

# ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

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SATURDAY, OCTOBER 1, 1994



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## MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on October 5, 1994, at 10 a.m. in Room 131 of the Capitol Annex. See tentative agenda on pages 959-962 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

### ADMINISTRATIVE REGISTER OF KENTUCKY

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**ADMINISTRATIVE REGISTER - 959**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA - October 5, 1994, 10 a.m.  
Room 131, State Capitol Annex**

**EXECUTIVE BRANCH ETHICS COMMISSION**

**Ethics Commission**

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

**TREASURY**

**State Treasury**

20 KAR 1:020. Unclaimed property; definitions; location of owners. (Deferred from September)  
20 KAR 1:030. Unclaimed property; escheating. (Deferred from September)  
20 KAR 1:040. Unclaimed properties; claims. (Deferred from September)  
20 KAR 1:050. Unclaimed property; examination of holder records. (Deferred from September)  
20 KAR 1:060. Unclaimed property; safe deposit boxes or other safekeeping repositories. (Deferred from September)  
20 KAR 1:070. Unclaimed property; administrative hearing, appeals process. (Deferred from September)

**DEPARTMENT OF LAW**

**Division of Consumer Protection**

(Following 19 administrative regulations deferred from September)

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.

**GENERAL GOVERNMENT CABINET**

**Board of Medical Licensure**

201 KAR 9:005. Ethical conduct. (Repeals 201 KAR 9:015) (Deferred from September)

**Board of Ophthalmic Dispensers**

201 KAR 13:040. Licensing; application, examination; temporary permit; inactive status. (Amended After Hearing)  
201 KAR 13:050. Apprentices. (Deferred from September)  
201 KAR 13:055. Continuing education requirements. (Amended After Hearing)

**Board of Examiners of Social Work**

201 KAR 23:070. Specialty certification. (Not Amended After Hearing)

**Board of Respiratory Care**

201 KAR 29:070. Scope of practice. (Amended After Hearing) (Deferred from September)

**ECONOMIC DEVELOPMENT CABINET**

**Department of Agriculture**

**Weights and Measures; Motor Fuel**

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

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**

**Administration**

400 KAR 1:001. Definitions for 400 KAR Chapter 1. (Not Amended After Hearing)  
400 KAR 1:030. Administrative service of process, computation of time and filing of documents. (Amended After Hearing)  
400 KAR 1:040. Administrative discovery. (Amended After Hearing)

## ADMINISTRATIVE REGISTER - 960

400 KAR 1:090. Administrative hearings practice provisions. (Amended After Hearing)

### Department for Environmental Protection

#### Standards for Solid Waste Facilities

- 401 KAR 48:005. Definitions related to 401 KAR Chapter 48. (Amended After Hearing)
- 401 KAR 48:050. Siting requirements for solid waste landfills. (Not Amended After Hearing)
- 401 KAR 48:090. Operating requirements for containing landfills. (Amended After Hearing)
- 401 KAR 48:300. Surface and groundwater monitoring and corrective action. (Amended After Hearing)
- 401 KAR 48:310. Financial requirements and bonds. (Amended After Hearing)

#### Division of Air Quality

(NOTE: The following 41 administrative regulations were deferred from the September meeting)

