Emissions trading. A provision stating that a permit revision shall not be required in approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(i) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the cabinet. The terms and conditions:

1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario in which it is operating;

2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions in each operating scenario; and

3. Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements.

(j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of other applicable requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The cabinet shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades. The terms and conditions:

1. Shall include all terms required in subsections (1) and (3) of this section to determine compliance;

2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions that allow increases and decreases in emissions; and

3. Shall meet all applicable requirements and the requirements of this administrative regulation.

4. Shall require written notification to the cabinet and the U.S. EPA seven (7) days in advance of the proposed change. The source, cabinet and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(2) Federally enforceable requirements. The cabinet shall include a notification in a federally enforceable permit that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin requirements [permit-conditions], shall be enforceable by the U.S. EPA and citizens.

(3) Compliance requirements. All permits shall contain the following elements for compliance:

(a) Pursuant to subsection (1)(c) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

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(b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:

1. Enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;
2. Have access to and copy, at reasonable times, any records required by the permit:

- a. During normal office hours; and

- b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet; and

3. Inspect, at reasonable times, any facilities, equipment, (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to the following:

- a. During all hours of operation at the source;

- b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

- c. During an emergency.

4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to the following:

- a. During all hours of operation at the source;

- b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

- c. During an emergency.

(c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.

(d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and

2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the following:

- a. The identification of each term or condition of the permit that is the basis of the certification;

- b. The compliance status;

- c. Whether compliance was continuous or intermittent;

- d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and

- e. Other facts as the cabinet may require to determine the compliance status of the source;

4. A requirement that all compliance certifications be submitted to the U.S. EPA for sources required to obtain permits pursuant to 40 CFR Part 70, as well as to the cabinet; and

5. Additional requirements for monitoring and compliance certification, consistent with 42 USC 7414(a)(3) and 7504(b) (Sections 114(a)(3) and 504(b) of the Act) [if specified by the cabinet].

(f) A specific condition, for a constructing, reconstructing, altering, or modifying source, that the source shall not be allowed to commence operation until it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) of this administrative regulation, or the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

(a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the acid rain program.

(b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

(5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:

- (a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

- (b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and

- (c) Conditions that assure compliance with all other provisions of this administrative regulation.

(6) Permit shield.

(a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:

1. The applicable requirements are included and are specifically identified in the permit; or

2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(c) Nothing in this subsection or in a permit shall alter or affect the following:

1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the acid rain program; or

4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).

(7) Emergency provision.

(a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions in paragraph (b) of this subsection are met.

(b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An emergency occurred and the permittee can identify the cause of the emergency;

2. The permitted facility was at the time being properly operated;

3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

4. The permittee notified the cabinet as promptly as possible and submitted written notice of the emergency to the cabinet within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3b of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.

(c) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(d) This provision is in addition to any emergency or upset provision contained in an applicable requirement.

Section 5. Permit Issuance and Renewal. ~~[(4)]~~ A person shall not construct, reconstruct, alter, modify, or operate a source without a permit issued pursuant to this administrative regulation. A permit application submitted by an existing source which is deemed complete prior to November 29, 1993, ~~[the effective date of this administrative regulation]~~ may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.

(1) Processing applications from existing sources for permits covering the entire source.

(a) An existing major source proposing to accept permit limitations to become a synthetic minor or conditional major source. Applications received from sources submitted pursuant to Section 3(1)(a)1a of this administrative regulation shall be processed as follows:

1. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete pursuant to Section 3(1)(b) of this administrative regulation. The cabinet shall submit the draft permit to the U.S. EPA and provide notice of the draft permit:

a. For public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70; or

b. For public review pursuant to Section 7 if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

2. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public and affected state review requirements in Sections 7 and 8 of this administrative regulation is complete.

3. If a proposed permit is issued:

a. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

b. The proposed permit shall be the final permit, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

3. Final permit. The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.

4. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the

final permit is issued or denied.

5. An existing source shall follow the applicable procedures in subparagraphs 1 through 4 of this paragraph unless the existing permit limits are deemed federally enforceable by the U.S. EPA.

(b) All other existing sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. Applications received from existing sources pursuant to Section 3(1)(a)1b and 2 of this administrative regulation shall be processed as follows:

1. Draft permit. The cabinet shall issue or deny a draft permit:

a. During the first two (2) years after the classification date for sixty (60) percent of the initial round of applications from existing sources that emit at least eighty (80) percent of the emissions in the KyEIS. [For one-fifth (1/5) of the initial round of applications from existing major sources each year for five (5) years after the classification date.]

b. Within sixty (60) days after the application is deemed complete for minor sources, permit renewals, and for sources that become subject to a requirement to obtain a federally enforceable permit after the classification date.

2. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

3. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

4. Final permit. The cabinet shall issue or deny a final permit:

a. For one-fifth (1/5) of the initial round of applications from existing major sources each year for five (5) years after the classification date.

b. Within eighteen (18) months after the application is deemed complete, for minor sources and for sources becoming subject to a requirement to obtain a federally enforceable permit after the classification date.

c. Within six (6) months after receiving a complete application, for permit renewals.

5. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.

(c) Existing minor sources required to obtain a state origin permit. Applications received from sources submitted pursuant to Section 3(1)(a)3 shall be processed as follows:

1. The cabinet shall issue or deny a final permit within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

2. The source shall operate in compliance with the existing permit, authorization to operate, or order of the cabinet until a final permit is issued or denied.

(2) Processing applications from existing sources proposing to construct, reconstruct, alter, or modify an affected facility at the source, submitted pursuant to Section 3(1)(a)4 of this administrative regulation.

(a) Proposed changes that are subject to new source review for major sources or prevention of significant deterioration requirements.

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 prior to the date the source submits [is required to submit] an application for a federally enforceable permit for the entire source shall be processed as follows:

a. Preliminary determination. The cabinet shall make a preliminary determination within sixty (60) days after the application is deemed complete if the change should be approved, approved with conditions or disapproved. The cabinet shall submit the preliminary determina-

tion to the U.S. EPA and shall provide notice for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

b. Final determination. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA, public, and affected state review is completed. The cabinet shall notify the applicant in writing of the final determination. If a permit is issued, the cabinet shall make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

c. The source shall construct and operate in compliance with the permit issued in subparagraph 1b of this paragraph until a final permit for the entire source is issued or denied, except that the owner or operator shall not construct a change that is subject to 40 CFR 51.166 and 401 KAR 51:017 until thirty (30) days after receiving notice of the final determination.

d. The permit issued pursuant to subparagraph 1b of this paragraph shall be incorporated into the application or final permit for the entire source as an administrative amendment.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 after the source submits ~~[is required to submit]~~ an application for a federally enforceable permit for the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independently from the application for the proposed change.

b. The application for the proposed change shall be processed pursuant subparagraph 1 of this paragraph.

(b) Sources proposing changes that are not subject to new source review for major sources or prevention of significant deterioration requirements.

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility prior to the date the source submits ~~[is required to submit]~~ an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall issue or deny a state origin permit within sixty (60) days after the application is deemed complete. If the source proposes to except permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection (1)(a) of this section.

b. The source shall construct and operate in compliance with the permit issued pursuant to this subparagraph until a permit for the entire source is issued or denied.

c. A permit issued pursuant to this subparagraph shall be incorporated into the source's application for a ~~[federally-enforceable]~~ permit for the entire source.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility after the source submits ~~[is required to submit]~~ an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independent of the application for the proposed change.

b. Draft permit. The cabinet shall issue or deny a draft permit for the proposed change within sixty (60) days after the application for the change is deemed complete. The source shall construct in compliance with the draft permit. If the source proposes to accept permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection (1)(a) of this section.

c. The cabinet shall process a draft permit issued pursuant to subparagraph 2b of this paragraph and revise the permit for the entire source pursuant to the applicable provisions of Section 6 of this administrative regulation.

(3) Processing applications for the proposed construction of new sources, reconstruction of existing sources, and alteration or modifica-

tion of sources with a permit for the entire source. Applications received after November 29, 1993, pursuant to Section 3(1)(a)5 of this administrative regulation shall be processed as follows:

(a) Applications for the proposed construction of new sources or reconstruction of existing sources shall be processed as follows:

1. Constructing or reconstructing sources that are subject to new source review for major sources or prevention of significant deterioration requirements or who propose to accept permit limitations which cause the source to be a synthetic minor source. Applications received for the proposed construction or reconstruction of a source that is subject to, or would otherwise be subject to, 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 source shall be processed as follows:

a. Preliminary determination/draft permit. The cabinet shall make a preliminary determination if the source should be approved, approved with conditions or disapproved, and issue or deny a draft permit within sixty (60) days after the application is deemed complete.

b. Public and affected state review. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice for public review pursuant to Section 7 of this administrative regulation. The cabinet shall also provide the draft permit for affected state review pursuant to Section 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

c. Final determination/proposed permit. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA and public review is completed. The cabinet shall notify the applicant in writing of the final determination, issue or deny a proposed permit, and make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

d. If the source is a not required to obtain a permit pursuant to 40 CFR Part 70, the source shall construct and operate in compliance with the proposed permit. The proposed permit shall ~~[not]~~ be submitted to the U.S. EPA and shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The source shall construct and operate in compliance with the proposed permit until a final permit for the entire source is issued or denied, except that the owner or operator of a source that is subject to 40 CFR 51.166 and 401 KAR 51:017 shall not construct until thirty (30) days after receiving notice of the final determination.

(ii) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation; and

(iii) The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

2. Applications received for the proposed construction or reconstruction of all other sources required to have a permit pursuant to 40 CFR Part 70 or who propose to accept permit limitations which cause the source to be a conditional major source, shall be processed as follows:

a. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. The source shall construct and operate in compliance with the draft permit until a final permit is issued or denied.

b. Public, EPA, and affected state review.

(i) The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

(ii) The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice of the draft permit for public review pursuant to Section 7 of this administrative regulation, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

c. ~~[d.]~~ Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public, U.S. EPA, and affected state review required in Sections 7 and 8 of this

administrative regulation is completed.

d. [e.] If the source is not required to have a permit pursuant to 40 CFR Part 70, the proposed permit shall ~~not~~ be submitted to the U.S. EPA and the proposed permit shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(ii) Final permit. The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

3. Processing applications for the proposed construction, reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

(b) Applications for the proposed construction, reconstruction, alteration, or modification at a source after a permit for the entire source has been issued. The cabinet shall follow the applicable preconstruction review procedures of paragraph (a) of this subsection and the applicable permit revision procedures in Section 6 of this administrative regulation for sources who have been issued a permit for the entire source.