#### New Source Performance Standards

- 401 KAR 60:100. Standards of performance for petroleum refineries. (Repeals 401 KAR 59:045)
- 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. (Repeals 401 KAR 59:070)
- 401 KAR 60:160. Standards of performance for primary copper smelters. (Repeals 401 KAR 59:110)
- 401 KAR 60:170. Standards of performance for primary zinc smelters. (Repeals 401 KAR 59:115)
- 401 KAR 60:180. Standards of performance for primary lead smelters. (Repeals 401 KAR 59:120)
- 401 KAR 60:190. Standards of performance for primary aluminum reduction plants. (Repeals 401 KAR 59:125)
- 401 KAR 60:250. Standards of performance for coal preparation plants. (Repeals 401 KAR 59:155)
- 401 KAR 60:260. Standards of performance for ferroalloy production facilities. (Repeals 401 KAR 59:160)
- 401 KAR 60:330. Standards of performance for stationary gas turbines. (Repeals 401 KAR 59:019)
- 401 KAR 60:340. Standards of performance for lime manufacturing plants. (Repeals 401 KAR 59:171)
- 401 KAR 60:370. Standards of performance for lead-acid battery manufacturing plants. (Repeals 401 KAR 59:270)
- 401 KAR 60:380. Standards of performance for metallic mineral processing plants. (Repeals 401 KAR 59:285)
- 401 KAR 60:390. Standards of performance for automobile and light-duty truck surface coating operations. (Repeals 401 KAR 59:181)
- 401 KAR 60:400. Standards of performance for phosphate rock plants. (Repeals 401 KAR 59:265)
- 401 KAR 60:420. Standards of performance for ammonium sulfate manufacture. (Repeals 401 KAR 59:255)
- 401 KAR 60:440. Standards of performance for pressure sensitive tape and label surface coating operations. (Repeals 401 KAR 59:300)
- 401 KAR 60:450. Standards of performance for industrial surface coating: large appliances. (Repeals 401 KAR 59:201)
- 401 KAR 60:460. Standards of performance for metal coil surface coating. (Repeals 401 KAR 59:221)
- 401 KAR 60:470. Standards of performance for asphalt processing and asphalt roofing manufacture. (Repeals 401 KAR 59:042)
- 401 KAR 60:480. Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry. (Repeals 401 KAR 59:305)
- 401 KAR 60:490. Standards of performance for the beverage can surface coating industry. (Repeals 401 KAR 59:216) (Amended After Hearing)
- 401 KAR 60:500. Standards of performance for bulk gasoline terminals. (Repeals 401 KAR 59:099)
- 401 KAR 60:540. Standards of performance for the rubber tire manufacturing industry. (Repeals 401 KAR 59:236)
- 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. (Repeals 401 KAR 59:211)
- 401 KAR 60:590. Standards of performance for equipment leaks of VOC in petroleum refineries. 401 KAR 59:049)
- 401 KAR 60:600. Standards of performance for synthetic fiber production facilities. (Repeals 401 KAR 59:280)
- 401 KAR 60:620. Standards of performance for petroleum dry cleaners. (Repeals 401 KAR 59:242)
- 401 KAR 60:630. Standards of performance for equipment leaks of VOC from on-shore natural gas processing plants. (Repeals 401 KAR 59:295)
- 401 KAR 60:640. Standards of performance for on-shore natural gas processing: SO<sub>2</sub> emissions.
- 401 KAR 60:680. Standards of performance for wool fiberglass insulation manufacturing plants. (Repeals 59:290)
- 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.

#### 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. National 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) (Not Amended After Hearing)
- 405 KAR 5:001. Definitions for 405 KAR Chapter 5. (Amended After Hearing)
- 405 KAR 5:015. General provisions. (Amended After Hearing)
- 405 KAR 5:021. Permit and license fees. (Not Amended After Hearing)
- 405 KAR 5:025. License requirements. (Amended After Hearing)
- 405 KAR 5:030. Permit requirements. (Amended After Hearing)
- 405 KAR 5:035. Signs and markers. (Amended After Hearing)

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- 405 KAR 5:038. Blasting. (Amended After Hearing)
- 405 KAR 5:040. Access roads and haul roads. (Amended After Hearing)
- 405 KAR 5:045. Protection of cultural and environmental resources. (Amended After Hearing)
- 405 KAR 5:050. Protection of the hydrologic balance. (Amended After Hearing)
- 405 KAR 5:055. Permanent and temporary impoundments. (Amended After Hearing)
- 405 KAR 5:060. Handling of materials. (Amended After Hearing)
- 405 KAR 5:065. Premining and postmining land use. (Amended After Hearing)
- 405 KAR 5:070. Revegetation. (Amended After Hearing)
- 405 KAR 5:075. Contemporaneous reclamation. (Not Amended After Hearing)
- 405 KAR 5:080. Reclamation bond. (Not Amended After Hearing)
- 405 KAR 5:085. Enforcement. (Amended After Hearing)
- 405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions. (Amended After Hearing)
- 405 KAR 5:096. Repeal of 405 KAR 5:010 and 405 KAR 5:020. (Not Amended After Hearing)