(2) Federally enforceable permits. The cabinet shall use the procedures provided in this subsection to issue a permit if the source is a major source, a minor source subject to a federally enforceable requirement and required by the U.S. EPA to obtain a federally enforceable permit, or a minor source that is subject to a federally enforceable requirement and requests that the cabinet issue a federally enforceable permit.

(a) Draft permit.

1. The cabinet shall deny the permit or issue a draft permit within sixty (60) days after the application is deemed complete. A minor source shall construct and operate in compliance with the draft permit until a final permit is issued or denied, except as provided in paragraph (c)4 of this subsection.

2. Public and affected state review. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

(b) Proposed permit.

1. The cabinet shall deny the permit or issue a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. A major source shall construct and operate in compliance with the proposed permit until the final permit is issued, except as provided in paragraphs (c)2 and 3 of this subsection.

2. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(c) Final permit.

1. The cabinet shall issue or deny a final permit within eighteen (18) months after receiving a complete application, except as provided in paragraphs 2 and 3 of this subsection.

2. A source subject to 401 KAR 51:017 shall construct and operate in compliance with a final permit, except as provided in subparagraph 3 of this paragraph. The cabinet shall issue or deny a final permit for these sources within twelve (12) months after receiving a complete application.

3. An existing source, including a source subject to 401 KAR 51:017, submitting an application pursuant to Section 3(1)(a)1 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until the final permit is issued or denied. The cabinet shall make a final determination on at least one third (1/3) of these applications during each twelve (12) month period beginning twelve (12) months after the approval date of the state's permit program by the U.S. EPA, so that a final action shall be taken on all applications within thirty six (36) months after program approval.

4. An existing source submitting an application pursuant to Section 3(1)(a)2 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet, until the final permit is issued or denied.

(d) The cabinet may extend the time periods specified in paragraphs (a) and (b) of this subsection with the consent of the applicant, however the time periods specified in paragraph (c) of this subsection shall not be exceeded.

(3) State origin permits. If the source is not subject to a federally enforceable requirement or the source is a minor source not required by the U.S. EPA to have a federally enforceable permit, the cabinet shall use the procedures provided in this subsection to issue a permit.

(a) The cabinet shall deny or issue a final permit within sixty (60) days after receiving a complete application. The cabinet may extend this time period with the consent of the applicant.

(b) An existing source submitting an application pursuant to Section 3(1)(a)2 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until a final permit is issued or denied.]

(4) Compliance demonstration. A source that is constructing, reconstructing, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Section 6 of this administrative regulation.

(a) A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

(b) If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.

(5) If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation until the cabinet makes a final determination to approve or deny the permit or permit revision. The sources authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information requested pursuant to Section 3(1)(b)3 of this administrative regulation.

(6) General requirements. For a source that is constructing, reconstructing, altering, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(7) Permit duration and renewal.

(a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years.

(b) Permit renewal.

1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a)6 of this administrative regulation.

2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.

3. If a timely and complete application for a permit renewal is submitted pursuant to ~~[consistent with]~~ Section 3 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

4. If the cabinet fails to act promptly on a federally enforceable permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings. (1) Administrative permit amendment procedures. An administrative permit amendment may be made by the cabinet pursuant to the following:

(a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.

(b) For federally enforceable permits the cabinet shall submit a copy of the revised permit to the U.S. EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.

(e) Administrative permit amendments for the acid rain portion of the permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651q (Title IV of the Act).

(2) Permit revisions. Except as provided in the acid rain program, the procedures for revising a permit shall be as follows:

(a) Minor permit revision procedures.

1. Minor permit revision procedures shall be used for permit revisions that:

a. Do not violate an applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of 42 USC 7401 through 7514a (Title I of the Act); and

(ii) An alternative emissions limit approved pursuant to 42 USC 7412(i)(5) (Section 112(i)(5) of the Act);

e. Are not modifications in a provision of 42 USC 7401 through 7514a (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and

f. Are not required to be processed as a significant permit revision.

2. Notwithstanding this paragraph and paragraph (b)1 of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.

3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and

d. For federally enforceable permits completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.

4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete application for a federally enforceable permit revision ~~[application]~~, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.

5. Timetable for issuance.

a. The cabinet shall not issue a final minor permit revision to a federally enforceable permit until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

(i) [a:] Issue the minor permit revision as proposed;

(ii) [b:] Deny the minor permit revision application;

(iii) [c:] Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or

(iv) [d:] Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.

b. For state-origin permits, the cabinet shall, within ninety (90) days of receipt of an application for a minor permit revision:

(i) Issue the minor permit revision as proposed;

(ii) Deny the minor permit revision application; or

(iii) Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures.

6. The source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5a through c of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and

b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(22) [(20)] of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

b. The source's suggested draft permit revision.

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.

d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

e. Certification, for federally enforceable permits, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

f. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3. U.S. EPA and affected state notification for federally enforceable permit revisions. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance for federally enforceable permits. Subsection (2)(a)5 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5. The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures. These procedures shall become effective after the classification date for sources that have filed an application for a permit pursuant to 40 CFR Part 70 or that have permits issued pursuant to 40 CFR Part 70 [this administrative regulation, and shall apply to state origin permits only if the revision causes the source to be required to have a federally enforceable permit]. Revisions that do not cause the source to have a federally enforceable permit shall be processed as minor permit revisions pursuant to paragraphs (a) and (b) of this subsection.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall ~~normally~~ be considered significant changes. The permittee may, however,

make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if:

1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or subject to 42 USC 7651 through 7651o (Title IV of the Act);

2. The changes do not result in emissions which exceed the emissions allowed by ~~allowable under~~ the permit, whether expressed as a rate of emissions or in terms of total emissions;

3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:

a. A brief description of the change within the permitted facility;

b. The date on which the change will occur;

c. Any change in emissions; and

d. Any permit term or condition that is no longer applicable as a result of the change.

4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.

5. The change shall be incorporated into the permit at renewal.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:

1. Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(7)(b)3 of this administrative regulation.

2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the acid rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit;

3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

(c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the

permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.

(4) Reopenings for cause by the U.S. EPA.

(a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.

(b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.

(c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.

(d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

(e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. These procedures shall apply only to federally enforceable permits and to state-origin permits that become federally enforceable as a result of the permit action to be taken.

(1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:

- (a) Issuance of a draft permit;
- (b) Intended denial of a permit application;
- (c) Issuance of a draft significant permit revision;
- (d) Issuance of a draft general permit;
- (e) Issuance of a permit renewal;
- (f) Scheduling of a public hearing pursuant to subsection (7) of this section.

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:

- (a) The applicant;
- (b) For sources subject to 401 KAR 51:017, officials and agencies having authority over the locations where the source will be located, as follows:

- 1. The administrator of the U.S. EPA through the appropriate regional office;
- 2. Local air pollution control agencies;
- 3. The chief executive of the city and county;
- 4. Any comprehensive regional land use planning agency; and
- 5. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;

(c) Affected states; and

(d) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit

proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.

(4) Public notice and the notice for those on the mailing list shall include the following minimum information:

(a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity involved in the permit action;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:

1. Copies of the draft permit;

2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and

3. All other materials available to the cabinet that are relevant to the permit decision;

(e) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

(f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.

(5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.

(6) Public comment.

(a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.

(b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.

(c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.

(7) Public hearings.

(a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. A request shall not require the extension of the comment period associated with the notice.

(b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be com-

bined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;
 2. Date, time, and place of the hearing; and
 3. A brief description of applicable rules and procedures for the hearing.
- (d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the comments and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.

(10) The following actions shall be exempt from this section:

- (a) Permit revisions qualifying for minor permit revision procedures, including group processing;
- (b) Administrative permit amendments[; and
- (c) Fast track permit revisions pursuant to the acid rain program].

Section 8. Notice to Affected States. The provisions of this section shall apply only to federally enforceable permits, and to state-origin permits that will become federally enforceable as a result of the action to be taken.

(1) The cabinet shall give notice of draft permits to affected states on or before the time that the cabinet provides the draft permit or draft permit revision notice to the public pursuant to Section 7 of this administrative regulation, unless Section 6(2)(a) or (b) requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, as part of the submittal of the proposed permit to the U.S. EPA (or for a minor permit revision, as soon as possible after the submittal), pursuant to Section 9 of this administrative regulation, shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet is not required to accept recommendations based on requirements that are not applicable to the proposed permit, or that are not based on requirements of this administrative regulation.

Section 9. U.S. EPA Review. (1) Prohibition on default issuance of permits.

(a) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and Section 8 of this administrative regulation; and

(b) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal if it has failed to take action on the

application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application, proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 3(1)(c) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit, for a federally enforceable permit, a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA will object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

(b) The cabinet shall not issue a federally-enforceable permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(c) The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(d) If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f, (Title V of the Act).

(e) If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 7 of this administrative regulation, unless the petitioner demonstrates that it was impracticable to raise the objections within the comment period, or unless the grounds for the objection arose after the comment period. If the U.S. EPA objects to the proposed permit as a result of a petition filed pursuant to this subsection, the cabinet shall not issue the permit until the U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to a U.S. EPA objection.

(f) If the cabinet has issued a permit prior to receipt of a U.S. EPA objection pursuant to this section, the U.S. EPA may modify, terminate, or revoke the permit pursuant to Sections 4 through 6 of this administrative regulation, and the cabinet shall thereafter issue a revised permit that satisfies the U.S. EPA objection. The source shall not be in violation of the requirement to have submitted a timely and complete application.

(4) Recordkeeping and sharing of information. The cabinet shall keep records of the information required in subsection (2) of this section for at least five (5) years. The cabinet shall submit, upon request from the U.S. EPA and in a form specified by the U.S. EPA, including computer-readable files to the extent practicable, information which may reasonably be required to determine if the permitting program complies with the requirements of 42 USC 7401 through 7661q, or 40 CFR Part 70. If the information has been submitted to the cabinet under a claim of confidentiality, the cabinet may require the source to submit this information to the U.S. EPA directly. If the cabinet is authorized by a source to submit information to the U.S. EPA under a claim of confidentiality, the cabinet shall submit the

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confidentiality claim to the U.S. EPA together with the information to which it applies.

Section 10. Emissions Statement Certification. The cabinet shall provide annually to each source subject to this administrative regulation a written copy of the KyEIS containing the most recent information appropriate to that source.

(1) ~~[(a)]~~ Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions. **Failure of the cabinet to notify a source pursuant to this subsection shall not relieve the source from the obligation to submit an emissions statement.**

(2) ~~[(b)]~~ The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.

(3) ~~[(c)]~~ Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the subject emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet. ~~[For Section 3(1)(a)1 of this administrative regulation, one-third (1/3) of the existing major sources with the lowest score shall be calculated using the following formula:~~

$$(1 + n)(1 + p/2) = \text{Score}$$

Where: "n" shall equal the number of emission units at the source as contained in the most recent version of the Kentucky Emissions Inventory System (KyEIS); and

"p" shall equal the sum of the number of pollutants, for which there is a national ambient air quality standard, emitted at each emission unit.]

Section 11. Materials Incorporated by Reference. (1) The following documents relating to affected sources subject to the acid rain program, are hereby incorporated by reference:

(a) 40 CFR Part 72, Permits Regulation, as published in the Federal Register, January 11, 1993 (58 FR 3650-3687), **and as amended at 58 FR 15647-15650 (March 23, 1993).**

(b) 40 CFR Part 73, Allowance System, as published in the Federal Register, January 11, 1993 (58 FR 3687-3701), **and as amended at 58 FR 15650-15716 (March 23, 1993).**

(c) 40 CFR Part 75, Continuous Emission Monitoring, as published in the Federal Register, January 11, 1993 (58 FR 3701-3757), **and as amended at 58 FR 15716-15717 (March 23, 1993).**

(d) **40 CFR Part 76, Acid Rain Nitrogen Oxides Emissions Reduction Program, as published in the Federal Register, March 22, 1994 (59 FR 13564-13580).**

(e) 40 CFR Part 77, Excess Emissions, as published in the Federal Register, January 11, 1993 (58 FR 3757-3760).

(f) ~~[(e)]~~ 40 CFR Part 78, Appeal Procedures for acid rain program, as published in the Federal Register, January 11, 1993 (58 FR 3760-3766).

(2) Copies of the documents incorporated by reference in subsection (1) of this section shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices of the Division for Air Quality:

(a) Division for Air Quality, 803 Schenkel Lane, ~~[346 St. Clair Mall,]~~ Frankfort, Kentucky, 40601, (502) 573 [664]-3382;

(b) Ashland Regional Office, P.O. Box 1507, 3700 Thirteenth ~~[13th]~~ Street, Ashland, Kentucky, 41105-1507, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, ~~[341 West Second Street,]~~ Owensboro, Kentucky, 42303,

~~[42304],~~ (502) 686-3304;

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: August 10, 1994

FILED WITH LRC: August 15, 1994 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amended After Hearing)

401 KAR 60:490. Standards of performance for the beverage can surface coating industry.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart WW, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:216, which provides for the control of emissions from the beverage can surface coating industry. 401 KAR 59:216 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for the beverage can surface coating industry are governed by 40 CFR Part 60, Subpart WW, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities in beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation that commences construction, reconstruction, or modification after November 26, 1980 ~~[1990]~~.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky,

41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:216, New beverage can coating operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: August 10, 1994

FILED WITH LRC: August 15, 1994 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(Amended After Hearing)

704 KAR 20:670. Kentucky teaching certificates.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.028, requires teacher education institutions be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the Kentucky certification to be issued for classroom teaching positions.

Section 1. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed an approved preparation program and assessments corresponding to the certificate identified in Section 2 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

(4) Each subsequent five (5) year renewal shall require completion of requirements outlined in 704 KAR 20:020 and 704 KAR 20:045.

Section 2. Grade Levels and Specializations. Preparation for all certificates shall ensure that teachers have the knowledge and skills for the instruction of all children including **intellectually gifted and talented** children and those with disabilities, are proficient in the use of technology and in the instruction for multiage and multiability grouping, and have knowledge and skills to implement the goals for the schools of the Commonwealth specified in KRS 158.6451. Teaching certificates shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(1) Interdisciplinary early childhood education, birth to primary;

(2) Elementary school: primary through grade five (5) **to include preparation in the [with one (1)] academic disciplines taught in the elementary school.** [emphasis to be selected from:

- (a) English and communications;
- (b) Fine arts and humanities;
- (c) Mathematics;
- (d) Science; or
- (e) Social and behavioral studies;

(3)(a) Middle school: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

- 1. English and communications;
- 2. Mathematics;
- 3. Science; or
- 4. Social studies;

(b) Candidates who choose to simultaneously prepare for teaching in the middle school and for teaching exceptional children as provided in subsection (7) of this section shall be required to complete only one (1) middle school teaching field.

(4) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

- (a) English;
- (b) Mathematics;
- (c) Social studies;
- (d) Biological science; or
- (e) Physical science;
- (5) Grades five (5) through twelve (12) with one (1) or more of the following specializations:

- (a) Agriculture;
- (b) Business and marketing education;
- (c) Home economics; or
- (d) Industrial technology;
- (6) All grade levels with one (1) or more of the following special-

ties:

- (a) Art;
- (b) A foreign language;
- (c) Health;
- (d) Physical education;
- (e) Music; or
- (f) School media librarian;
- (7) **Grades primary through twelve (12) for teaching exception-**

al children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of [at all levels, including preschool, with] the following disabilities:

- (a) Learning and behavior disorders;
- (b) Moderate and severe disabilities;
- (c) Hearing impaired;
- (d) Visually impaired; or
- (e) Communication disorders;
- (8) Endorsements to certificates identified in subsections (1)

through (7) of this section for the following:

- (a) Computer science;
- (b) English as second language;
- (c) Gifted education;
- (d) Driver education; or
- (e) Reading and writing;
- (9) Candidates who hold one (1) of the certificates listed above

may qualify for additional certification by successfully completing the corresponding assessments.

Section 3. New Teacher Standards for Preparation and Certification. The approved program of preparation for each certification shall be designed to prepare candidates to teach children, including children from culturally diverse backgrounds, and manage tasks identified in the following teacher performance standards:

(1) New Teacher Standard I, designs and plans instruction. The teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(2) New Teacher Standard II, creates and maintains learning climates. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(3) New Teacher Standard III, implements and manages instruc-

tion. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(4) New Teacher Standard IV, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(5) New Teacher Standard V, reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs;

(6) New Teacher Standard VI, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other community agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge; and

(7) New Teacher Standard VII, engages in professional development. The teacher evaluates his overall performance with respect to modeling and teaching Kentucky's learning goals established in KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan.

Section 4. (1) The provisions for the issuance of teaching certificates for each grade level and for each specialization identified in this administrative regulation shall become effective for all students admitted to the specific program of preparation beginning with the academic year following the establishment of the assessments for the particular certification by the Education Professional Standards Board.

(2) Candidates admitted prior to the effective date of admission to the new program shall complete the program by September 1 of the fourth year of the effective date of the new program.

(3) Candidates who fail to complete the program by the announced deadline date and do not apply for the certification by September 1 of the following academic year shall be required to qualify for the certification identified in this administrative regulation.

(4) The Education Professional Standards Board shall communicate to the Kentucky colleges and universities approved for such programs the effective date for admission to each new program identified in this administrative regulation and the date by which a candidate shall complete the former program. Colleges and universities shall take adequate steps to inform candidates in these programs regarding the deadline dates.

DANIEL GREENE, Chair

APPROVED BY AGENCY: August 11, 1994

FILED WITH LRC: August 11, 1994 at 11 a.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the August 10, 1994 Meeting

The August meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, August 10, 1994, at 10 a.m. in Room 149 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the July 1, 1994 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators John David Preston, Nick Kafoglis, Representatives Woody Allen, Jim Bruce and proposed member Representative Tommy Lee.

Guests: Londa L. Wolanin, Richard Casey, Paul P. Borden, KHEAA; David T. Buckingham, University of Kentucky - Division of Regulatory Services; Frank Leidermann, Treasury; Eddie Mattingly, Elwood Harris, Jennifer Hays, Mark H. McChesney, Revenue Cabinet; Dave Nicholas, Division of Occupations and Professions; Nancy Brinly, Board of Physical Therapy; James P. Daniels, Real Estate Appraisers Board; Tom Bennett, Pete Pfeiffer, Tom Young, Grant Winston, Department of Fish and Wildlife; Bill Fraser, Donna G. Dutton, Department of Agriculture; Doug Allgeier, R. Bruce Scott, J. R. Hamm, Jack A. Wilson, Martha L. Hall, Beverly Oliver, John Drake, Kay Harker, Bob G. Rogers, Kathy Hargraves, Bob Logan, Jim Villines, Natural Resources and Environmental Protection Cabinet; Brenda Priestley, Louis Smith, Department of Corrections; Bill Ralston, Erin Foley, Kembra Taylor, Labor Cabinet; Valerie Salven, Department of Workers' Claims; Sharron S. Burton, Department of Insurance; Bill Young, Judith Walden, Department of Housing, Buildings and Construction; Reginald Finger, Joyce Bothe, Linda Graves, Don Hogan, Cookie Whitehouse, Janice Kline, Stephen L. Bower, Ked Fitzpatrick, Larry A. McCarthy, Jeff Antle, Barbara Freeman, Eric Friedlander, Anita Moore, Cabinet for Human Resources; Anna Walker; Pauline Lewis; Billie J. Shepherd; Helen S. Lewis; William E. Murphy; Barbara Hadley Smith, Alliant Health System; David Sauer, Ashland Petroleum Company; John F. Nichols, Jr., Associated Industries of Kentucky; Dot Darby-Paschall, Baptist Healthcare System; Tony Sholar, John Brazel, Chamber of Commerce; Rhonda Willis, Kentucky Chiropractors Society; Anthony J. Pino, HRC-PRO; Allen Summers, Randy Lawrence, Tod Griffin, KFACA; Jerry Deaton, Kentucky League of Cities; Lyle D. Cobb, Kentucky Respiratory Care; Sharon Rich, Kentucky Society for Respiratory Care; Rhonda Windhorst, Respiratory Therapy; Ted Bradshaw, Kentucky Optometric Association; Jan Gould, Kentucky Retail Federation; Lisa Felther, Kentucky Speech-Language Pathologist; Rebecca S. Goss, Jim Carlross, Ed Garrett, Kentucky Speech-Language Hearing Association; Roy Strange, Tobacco Institute; Francis Kohrs, University of Kentucky; Carl W. Breeding, Westvaco.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman.