### **General Provisions**

- 405 KAR 7:015. Documents incorporated by reference. (Public Hearing in August)
- 405 KAR 7:095. Assessment of civil penalties. (Public Hearing in August)

### **Bond and Insurance Requirements**

- 405 KAR 10:010. General requirements for performance bond and liability insurance. (Public Hearing in August)

### **Performance Standards for Surface Mining Activities**

- 405 KAR 16:010. General provisions. (Public Hearing in August)
- 405 KAR 16:020. Contemporaneous reclamation. (Public Hearing in August)
- 405 KAR 16:200. Revegetation. (Public Hearing in August)

### **Performance Standards for Underground Mining Activities**

- 405 KAR 18:010. General provisions. (Public Hearing in August)
- 405 KAR 18:200. Revegetation. (Public Hearing in August)

## **JUSTICE CABINET**

### **Charitable Gaming**

- 500 KAR 11:010E. Temporary licensing.
- 500 KAR 11:020E. Conduct of hearings.

## **TRANSPORTATION CABINET** **Department of Vehicle Regulation**

### **Commissioned Employees**

- 601 KAR 15:010 & E. Disciplinary actions relating to employees commissioned pursuant to the provisions of KRS 281.770. (Amended After Hearing)

## **EDUCATION, ARTS AND HUMANITIES CABINET** **Department of Education** **Office of Learning Programs Development** **Office of District Support Services**

### **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. (Not Amended After Hearing) (Deferred from September)

## **WORKFORCE DEVELOPMENT CABINET** **Department of Vocational Rehabilitation**

### **Administration**

- 781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation service. (Amended After Hearing)

## **LABOR CABINET** **Department of Workers' Claims**

### **Workers' Compensation**

- 803 KAR 25:089E. Workers' compensation medical fee schedule for physicians. (Repeals 803 KAR 25:090)
- 803 KAR 25:091E. Workers' compensation hospital fee schedule.
- 803 KAR 25:101. Provision of Workers' Compensation Rehabilitation Services. (Repeals 803 KAR 25:100) (Not Amended After Hearing) (Deferred from September)
- 803 KAR 25:110E. Workers' compensation managed health care plans.

## **Department of Mines and Minerals**

### **Division of Mining**

- 805 KAR 5:060. Electrical mine safety standards. (Repeals 805 KAR 3:090) (Public Hearing in August)

## ADMINISTRATIVE REGISTER - 962

### CABINET FOR HUMAN RESOURCES Department for Health Services

#### Local Health Departments

902 KAR 8:060 & E. Classification and compensation plans for local health departments of Kentucky. (Not Amended After Hearing)

#### Sanitation

902 KAR 10:150. Domestic septage disposal site approval procedures. (Deferred from September)

902 KAR 10:160. Domestic septage disposal site operation. (Deferred from September)

902 KAR 10:170. Septic tank servicing. (Deferred from September)

#### Health Services and Facilities

902 KAR 20:016. Hospitals; operation and services. (Not Amended After Hearing) (Deferred from September)

### Department for Social Services

#### Children's Residential Services

905 KAR 7:240 & E. Kentucky Educational Collaborative for State Agency Children. (Amended After Hearing)

### Department for Medicaid Services

#### Medicaid Services

907 KAR 1:022 & E. Nursing facility and intermediate care facility for the mentally retarded services. (Amended After Hearing)

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

### OTHER BUSINESS

### CABINET FOR HUMAN RESOURCES Department for Social Services

#### Child Welfare

905 KAR 1:300. Standards for child caring facilities.

## 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

KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY

Date: September 6, 1994

Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 3:015, Borrower eligibility.**

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 7 of the administrative regulation governing the subject matter listed above, particularly, the process by which a borrower who has defaulted in repayment of an insured student loan may obtain reinstatement of eligibility for Title IV student financial assistance or rehabilitate the defaulted loan.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 28, 1994, at 3 p.m., at 1050 U.S. 127 South, Suite 102, 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 October 28, 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: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority 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 borrower eligibility for rehabilitation of a defaulted insured student loan or reinstatement of eligibility for Title IV student financial assistance is KRS 164.744(1), 164.748(1), (2), (4), (10) and (14).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 3:015, as follows: Section 7(1) of the above cited administrative regulation currently requires a borrower that has defaulted on an insured student loan to repay the loan in full; repay an amount necessary to bring the defaulted loan contractually current; or make six consecutive monthly payments equal to the greater of 25% of the borrower's disposable income, \$50, or the originally scheduled monthly payment in order to reinstatement eligibility; with exceptions made by the executive director in an amount that is reasonable and affordable. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide for reinstatement of eligibility and rehabilitation of the defaulted loan upon written request of the borrower. The administrative regulation will require that the borrower tender full, timely, voluntary payments, satisfactory to the Kentucky