The Subcommittee determined that the following administrative regulations, as amended, complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:005. Lender participation. Paul Borden, Executive Director of the Kentucky Higher Education Assistance Authority, appeared before the Subcommittee. This administrative regulation was technically amended to correct the numbering of Section 4 to Section 3, and change the reference in Section 2(2) from Section 4 to Section 3.

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships. This administrative regulation was amended on page 5 line 17 to delete the word "have"

as unnecessary. Senator Preston questioned the effect of Section 2(3) concerning the granting of awards in a required ratio based on the ratio of initial applications by minority applicants to all applications. He asked if this was in effect, a quota system. Mr. Borden replied that yes, in effect, it was. Senator Preston replied that this raised real federal and Kentucky constitutional problems to him. Chairman Kerr questioned the source of the definition of "minority" found in Section 1. Mr. Borden told the Subcommittee that that definition was pulled from the definition used for minority in the cite based decision making council language. Chairman Kerr stated that he felt that definition was not applicable here and needed to be amended. After several attempts at amending the definition, Chairman Kerr asked the agency if it would be helpful to defer the administrative regulation until after lunch to give the agency time to come up with an acceptable definition. Mr. Borden agreed to this. On reconvening, Section 1(3), the definition of "minority" was amended to delete the words "under-represented in a local school district" and insert in lieu thereof "that constitutes eight percent or less of the population of the Commonwealth."

Treasury: State Treasury

20 KAR 1:010. Access to public records of State Treasury. Section 4(2) was amended to add the statutory standard for a custodian's refusal or denial of an open records requests.

Revenue Cabinet: Income Tax; General Administration

The following two administrative regulations were amended to: (1) correct statutory citations in the STATUTORY AUTHORITY and RELATES TO paragraphs; and (2) comply with the drafting and format requirements of KRS 13A.220(4) and 13A.222(4).

Issues relating to the incorporation by reference of forms and other matters were raised by these administrative regulations. The Subcommittee and Cabinet agreed that issues raised concerning Revenue Cabinet policies, forms, and procedures would be considered at the September 1994 meeting.

103 KAR 15:070. Electronic funds transfer.

Income Tax; Withholding

103 KAR 18:150. Employer's withholding reporting requirements. This administrative regulation was also amended to clearly state the: (1) date upon which 103 KAR 18:030, 103 KAR 18:040, and 103 KAR 18:141 will expire; and (2) payroll periods to which these administrative regulations apply.

In response to a question by Representative Bruce, Cabinet personnel stated: (1) reporting is now required twice monthly rather than monthly; (2) this change would affect less than one percent of employers; approximately 700 of 97,000 employers, who remit more than fifty percent of the total state withholding tax.

In response to a question by Representative Allen, Cabinet personnel stated that: (1) this change will result in an acceleration of withholding tax receipts to the state totalling approximately \$37 million, and enable the state to earn more interest on this collection; (2) the additional earnings are reflected in the current state budget; (3) it affects employers who contribute more than \$50,000 in withholdings annually; (4) these employers represent less than one percent of the total number of employers remitting the income withholding tax; (5) the amendment would change the number of filing from quarterly to annually for approximately 22,000 employers who remit less than \$400 withholding per quarter; and (6) prior to this amendment, employers remitting less than \$50 per quarter were permitted to file annually rather than quarterly.

In response to questions by Senator Preston and Representative Allen, Cabinet personnel stated that: (1) the \$37 million did not represent an increase in revenues, but was an acceleration of the

receipt of withholding tax revenues; (2) accelerated receipt would permit the state to earn more interest because it would receive the revenues earlier; (3) for the initial period of acceleration, an apparent increase in addition to interest would occur; (4) there does not appear to be an increase in the regulatory requirements on the taxpayer, because many will be able to file annually rather than quarterly and, whenever filed, the amount withheld belongs to the state upon withholding rather than filing; (5) 103 KAR 15:070, electronic funds transfer, will make remitting the withholding tax to the state easier.

In response to a question by Representative Allen, Cabinet personnel stated that the delays in tax refunds due last year were attributable to the state's fiscal problems, and that information received indicated that tax refunds due this year were not delayed.

Board of Speech-language Pathology and Audiology

201 KAR 17:010. Application for licensure. Section 1(3) was amended to add a cross-reference to the administrative regulation that establishes the application fee.

201 KAR 17:025. Requirements for an interim license as a speech-language pathology assistant. Section 1(3), 2(12) and (14) and Section 3(3) were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 17:027. Supervision requirements for a speech-language pathology assistant. Sections 6 and 8 to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 17:030. License fees. Sections 2 and 3(1) were amended to comply with the drafting requirements of KRS 13A.222(4).

Board of Physical Therapy

201 KAR 22:031. Therapist's licensing procedures. Section 4 was amended to comply with the drafting requirements of KRS 13A.222(4). Sections 1 and 6 were amended to comply with the format requirements of KRS 13A.220(4).

201 KAR 22:106. Assistant's certification procedure. This administrative regulation was amended as follows: to comply with: (1) Section 3(1) and (3) were amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Sections 5 and 6 were amended to comply with the format requirements of KRS 13A.220(4).

Economic Development Cabinet: Department of Agriculture: Tobacco Sales

302 KAR 78:010. Tobacco sales to persons under the age of eighteen (18). Section 2 of this administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements by deleting "should" and inserting "shall".

In response to a question by Representative Bruce, Subcommittee staff stated that KRS Chapter 13A.222(4) requires the use of "shall" or "shall not" to mandate a duty, obligation or prohibition.

In response to a question by Representative Allen, Department of Agriculture staff stated that: (1) this administrative regulation implements the provisions of Senate Bill 316, enacted by the 1994 General Assembly, which: (a) requires the Department to specify by administrative regulation the manner in which any resident wholesaler, nonresident wholesaler, or subjobber making tobacco products available to a retail establishment for sale or distribution shall report the name and address of the owner of the retail establishment to the Department; and (b) provides that within one year of its effective date, retailers shall: 1. place all vending machines in the line of sight of the cashier; and 2. notify their employees that they shall not allow persons under the age of 18 to purchase tobacco.

Rep. Allen asked what enforcement measures the Department would take against an employee who was busy and perhaps inadvertently permitted a minor to purchase tobacco products from a machine.

Ms. Dutton stated that: (1) although testimony on SB 316 included consideration of a standard which would establish whether an

employee "knowingly" permitted the sale to occur, this standard was not included in the final legislation; (2) penalty for such a sale would range from \$25.00 to \$100.00 per violation in a civil enforcement procedure; and (3) although the Department may be collaborate with local authorities if the Department engages in "sting operations", it has primary enforcement authority; and (4) an example of a "sting operation" is the Department directing a minor to attempt to make a purchase in a retail setting.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:065. KPDES permit conditions. This administrative regulation was amended to add the word "loans" after the word "grants".

Cabinet personnel stated that this amendment was necessary to comply with the new provisions of the Clean Water Act which provided for a loan program in addition to a grant program.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Louis Smith, representing the Cabinet, appeared before the Subcommittee. Helen Lewis, Pauline Lewis, Billie Shepherd and Anna Walker were present, concerned about the effect this proposed change in the administrative regulation would have on the housing assignment of Class A felons. Mr. Smith assured the Subcommittee and those present that the changes proposed in this administrative regulation do not affect classification concerns. He stated that this proposal is concerned with how classification will proceed, the process classification will take. Chairman Kerr noted to those present that the manual incorporated by reference was available to the public. It developed that there were sufficient copies of the manual at the meeting, and these four individuals were each given a copy. This administrative regulation and the following three administrative regulations were amended to comply with the drafting requirements of KRS Chapter 13A., specifically, grammatical usage.

501 KAR 6:070. Kentucky Correctional Institution for Women.

501 KAR 6:080. Department of Corrections manuals.

501 KAR 6:140. Bell County Forestry Camp.

501 KAR 6:150. Eastern Kentucky Correctional Complex. This administrative regulation was amended to include appropriate reference citations, both federal and state, and to delete a sentence that stated that an elevated temperature was not an emergency level II medical emergency.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:180. Recordkeeping; statistics. Kembra Taylor, Counsel for the Labor Cabinet, appeared before the Subcommittee. This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

Cabinet for Human Resources: Department for Health Services: Communicable Diseases

902 KAR 2:111. Repeal of 902 KAR 2:110 and 902 KAR 2:120. This administrative regulation was amended to add a cross-reference to the legislation repealing: (1) KRS 214.460, which authorized the Cabinet to promulgate 902 KAR 2:110; and (2) KRS 214.462 which authorized promulgation of 902 KAR 2:120.

Department for Medicaid Services

907 KAR 1:026 & E. Dental services. This administrative regulation was amended to: (1) comply with the drafting requirement of KRS 13A.222(4); and (2) correct technical errors in the incorporation by reference material.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment.

KHEAA Grant Program

11 KAR 5:001. Definitions pertaining to Chapter 5 of Title 11 of Kentucky administrative regulations.

11 KAR 5:034. CAP grand student eligibility.

11 KAR 5:130. Student application.

11 KAR 5:145. CAP grant award determination procedure.

11 KAR 5:160. Disbursement procedures.

Agricultural Experiment Station: Seed

12 KAR 1:071. Repeal of 12 KAR 1:015; 12 KAR 1:020; 12 KAR 1:030; 12 KAR 1:035; 12 KAR 1:040; 12 KAR 1:050 and 12 KAR 1:070.