Higher Education Assistance Authority, for three (to qualify for a consolidation loan), six (to qualify for reinstatement of eligibility for Title IV student financial assistance), and twelve (to qualify for rehabilitation of the defaulted insured student loan) months. The monthly payments that shall be considered satisfactory for this purpose shall be determined on a case by case basis as an amount that is both reasonable in light of the balance owed and affordable for the borrower based on information provided by the borrower indicating the borrower's and borrower's spouse's disposable income and necessary and reasonable living expenses. The required monthly payments shall be paid voluntarily by the borrower on a timely basis (not later than fifteen days after the scheduled due date). In the case of rehabilitation of the loan, the Kentucky Higher Education Assistance Authority will diligently seek a lender willing to repurchase the loan, and the Kentucky Higher Education Assistance Authority will consult with the lender in an assessment of the borrower's capability to make scheduled monthly payments after repurchase that will repay the loan over a ten year period. Section 10 of the administrative regulation currently specifies eligibility criteria to receive a Federal SLS loan. The Kentucky Higher Education Assistance Authority intends to delete this section due to elimination of the Federal SLS program, effective July 1, 1994 pursuant to PL 103-66. Subsection 11(1)(a) of the administrative regulation currently requires that the borrower have outstanding indebtedness of at least \$7,500 for insured student loans as a precondition to receiving a Federal Consolidation loan. The Kentucky Higher Education Assistance Authority intends to delete this subsection to conform to the elimination of that requirement pursuant to PL 103-208.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment is necessary to implement §428F of the Higher Education Act of 1965, as amended (20 USC §1078-6), now in effect, and to conform to 34 CFR §682.401(b)(4) and §682.405 published in Federal Register Vol. 59, Number 123, June 28, 1994 at page 33334 et seq, in anticipation of those regulations taking effect July 1, 1995. Other amendments to the administrative regulation are needed to conform to changes effecting the Federal SLS loan program and the Federal Consolidation Loan program pursuant to PL 103-66 and 103-208.

(d) The benefits expected from administrative regulation are: A borrower that has defaulted in repayment of an insured student loan may, through reinstatement, regain eligibility for additional Title IV student financial assistance, and, through rehabilitation, remove the loan from default status through repurchase by a willing lender. Through this process, the borrower may rehabilitate his credit record while ensuring recovery of the defaulted loan and reducing the amount of defaulted student loans held by the Kentucky Higher Education Assistance Authority. Additionally, the changes pertaining to the Federal SLS loan program and the Federal Consolidation loan program will conform the administrative regulation to recent amendments to federal legislation.

(e) The administrative regulation will be implemented as follows: The administrative regulation will require that a borrower request in writing reinstatement of eligibility or rehabilitation of a defaulted loan. The administrative regulation will delineate the types of information that must be submitted by the borrower and will be considered in the determination of reasonable and affordable payments, including, but not limited to evidence of all sources of income and expenses. The administrative regulation will establish the criteria for evaluating the required monthly payments and the practicality of rehabilitating a defaulted loan.