12 KAR 1:111. Repeal of 12 KAR 1:110.

12 KAR 1:115 & E. Sampling, analyzing, testing, and tolerances.

12 KAR 1:120 & E. Noxious weed seed.

12 KAR 1:125 & E. Identification of seed not for sale.

12 KAR 1:130 & E. Labeling of seed mixtures.

12 KAR 1:135 & E. Tags available for purchase from the director.

12 KAR 1:140 & E. Permits, reports and fees for persons using own tags.

12 KAR 1:145 & E. Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners.

12 KAR 1:150 & E. Stop sale orders.

12 KAR 1:155 & E. Schedule of charges for samples submitted for testing.

12 KAR 1:160 & E. Seed not required to be labeled by variety name.

12 KAR 1:165 & E. Germination standards for vegetable seed.

12 KAR 1:170 & E. Germination standards for flower seed.

12 KAR 1:175 & E. Seed certification in Kentucky.

Tobacco

12 KAR 6:010 & E. Dealer registration.

12 KAR 6:015 & E. Permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky, reports of sales, and payment of inspection fees.

12 KAR 6:020 & E. Identification of tobacco seedlings or finished tobacco plants not for sale.

12 KAR 6:025 & E. Notice of violation and stop sale.

Board of Physical Therapy

201 KAR 22:135. Fees.

Kentucky Real Estate Appraisers Board

201 KAR 30:020. Licensed nonfederal real property appraiser.

201 KAR 30:140. Transitional licensed real property appraiser.

Department of Fish and Wildlife Resources: Hunting and Fishing

301 KAR 3:022. License, tag and permit fees. In response to Representative Allen's question relating to fee changes, Commissioner Tom Bennett stated that the: (1) commercial wildlife and fisheries pet and propagation permit fee are reduced; (2) fish transportation permit fee has been eliminated, while maintaining the requirement that a permit be acquired; (3) waterfowl stamp has been added; (4) pond stocking fee has increased; and (5) fishery pet permit fee has been eliminated.

Commissioner Bennett stated that the: (1) Department of Fish and Wildlife is concerned with the types of fish brought into and transported through Kentucky; and (2) permit functions are a screening mechanism to allow the Department to make a case-by-case determination of the types of fish it will allow in Kentucky waters. Rep. Allen asked if the Department has had problems with placement of exotic fish in Kentucky waters. The Department described a recent example of the Department's effort and expense to eradicate Gizzard

Shad from Elmer Davis Lake in order to prevent competition with native fish.

301 KAR 3:027. Hunting and fishing method exemptions for disabled persons. In response to Senator Preston's inquiry as to what measures are proposed to assist persons with disabilities, Commissioner Bennett stated that: (1) those who have physical disabilities to hunt and fish through conventional methods may apply for exemptions from such traditional methods; and (2) an example of an exemption is permitting a disabled person to drive closer to the lake or stream to fish, if vehicle access to the lake or stream is limited to a particular area.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

401 KAR 5:037. Groundwater protection plans. In response to a question from Representative Bruce, cabinet personnel stated that: (1) an attempt has been made to work with all interested parties; (2) there is a consensus that the proposed administrative regulation will work if properly implemented; and (3) the cabinet is committed to working with all parties to assure proper implementation.

Representative Bruce stated that: (1) he would not object to this administrative regulation but was concerned about proper implementation; (2) if complaints are received he will ask that the administrative regulation be placed on the agenda immediately for a possible finding of deficiency; (3) the cabinet needs to enforce this program in an even handed manner throughout the state; (4) some field inspectors are too heavy handed in the enforcement of administrative regulations; and (5) the cabinet needs to be aware that some businesses have a difficult time with certain field inspectors.

Senator Preston asked the Cabinet to explain the specific points of disagreement. Cabinet personnel responded that: (1) complaints relate to the implementation of the regulatory program; (2) questions arose about how the: (a) generic plan and the individual plan would be developed; and (b) plans would be reviewed and monitored.

In response to questions from Representative Allen, Cabinet personnel responded that: (1) the agricultural community was exempted from this administrative regulation by the 1994 General Assembly; (2) this administrative regulation: (a) only deals with commercial and industrial applications; and (b) is not mandated by the federal government; (3) the federal government has encouraged the states to take the initiative in protecting groundwater from contamination; and (5) this regulatory package is the product of many months of negotiation with 20 different interest groups.

The Subcommittee did not approve a motion by Representative Allen to find this administrative regulation deficient because it did not comply with legislative intent.

401 KAR 5:050. General provisions of KPDES permitting program.

401 KAR 5:055. Scope and applicability of the KPDES program.

401 KAR 5:057. KPDES pretreatment requirements.

401 KAR 5:060. KPDES application requirements.

401 KAR 5:070. Provisions of the KPDES permit.

401 KAR 5:075. Cabinet review procedures for KPDES permits.

401 KAR 5:080. Criteria and standards for the Kentucky pollutant discharge elimination system.

Cabinet personnel stated that: (1) these administrative regulations; (a) bring the state into compliance with federal standards for pollution discharge; (b) have not been revised since 1985; (c) are consistent with federal regulations; and (d) are a federal requirement for primacy in the state of Kentucky; (2) the state of Kentucky was granted primacy in the early 1980's; (3) EPA has advised the state that the program is deficient without the update of these administrative regulations; (4) most of the amendments to these administrative regulations are to comply with KRS Chapter 13A drafting requirements; and (5) there will be no significant additional impact on the

regulated community because these requirements are already being enforced.

In response to a question from Representative Allen, cabinet personnel stated that: (1) this program affected discharges from municipal, industrial, and privately owned package treatment plants treating domestic or industrial waste; (2) these administrative regulations do not apply to septic tank systems, but could apply to private homes if they have an individual treatment plant that discharges into a water of the Commonwealth; (3)(a) except for being restricted to a private home, a home treatment plant consists of an aeration unit that has settling and chlorination like a municipal unit; (b) some homes have utilized this home treatment plant if a lateral field or septic tank could not be used; (c) there are currently 261 home treatment plants in the state.

Department for Surface Mining Reclamation and Enforcement: General Provisions

405 KAR 7:080 & E. Small operator assistance.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:050 & E. Luther Luckett Correctional Complex & E.

501 KAR 6:090. Frankfort Career Development Center.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:308. Adoption of 29 CFR Part 1910.132-.140.

803 KAR 2:309. Adoption of 29 CFR Part 1910.141-.149.

803 KAR 2:317. Adoption of 29 CFR Part 1910.261-.275.

803 KAR 2:318. Adoption of 29 CFR Part 1910.301-.399.

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000-1910.1500.

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.59.

803 KAR 2:424. Adoption of 29 CFR Part 1926.1071-.1092.

803 KAR 2:500. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, maritime employment.

803 KAR 2:600. Adoption of 29 CFR Part 1928.

Workers' Compensation Board

803 KAR 25:035 & E. Computation of apportionment and attorney's fees.

Department of Insurance: General Provisions

806 KAR 1:011. Repeal of 806 KAR 1:010, 806 KAR 2:130, 806 KAR 3:180 and 806 KAR 14:040.

Liability Self-Insurance Groups

806 KAR 46:010. Financial statements for liability self-insurance groups.

Department of Housing, Buildings and Construction: Electrical Inspectors

815 KAR 35:015. Certification of electrical inspectors.

Cabinet for Human Resources: Department for Health Services: Communicable Diseases

902 KAR 2:020. Reportable diseases.

Department for Employment Services: Unemployment Insurance

903 KAR 5:270 & E. Maximum weekly benefit rates.

Department for Social Insurance: Public Assistance

904 KAR 2:017. Job opportunities and basic skills (JOBS) child care and supportive services.

Department for Medicaid Services

907 KAR 1:009 & E. Physicians' services.

907 KAR 1:023 & E. Review and approval of oxygen and selected therapies in nursing facilities. Cabinet for Human Resources personnel stated that: (1) this administrative regulation was promulgated to establish control over payment of Medicaid reimbursement for ancillary services in nursing facilities; (2) these services include oxygen services, physical, respiratory, speech and occupational therapies; (3) reimbursement at the ancillary level means that the

actual therapy, supervision and treatment, is being provided by a therapist or a registered therapist aid, rather than a nurse who provides the basic patient care or administered that specialist treatment; (4) these therapeutic services have been under scrutiny in recent months because of questions raised over the adequacy of Medicaid agency oversight over payment for these services; (5) the intent of this administrative regulation is to establish a review agency, the "Peer Review Organization" ("PRO") which: (a) PRO applies standard criteria on a case-by-case basis to each individual patient to determine the medical necessity for services or therapies; and (b) determines whether the therapeutic services meet program criteria to be billed and reimbursed as an ancillary service through Medicaid, i.e., services which would be paid at a higher Medicaid level.

Cabinet personnel stated that the criteria established in the administrative regulation provide for excellent individual determinations of whether a patient needs a particular type of therapy. They assured the Subcommittee that the PRO: (1) does not intend to make "heavy-handed" class action decisions; and (2) will utilize criteria that provide a degree of flexibility, while permitting the Cabinet to maintain some degree of control over the payment system.

Representative Bruce asked: (1) what procedure would be followed if he was faced with a serious oxygen problem; and (2) whether advanced approval would be required by the PRO before oxygen therapy was rendered.

Cabinet personnel stated that: (1) the Cabinet grandfathered all patients in nursing facilities prior to the implementation of the review; (2) on May 1st, the PRO began implementing the review process; (3) if a therapist and treatment team determines that a therapy meets the definition of one of the ancillary therapies and is required for a patient, the facility is obligated to immediately call the PRO and schedule a review; (4) the administrative regulation provides for: (a) a twenty-four (24) hour notification period within which to call for a review; and (b) if the service is subsequently approved, the PRO will cover payment of the service back to the initial date of the review.

Cabinet personnel stated that: (1) there is no intent to stop a patient from having oxygen; (2) the facility is obligated to provide that therapy if it is needed; (3) the only distinction this administrative regulation establishes is a PRO determination as to whether the service: (a) will be covered by Medicaid as a "routine" or "ancillary" service, and therefore appropriate for a higher level of Medicaid billing; or (b) is medically necessary.

In response to a question by Senator Kafoglis, Cabinet personnel stated that: (a) a decision to provide or withhold services would not be changed in any way; and (b) the facility providers would have to be prepared to justify the necessity for each service.

Representative Lee asked whether the Cabinet foresaw any problems with borderline cases, such as a person with a respiratory problem who is sent to the emergency room of a local hospital by the nursing facility. Cabinet personnel stated that: (1) some individual judgment calls may result in a referral to an emergency room; and (2) the Cabinet does not anticipate a significant number of "borderline cases" that would have any significant effects on emergency rooms.

Rep. Lee asked whether the Cabinet had any mechanism by which to track these types of referrals to emergency rooms. He expressed concern that the average stay in an emergency room for a patient, that would typically reside in a nursing home, is six or seven hours.

Cabinet personnel stated that the PRO criteria permits reviewers to favor the patients side of care.

Rep. Lee asked if Medicaid would still pay the nursing home facility, for oxygen therapy, up until the time the review determination found that the service was unnecessary.

Dr. Barbara Freeman, representing the Health Review Corporation, which is the Medicaid PRO, stated that: (1) this service would not be reimbursed; and (2) this administrative regulation provides that: (a) a PRO reviewer shall review cases, called in a timely within the first 48 hours of service initiation; (b) 48 hours is the official notifica-

tion period; and (c) a PRO reviewer shall render a determination that may deny the service back to the expiration of the initial 48 hours, if there is no medical necessity documented on the clinical record; and (d) this may result in a facility being at risk for Medicaid reimbursement for those services rendered after the initial 48 hours.

Rep. Lee asked if most PRO decisions, regarding patients who are borderline cases, are made within the initial 48 hour notification period, thereby not exposing a facility to incur the costs of those services which may subsequently be denied by the PRO.

Dr. Freeman stated that: (1) if a patient presents with borderline respiratory difficulty, and a facility is faced with a decision to treat or transfer the patient to an emergency room, this determination can be safely made within the initial 48 hour period; (2) a patient assessment is performed at the nursing facility at the time the patient is in need of immediate respiratory therapy; (3) the patient's clinical status should be demonstrated: (a) on the patient's chart; (b) in the nurses notes; or (c) in the doctors notes or orders; and (4) this documentation would reflect the instability of the patient and why the oxygen or therapy was initiated.

Dr. Freeman added that: (1) a borderline case would typically result in a transient situation that could be remedied immediately by providing oxygen to the patient, while monitoring the patient's improvement within the 48 hour period; (2) the nursing facility would not be at risk for denial of those services rendered within the first 48 hours service is initiated; (3) the PRO anticipates that normal patient care situations will be maintained at the nursing facility, as most decisions regarding the necessity for services are made within the first 48 hours; and (4) because of this 48 hour period in which facilities will not be at risk for incurring the costs of services rendered, the Cabinet does not expect to see an increase in the number of emergency room referrals.

Dr. Freeman advised the Subcommittee that: (1) the PRO is prepared to address emergency room referrals; and (2) since the recently filed health care administrative regulations require PRO review of emergency room care, this monitoring will provide a tracking methodology that would address Rep. Lee's concern.

Dr. Freeman stated that: (1) Kentucky's Medicaid program has utilized this type of authorization (PRO review) for long-term care admission and services since 1990; the same is true for acute care hospital stays are subject to PRO review; (2) the review has provided PRO familiarity, since July of 1990, with some of the patients who are in both long-term and acute care situations; (3) the PRO attempts to maintain a non-adversarial relationship with facilities and physicians as it relates to the review process; (4) facility nursing personnel are very familiar with the PRO physicians who provide the reviews; (5) criteria established in this administrative regulation present a number of reimbursement decisions that: (a) describe particular clinical situations where a "denial by the PRO would be considered"; (b) give nurses advance warning that attention should be paid to either over utilization or under utilization of care; and (5) the PRO advises that such situations should be quickly communicated to the PRO physicians who, in turn, have the responsibility to inquire with the patient's physician as to the current status of the patient.

Rhonda Windhorst, a Respiratory Care Practitioner, opposed the administrative regulation because: (1) it was implemented as an emergency administrative regulation, without the Cabinet collaboration with the Kentucky Society for Respiratory Care, the Kentucky Nurse's Association or the Kentucky Association for Health Care Facilities; (2) PRO reviewers are inconsistent; (3) in many facilities, nursing staff are untrained and understaffed to perform specialized therapies in lieu of respiratory therapist; (4) the PRO has not followed the guidelines and review deadlines established in the administrative regulation; (5) patient care is in jeopardy; and (6) the administrative regulation failed to adopt verbatim the clinical practice guidelines established by the American Association for Respiratory Care.

Ms. Windhorst added that because the Cabinet filed this administrative regulation as an emergency regulation, it resulted in: (1) a

poorly drafted regulation; and (2) inadequate time for: (a) the PRO to in-service their staff; and (b) facilities to prepare for the new regulatory requirements.

Ed Garrett, a member of the Third-Party Reimbursement Committee with the Kentucky Speech Language Hearing Association, and a rehab clinical consultant for the eight Beverly Enterprises in Kentucky stated that the Association is concerned that: (1) the indicators for denial in speech, language and cognition include any "peripheral vision or hearing deficit", because speech language pathologists have clinical means of addressing the needs of patients even in the presence of vision and hearing deficits; (2) the administrative regulation's criteria for dysphasia state that a condition for denial is the absence of a "confirmatory diagnostic evaluation"; because many rural facilities do not have access to such specific testing, or may need additional time to schedule such testing at facilities some distance away; (3) the standards established in the administrative regulation are too "diagnosis specific", and do not address changes in condition which therapist are required to treat under Medicare guidelines; (4) PRO reviewers are inconsistent in their reviews of patient cases, and while providing reasons for denial of oxygen services, do not always provide reasons for denials of ancillary services; (5) he was concerned about how the PRO will review Medicare co-payments under Medicaid; (6) while age is being used as a barrier to successful rehabilitation outcomes: (a) the average Speech Language Pathologist's caseload in residential facilities is over the age of 85; (b) residents from Beverly facilities have been successfully discharged to home who were over the age of 85; and (c) many cases were initially denied by the PRO; and (7) the Association supports administrative regulations that provide cost-efficient and effective services to Kentuckians.

Sharon Rich, a registered Respiratory Therapist, and President of the Kentucky Society for Respiratory Care, stated that the Society: (1) supported the administrative regulation with some reservations; (2) is pleased to see that the Cabinet used the American Association for Respiratory Care (ARC) Clinical Practice Guidelines in the development of the administrative regulation; (3) believes the Cabinet misstated some of the guidelines concerning specific therapies in its redraft of the ARC guidelines; (4) is concerned with the lack of continuity in the application of the guidelines by the reviewers, because this results in inconsistent care for Kentuckians who have respiratory problems; (5) is concerned that the administrative regulation was promulgated as an emergency regulation; (6) believes that if the guidelines are used uniformly throughout the state they will result in: (a) a decrease of fraud and abuse of respiratory care treatments; (b) more appropriate utilization of services with improved outcomes in efficiencies; and (c) less cost-shifting to more expensive acute care settings.

In response, Cabinet personnel stated that: (1) the concern Mr. Garrett raised about PRO review of Medicare co-payments under Medicaid, was addressed in the Statement of Consideration; (2) in order to ensure timeliness of review if Medicare denies coverage of services that could be covered by Medicaid; the Cabinet is willing to have the PRO review ancillary services; (3) failure by a facility to request a timely review would result in a denial by Medicaid, if Medicare refused to pay; and (4) the Medicaid Program will make all required Medicare co-payments for ancillary services without regard to Medicaid Program criteria for coverage of the ancillary services.

The Cabinet responded to the comment concerning denial of ancillary services by stating that: (1) the PRO is not denying coverage of these ancillary services, and therefore, no requirement exists to provide a written notice; (2) if a physician orders therapy for a patient, whether it meets the Medicaid guidelines or not, the PRO must assume that the facility will follow the orders and provide the care; (3) the cost of physician-ordered therapy simply: (a) is absorbed in the routine cost; and (b) the Medicaid program picks up its proportionate share of that cost based on the daily per diem rates; (4) the PRO is not denying the cost of the therapy; and, (5), the cost the therapy is

shifted over into the routine cost reimbursement area.

Dr. Freeman addressed the question of the age of the patient. He stated that: (1) the PRO does not give a clinical reason why the reimbursement should not be made at the ancillary level; (2) the reimbursement question is not that the patient does not need the particular care, but: (a) whether the service needs to be provided by a therapist, as opposed to a registered nurse; and (b) therefore reimbursed at the ancillary level; and (2) there was nothing in the regulatory criteria or in the training of the nurses that would indicate that age would disqualify or deny patients access to ancillary services.

Chairman Kerr asked whether the PRO closely monitor age-related characteristics in cases which have been denied for reimbursement at the ancillary level.

Senator Preston asked about inconsistencies in review of patient charts. Dr. Freeman stated that: (1) nurses apply criteria differently, because this is a clinical judgment based upon the documentation in the clinical record; (2) the criteria allows for patient individualization and nurses must make that judgment based on the clinical picture in a patient's chart; (3) physicians and nurses rarely see patients who present according to a step-by-step clinical presentation; and (4) the review is inherently subjective.

In response to a question by Senator Kafoglis, Dr. Freedman stated that the administrative regulation was promulgated as an emergency regulation because: (1) the Medicaid Program: (s) had experienced a number of shortfalls in its budget; (b) might be paying out more than 10 million dollars per year for these services, without appropriate documentation, than it needed to, which the Cabinet could recover as savings; and (c) established the review system to begin realizing those savings immediately through the promulgation of an emergency administrative regulation.

Senator Kafoglis stated that: (1) the General Assembly has been critical of excess utilization of the Medicaid program and taken measures for more accountability; and (2) if the criteria established by administrative regulation are unfair and applied inconsistently, there is a danger of denying care to people who need it.

The Cabinet stated that: (1) it shared Senator Kafoglis' concern that with an shared concern that spending be controlled without making decisions that are detrimental to patients; (2) the intent behind promulgation of this administrative regulation was to establish a reasonable set of criteria so that a medical judgment could determine whether the services were appropriate; and (3) the Medicaid program has oversight responsibility for the PRO, and will continue to monitor and improve implementation of the administrative regulation.

Rep. Lee asked how many: (1) reviewers are available for review of patient cases; and (2) requests the PRO anticipates its reviewers will process each month.