Date: September 6, 1994

Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 4:050**, Set-off of authority claims.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to the administrative regulation governing the subject matter listed above, particularly, the process by which the Kentucky Higher Education Assistance Authority submits claims against those borrowers who have defaulted in repayment of insured student loans to the Internal Revenue Service, the State Revenue Cabinet, and the State Treasury for offset of income tax refunds and other payments due to the borrowers for recovery of the defaulted loans.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 28, 1994, at 3 p.m., at 1050 U.S. 127 South, Suite 102, 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 October 28, 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: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority 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 offset of authority claims is KRS 164.744(1), 164.748(1), (2), (4), (10) and (14).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 4:050, as follows: Section 1 of the above cited administrative regulation currently requires that a notice be sent to a borrower that has defaulted on an insured student loan prior to submitting the claim for offset to the Revenue Cabinet or to the federal government. That section of the regulation will be amended to additionally provide for offset against payments due to the borrower from the state pursuant to KRS 44.030, and to provide for notification sixty (60) days prior to submission of the claim to the federal government and notice seven (7) days prior to submission of the claim to the State Treasury. Section 2(1) currently provides the borrower a right to dispute the claim of the Kentucky Higher Education Assistance Authority within thirty (30) days after notification. That section will be amended to conform the time period for disputing claims to the periods specified in Section 1. Subsections 2(2) and 2(3) will be amended to add a reference to submission of the claim to the State Treasury. Section 3(2) currently specifies a right to request a hearing by the authority in the case of an adverse initial determination relating to the federal income tax refund offset process. That section will be amended to provide for appeal of the initial adverse determination to the U.S. Department of Education in accordance with 34 CFR Part 30. Section 3 will further be amended

to provide for a procedure for requesting a hearing in the event of an initial adverse determination related to offset of a claim pursuant to KRS 44.030. Section 3 of the administrative regulation will be amended to specify that any hearing requested before the Kentucky Higher Education Assistance Authority will be conducted in accordance with the procedure set out in 11 KAR 4:030.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment is necessary to assure conformity of the notification and administrative review process used for offset of federal income tax refunds to the procedures specified in 34 CFR Part 30, and include the notification and administrative review process currently offered voluntarily by the Kentucky Higher Education Assistance Authority for offset of claims against payments due from the Treasury pursuant to KRS 44.030.

(d) The benefits expected from administrative regulation are: Under various statutory authority, both state and federal, the Kentucky Higher Education Assistance Authority may invoke administrative remedies of offset against a borrower that has defaulted in repayment of an insured student loan. The proposed amendments will assure due process safeguards for the borrower to dispute the claim of the Kentucky Higher Education Assistance Authority; assure conformity of the notification and administrative review process used for offset of federal income tax refunds to the procedures specified in 34 CFR Part 30, and include the notification and administrative review process currently offered voluntarily by the Kentucky Higher Education Assistance Authority for offset of claims against payments due from the State Treasury pursuant to KRS 44.030.

(e) The administrative regulation will be implemented as follows: The administrative regulation will require that a notice be sent to a borrower prior to submitting a defaulted insured student loan to another administrative body for offset. The administrative regulation will provide the borrower with an opportunity to dispute the claim and have an administrative review of the claim, and appeal an adverse decision to the U.S. Department of Education or to a hearing officer appointed by the authority as appropriate.

#### KENTUCKY DEPARTMENT OF THE TREASURY

Date: September 14, 1994

Kentucky Department of The Treasury

(1) **20 KAR 1:080** - The subject matter of the proposed administrative regulation is the linked deposits loan program.

(2) The Kentucky Department of the Treasury 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 October 31, 1994, at 10 a.m., Room 125, Capitol Annex, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or the administrative body or 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 October 31, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of the Treasury, Room 183, Capitol Annex, Frankfort, Kentucky 40601, 1-800-465-4722.

(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 the Treasury at the address listed above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the linked deposits program is SB 100, as passed by the 1994 Regular Session of the General Assembly, signed by the Governor and enacted into law on July 15, 1994.

(b) The administrative regulation that the Treasury intends to promulgate will not amend an existing administrative regulation. It will establish the requirements, procedures and criteria for the application and processing of linked deposit loans at banks and through the Kentucky Investment Commission by the Treasury.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation allows for the appropriate procedures and processes to enact and operate the Linked Deposits Program. It will clarify loan requirements from borrowers, banking procedures and interaction between appropriate governmental agencies.

(d) The benefits expected from the administrative regulation are: The Treasury, the Investment Commission, banks and the public will better understand how the Linked Deposits Program works and how to process applications and loans.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish the requirements and procedures for the processing of Linked Deposits Loans through the Investment Commission and at banks. First criteria will be established for loan applications. The current process used by the Investment Commission on repurchase agreements will be followed in this program. The Treasury will establish the in-house review procedure for loan applications, the required loan package information from banks, and monitoring procedures as stipulated in SB 100.