Dr. Freeman stated that: (1) forty-four full-time reviewers are available; (2) the PRO anticipated seeing approximately 2,000 service reviews a month; (3) in practice, in the first three months since the program's implementation, the PRO has reviewed 8,198 therapies, which exceeds the initial estimation by 30%; (4) the administrative regulation provides for an appeals mechanism or reconsideration of any PRO determination within a specified period of time; (5) if the PRO is making inappropriate decisions, there would be a measurable number of requests for reconsideration; (6) in the month of: (a) May, the PRO reviewed 2,083 services, of which 352 were denied, for a denial rate of 17% percent; (b) of the 17% of cases denied, only 3.7% of the 2,083 services reviewed requested reconsideration, with 14 of the 16 reconsiderations being overturned; (b) June, the PRO reviewed 3,389 therapies, of which 445 were denied, for a denial rate of 13.1%; (c) the reconsideration request rate for the June review was 1.1% of 3,389 therapies denied, with 15 of 35 reconsiderations being overturned.

In response to Representative Lee's question of how the reconsideration is conducted, Dr. Freeman stated that: (1) the initial reviewer did not conduct the reconsideration review; and (2) if the

review was of the denial of oxygen therapy, the second reviewer had to be a physician.

Chairman Kerr asked why the Cabinet did not follow the American Association for Respiratory Care (ARC) Clinical Practice Guidelines verbatim.

Dr. Freeman stated that the issue: (1) is really one of interpretation of the guidelines, rather than a failure to follow the guidelines; and (2) involves a specific type of breathing therapy (IPPB), that: (a) is not taken verbatim from the guidelines; (b) states that facility nurses should be aware that there is "potential for denial in this area in certain clinical situations"; and (c) is a notification that additional information is necessary, and is not a mandatory denial.

Chairman Kerr noted that although the Subcommittee: (1) is concerned with cost controls and accountability, its primary concern was that people receive the care that they need; and (2) if it appears the PRO system is not working, reconsider the administrative regulation.

Chairman Kerr and Representative Bruce asked that the Cabinet provide the Subcommittee with a report in 90 to 120 days on: (1) the effectiveness of the PRO system; and (2) any findings or recommendations.

907 KAR 1:030. Home health agency services.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the September meeting, unless otherwise noted, upon request by the Subcommittee and agreed to by the promulgating agency:

Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:270. SEEK funding formula.

Bureau of Learning Results Services: Learning Results Services

703 KAR 4:060. Academic expectations.

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

904 KAR 2:040. Procedures for determining initial and continuing eligibility.

The Subcommittee adjourned at 2:30 p.m. until September 7, 1994 at 10 a.m. in Room 149 of the Capitol Annex.

ADMINISTRATIVE REGISTER - 957

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 AGRICULTURE AND NATURAL RESOURCES Meeting of July 27, 1994

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, July 27, 1994, and submits the following report:

The committee determined that the following administrative regulations comply with KRS Chapter 13A;

Department of Fish and Wildlife Resources
301 KAR 1:085
301 KAR 2:111
301 KAR 3:025
Petroleum Storage Tank Environmental Assurance Fund
Commission
415 KAR 1:114 & E
Natural Resources and Environmental Protection Cabinet
401 KAR 8:040 401 KAR 8:400
401 KAR 8:060 401 KAR 8:420
401 KAR 8:070 401 KAR 8:440
401 KAR 8:100 401 KAR 8:500
401 KAR 8:250 401 KAR 8:600
401 KAR 8:300

Administrative regulations 401 KAR 8:010, 401 KAR 8:020, 401 KAR 8:150, and 401 KAR 8:200 were deferred until the next meeting.

The committee meeting adjourned July 27, 1994, at 1:15 p.m.

ADMINISTRATIVE REGISTER - C1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates C2

The Locator Index lists all regulations published in VOLUME 21 of the Administrative Register from July, 1994 through June, 1995. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other action which may affect the regulation. NOTE: The regulations listed under VOLUME 20 are those regulations that were originally published in the Volume 20 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1994 bound Volumes were published.

KRS Index C10

The KRS Index is a cross-reference of statutes to which regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication in VOLUME 21 of the Administrative Register.

Subject Index C18

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - C2

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VOLUME 20

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12 KAR 1:115E	3166	5-13-94
12 KAR 1:120E	3166	5-13-94
12 KAR 1:125E	3166	5-13-94
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12 KAR 6:015E	3174	5-13-94
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12 KAR 6:025E	3175	5-13-94
401 KAR 42:060E	2530	2-15-94
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401 KAR 42:080E	2531	2-15-94
415 KAR 1:114E	2962	4-8-94
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501 KAR 6:130E	2774	3-14-94
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600 KAR 1:101E	3175	4-15-94
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601 KAR 13:011E	3184	4-15-94
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815 KAR 45:025E	2964	4-14-94
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903 KAR 5:290E	2970	3-28-94
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903 KAR 5:391E	2971	3-28-94
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907 KAR 1:013E	281	7-7-93
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907 KAR 1:023E	3185	4-29-94
907 KAR 1:150E	3186	4-28-94
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907 KAR 1:625E	3187	4-25-94
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907 KAR 1:630E	3188	4-25-94
Repealed		6-6-94

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12 KAR 1:111	3322
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30 KAR 3:010	3339	(See Volume 21)
30 KAR 3:020	3340	(See Volume 21)
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Regulation Number	21 Ky.R Page No.	Effective Date	Regulation Number	21 Ky.R Page No.	Effective Date
103 KAR 43:020 Expired		7-15-94	301 KAR 2:040 Repealed	2921	6-2-94
103 KAR 43:030 Expired		7-15-94	301 KAR 2:041 Repealed	2921	6-2-94
103 KAR 43:060 Expired		7-15-94	301 KAR 2:048 Repealed	2922	6-2-94
103 KAR 43:090 Expired		7-15-94	301 KAR 2:049 Repealed	2922	6-2-94
103 KAR 43:200 Expired		7-15-94	301 KAR 2:080 Repealed	2926	6-2-94
103 KAR 44:040 Expired		7-15-94	301 KAR 2:081 Repealed	2926	6-2-94
201 KAR 1:045 Amended	3209	8-4-94	301 KAR 2:111 Amended	3225	7-27-94
201 KAR 1:050 Amended	3210	8-4-94	301 KAR 2:171 Amended	2992	7-7-94
201 KAR 1:063 Amended	3212	8-4-94	301 KAR 2:250 Repealed	3193	6-2-94
201 KAR 1:065 Amended	3213	8-4-94	301 KAR 2:251 As Amended	2928	6-2-94
201 KAR 1:080 Repealed	3344	8-4-94	301 KAR 3:025 Repealed	3193	6-2-94
201 KAR 1:081 Repealed	3343	(See Volume 21)	302 KAR 16:080 Amended	3347	7-27-94
201 KAR 1:090 Repealed	3344	8-4-94	302 KAR 20:220 Amended	2998	7-18-94
201 KAR 1:095 Repealed	3344	8-4-94	401 KAR 4:060 Amended	3002	6-29-94
201 KAR 1:096 Repealed	3344	8-4-94	401 KAR 5:001 Amended	3005	7-7-94
201 KAR 1:130 Amended	3214	8-4-94	401 KAR 5:037 Amended	3348	(See Volume 21)
201 KAR 15:010 Amended	2991	7-7-94	401 KAR 5:050 Amended	3128	(See Volume 21)
201 KAR 16:020 Amended	2991	7-7-94	401 KAR 5:055 Amended	3228	(See Volume 21)
201 KAR 19:035 Amended	2881	6-2-94	401 KAR 5:057 Amended	3231	(See Volume 21)
201 KAR 19:095 Amended	2884	6-2-94	401 KAR 5:060 Amended	3358	(See Volume 21)
201 KAR 19:100 Amended	2885	6-2-94	401 KAR 5:065 Amended	3246	(See Volume 21)
201 KAR 20:056 Amended	3216	8-4-94	401 KAR 5:070 Amended	3272	(See Volume 21)
201 KAR 20:057 Amended	3218	8-4-94	401 KAR 5:075 Amended	3282	(See Volume 21)
201 KAR 20:070 Amended	3219	8-4-94	401 KAR 5:080 Amended	3285	(See Volume 21)
201 KAR 20:240 Amended	3220	8-4-94	401 KAR 5:080 Amended	3290	(See Volume 21)
201 KAR 20:370 Amended	3221	8-4-94	401 KAR 8:010 Amended	3010	(See Volume 21)
201 KAR 23:015 Repealed	3344	8-4-94	401 KAR 8:020 Amended	3015	(See Volume 21)
201 KAR 28:040 Repealed	3128	6-9-94	401 KAR 8:040 Amended	3019	7-27-94
201 KAR 28:041 Repealed	3128	6-9-94	401 KAR 8:060 Amended	3021	7-27-94
201 KAR 28:080 Repealed	3128	6-9-94	401 KAR 8:070 Amended	3025	7-27-94
201 KAR 28:100 Repealed	3128	6-9-94	401 KAR 8:100 Amended	3037	(See Volume 21)
201 KAR 31:010 Amended	3222	8-4-94	401 KAR 8:150 Amended	3041	(See Volume 21)
201 KAR 31:030 Amended	3345	8-4-94	401 KAR 8:200 Amended	3045	(See Volume 21)
201 KAR 31:040 Amended	3346	8-4-94	401 KAR 8:250 Amended	3051	(See Volume 21)
301 KAR 1:085 Amended	3223	(See Volume 21)	401 KAR 8:300 Amended	3057	7-27-94

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401 KAR 8:400			702 KAR 7:065		
Amended	3071	7-27-94	Amended	2900	
401 KAR 8:420			Amended	3203	6-14-94
Amended	3076	7-27-94	703 KAR 4:060	3381	(See Volume 21)
401 KAR 8:440			703 KAR 4:090	2934	6-14-94
Amended	3085	7-27-94	703 KAR 4:100	3381	8-4-94
401 KAR 8:500			704 KAR 3:035		
Amended	3088	(See Volume 21)	Amended	3311	8-4-94
401 KAR 8:600			704 KAR 3:175		
Amended	3091	7-27-94	Expired		7-15-94
405 KAR 7:080			704 KAR 3:292		
Amended	3297		Amended	3313	8-4-94
415 KAR 1:114	3140	(See Volume 21)	704 KAR 3:380		
501 KAR 6:020			Expired		7-15-94
Amended	3093	7-7-94	704 KAR 3:400		
Amended	3301	8-4-94	Expired		7-15-94
501 KAR 6:030			704 KAR 3:401	3382	(See Volume 21)
Amended	2886	6-2-94	704 KAR 3:406	3384	(See Volume 21)
Amended	3095	7-7-94	704 KAR 15:080		
Amended	3303	8-4-94	Expired		7-15-94
501 KAR 6:040			704 KAR 20:245		
Amended	2888	6-2-94	Amended	2901	6-2-94
501 KAR 6:050			704 KAR 20:250		
Amended	3097	7-7-94	Amended	2902	6-2-94
501 KAR 6:060			704 KAR 20:380		
Amended	3098	7-7-94	Amended	2903	6-2-94
501 KAR 6:070			704 KAR 20:390		
Amended	3099	7-7-94	Amended	2904	6-2-94
501 KAR 6:120			704 KAR 20:400		
Amended	3101	7-7-94	Amended	2906	6-2-94
Amended	3305	8-4-94	704 KAR 20:410		
501 KAR 6:130			Amended	2907	6-2-94
Amended	2889	6-2-94	704 KAR 20:420		
501 KAR 6:140			Amended	2908	6-2-94
Amended	2890	6-2-94	705 KAR 3:140		
Amended	3103	7-7-94	Expired		7-15-94
600 KAR 1:101	3142	(See Volume 21)	705 KAR 3:141	3386	8-4-94
600 KAR 4:010			705 KAR 4:040		
Amended	2892		Expired		7-15-94
As Amended	3194	5-23-94	705 KAR 4:041	3388	8-4-94
600 KAR 4:020			705 KAR 4:050		
Amended	2896	5-23-94	Expired		7-15-94
601 KAR 1:005			705 KAR 4:051	3389	8-4-94
Amended	3307		705 KAR 4:080		
601 KAR 9:125			Expired		7-15-94
Expired		7-15-94	705 KAR 4:081	3390	8-4-94
601 KAR 9:160	2930	5-23-94	705 KAR 4:230		
601 KAR 11:080	2273		Expired		7-15-94
Resubmitted	2931	5-23-94	705 KAR 4:231	3391	(See Volume 21)
601 KAR 13:010			709 KAR 1:080		
Expired		4-15-94	Expired		7-15-94
601 KAR 13:011	3152	7-13-94	780 KAR 1:010		
603 KAR 4:035			Amended	3316	8-4-94
Amended	3104	(See Volume 21)	780 KAR 9:040		
603 KAR 5:050			Amended	2909	6-2-94
Amended	3310	7-13-94	803 KAR 1:085		
605 KAR 1:200	3153	6-9-94	Amended	3110	(See Volume 21)
701 KAR 5:055	3377	8-4-94	806 KAR 38:020		
702 KAR 3:230			Amended	2911	6-2-94
Repealed	2933	6-2-94	806 KAR 43:010		
702 KAR 3:265	2933	6-2-94	Amended	2912	6-2-94
702 KAR 3:270	3378	(See Volume 21)	815 KAR 20:010		
			Amended	3112	7-7-94

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815 KAR 20:070			903 KAR 5:391	2946	6-2-94
Amended	3117	7-7-94	904 KAR 2:050		
815 KAR 20:120			Amended	3317	8-4-94
Amended	3119	7-7-94	904 KAR 2:370		
815 KAR 45:025	3155	(See Volume 21)	Amended	2916	
900 KAR 1:070	2941		As Amended	3199	6-2-94
Amended	3203	(See Volume 21)	904 KAR 3:025		
900 KAR 1:080	2943	6-2-94	Amended	3319	8-4-94
902 KAR 100:020			904 KAR 3:041	3392	(See Volume 21)
Repealed	2791	4-11-94	905 KAR 7:230		
902 KAR 100:025			Expired		7-15-94
Repealed	2791	4-11-94	907 KAR 1:013		
903 KAR 5:290			Amended	2740	(See Volume 21)
Amended	2914	6-2-94	907 KAR 1:023	3395	
903 KAR 5:300			907 KAR 1:150		
Amended	2915		Amended	3125	6-9-94
As Amended	3198	6-2-94			

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32 KAR 1:100E	242	7-14-94
40 KAR 2:061E	242	7-14-94
40 KAR 2:070E	243	7-14-94
40 KAR 2:080E	243	7-14-94
40 KAR 2:090E	245	7-14-94
40 KAR 2:100E	246	7-14-94
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405 KAR 7:080E	5	5-27-94
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500 KAR 11:020E	874	8-15-94
501 KAR 6:050E	8	5-27-94
501 KAR 6:130E	875	7-18-94
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502 KAR 45:035E	268	7-11-94
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502 KAR 45:065E	269	7-11-94
601 KAR 15:010E	876	7-15-94
704 KAR 3:035E	9	5-24-94
Replaced		8-4-94

704 KAR 3:455E	883	7-15-94
803 KAR 25:035E	10	5-23-94
803 KAR 25:089E	886	7-15-94
803 KAR 25:091E	888	7-15-94
803 KAR 25:110E	890	7-15-94
902 KAR 8:040E	893	7-15-94
902 KAR 8:051E	269	7-15-94
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905 KAR 1:010E	905	7-15-94
905 KAR 1:330E	275	7-15-94
905 KAR 2:140E	280	7-15-94
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907 KAR 1:009E	11	6-6-94
907 KAR 1:022E	287	7-14-94
907 KAR 1:025E	291	7-14-94
907 KAR 1:026E	12	6-6-94
907 KAR 1:626E	13	6-6-94
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11 KAR 5:001			40 KAR 2:200	702	
Amended	52		40 KAR 2:210	703	
11 KAR 5:034			40 KAR 2:220	704	
Amended	54		40 KAR 2:230	705	
11 KAR 5:130			40 KAR 2:240	706	
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11 KAR 5:145			Amended	62	
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11 KAR 5:150			Amended	460	
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11 KAR 5:160			101 KAR 1:375		
Amended	57		Amended	462	
11 KAR 5:170			101 KAR 1:400		
Amended	448		Amended	463	
11 KAR 5:180			101 KAR 2:100		
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11 KAR 8:030			101 KAR 3:010		
Amended	59		Amended	470	
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12 KAR 1:071	143		As Amended	911	
12 KAR 4:080			103 KAR 18:120		
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12 KAR 4:090			103 KAR 18:150	144	
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12 KAR 4:100			200 KAR 5:021	709	
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12 KAR 4:110			201 KAR 1:081		
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12 KAR 4:130			201 KAR 9:005		
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12 KAR 4:140			201 KAR 9:041		
Amended	458		Amended	475	
12 KAR 4:160			201 KAR 9:084		
Amended	459		Amended	476	
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Amended	61		Amended	477	
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20 KAR 1:030	682		201 KAR 13:050		
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20 KAR 1:050	684		201 KAR 13:055	712	
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20 KAR 1:070	686		Amended	64	
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40 KAR 2:110	694		As Amended	916	
40 KAR 2:120	695		201 KAR 22:106		
40 KAR 2:130	695		Amended	67	
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40 KAR 2:150	699		201 KAR 22:135		
40 KAR 2:160	699		Amended	69	
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201 KAR 30:020			401 KAR 48:090		
Amended	70		Amended	503	
201 KAR 30:140			401 KAR 48:300		
Amended	71		Amended	506	
301 KAR 1:015			401 KAR 48:310		
Amended	487		Amended	515	
301 KAR 1:085			401 KAR 50:035		
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301 KAR 1:115			Amended	932	
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301 KAR 1:155			Amended	90	
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301 KAR 3:022			401 KAR 60:111	154	
Amended	71		401 KAR 60:150	156	
301 KAR 3:027	149		401 KAR 60:160	158	
301 KAR 4:200	716		401 KAR 60:170	159	
302 KAR 78:010	150		401 KAR 60:180	161	
400 KAR 1:001	718		401 KAR 60:190	162	
400 KAR 1:030			401 KAR 60:250	164	
Amended	491		401 KAR 60:260	165	
400 KAR 1:040			401 KAR 60:330	167	
Amended	495		401 KAR 60:340	168	
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Amended	25		401 KAR 60:420	176	
401 KAR 5:050			401 KAR 60:440	178	
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401 KAR 5:055			401 KAR 60:460	181	
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401 KAR 5:057			401 KAR 60:480	184	
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Amended	432		401 KAR 60:630	199	
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401 KAR 8:150			401 KAR 63:320	210	
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401 KAR 8:200			405 KAR 5:001	736	
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405 KAR 5:070	765		704 KAR 3:401		
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405 KAR 5:080	769		704 KAR 3:405		
405 KAR 5:085	770		Repealed	346	8-4-94
405 KAR 5:095	773		704 KAR 3:406		
405 KAR 5:096	777		As Amended	346	8-4-94
405 KAR 7:015			704 KAR 3:455	785	
Amended	523		704 KAR 20:670	212	
405 KAR 7:095			Amended	949	
Amended	524		705 KAR 4:231		
405 KAR 10:010			As Amended	348	8-4-94
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405 KAR 16:010			Amended	551	
Amended	528		781 KAR 1:030		
405 KAR 16:020			Amended	556	
Amended	530		781 KAR 1:040		
405 KAR 16:200			Amended	558	
Amended	535		781 KAR 1:050		
405 KAR 18:010			Amended	560	
Amended	539		781 KAR 1:060		
405 KAR 18:200			Amended	562	
Amended	541		782 KAR 1:020		
415 KAR 1:114			Amended	564	
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Amended	95		803 KAR 1:035		
501 KAR 6:040			Amended	568	
Amended	97		803 KAR 1:085		
501 KAR 6:050			As Amended	16	7-7-94
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501 KAR 6:070			803 KAR 2:180		
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501 KAR 6:080			As Amended	926	
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501 KAR 6:090			Amended	109	
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501 KAR 6:130			Amended	112	
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501 KAR 6:150			Amended	114	
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502 KAR 45:055			Amended	121	
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502 KAR 45:065			Amended	122	
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806 KAR 46:020	801		904 KAR 2:016 Amended	633	
815 KAR 7:100	802		904 KAR 2:017 Amended	131	
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