#### ATTORNEY GENERAL'S OFFICE

Date: September 15, 1994

Office of the Attorney General

(1) The subject matter of the proposed administrative regulation is Open records and open meetings decisions - 40 KAR 1:030.

(2) The Attorney General 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 October 31, 1994, 9 a.m., Room 327, The Capitol, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to October 31, 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: Amye B. Majors, Office of the Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General 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 open records and open meetings decisions is KRS 15.180.

(b) The administrative regulation that the Attorney General intends to promulgate will not amend an existing administrative regulation. It will establish procedures to be used by the parties in an open records or open meetings appeal to the Attorney General.

(c) The necessity and function of the proposed administrative regulation is as follows: No administrative regulation currently governs procedures to be followed by the parties to an open records or open meetings appeal. The administrative regulation will promote uniformity in the appeal process and expedite resolution of open records and open meetings disputes by the Attorney General.

(d) The benefits expected from the administrative regulation are: The administrative regulation will supplement the procedures for appeal set forth in KRS 61.880 and KRS 61.846 and eliminate confusion relative to the appeal process with the result of increasing efficiency in dispute resolution.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish the requirements for perfecting an open records or open meetings appeal to the Attorney General. It will delineate the procedures followed by the Attorney General upon receipt of an appeal, including notification to the public agency against whom the appeal is taken, consideration of additional documentation submitted by the parties, and the handling and disposal of copies of disputed records submitted to the Attorney General for inspection pursuant to KRS 61.880(2). The regulation will also define the limits of the Attorney General's role in open records and open meetings dispute resolution.

#### PERSONNEL BOARD

Date: September 9, 1994

Kentucky Personnel Board

(1) Regulation Number and Title: 101 KAR 1:325 - Probationary periods.

(2) The Kentucky Personnel 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 October 31, 1994, at 9 a.m., 5 Fountain Place, 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 October 31, 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: Mr. R. Hanson Williams, Executive Director, Kentucky Personnel Board, 28 Fountain Place, 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 Kentucky Personnel 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 probationary periods is KRS Chapter 13A and 18A.0751.

(b) The administrative regulation that the Kentucky Personnel Board intends to promulgate will amend 101 KAR 1:325, Probationary periods. Section 1(2) will be amended to establish 12 month initial probationary periods for police communications dispatchers within the Kentucky State Police and residential facility superintendents within the Cabinet for Human Resources, Department for Social Services.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Police communications dispatchers are the "first responders" to most requests for police service and are responsible for relaying and dispatching information and resources to operations and administrative personnel. They must be able to perform multitasks and must handle requests for service that vary in degree of severity. The duties of residential facility superintendents require a diversity of knowledge and experience, as well as independent judgment and decision making responsibility in the areas of child development, abnormal psychology, juvenile delinquency, counseling, staff management and development, fiscal matters and medical and health related issues. Decisions made at this level directly impact the health and safety of facility residents and employees. For these reasons, the Kentucky Personnel Board believes that a 12 month initial probationary period is needed in these classifications to permit a greater period of training and evaluation of new employees.

(d) The benefits expected from the proposed administrative regulation are: By increasing the initial probationary period to 12 months in these classifications, the Kentucky State Police and Cabinet for Human Resources would be able to adequately train and evaluate employees thus allowing the most qualified individuals to be placed into these classifications in order to provide a safer environment for all concerned.

(e) The administrative regulation will be implemented as follows: A 12 month probationary period will be required in order to obtain status in these classifications rather than 6 months as is the current requirement.

#### DEPARTMENT OF PERSONNEL

DATE: September 15, 1994

Department of Personnel

The subject matter of this amended regulation, is the manner in which state merit system employees are paid.

(1) **101 KAR 2:036** - Compensation plan and pay incentives systems.

(2) The Department of Personnel 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 October 31, 1994, at 10 a.m., at 200 Fair Oaks Lane, Suite 508, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 5 persons, or and 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 October 31, 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: 200 Fair Oaks Lane,

Suite 516, Frankfort, Kentucky 40601 Attn: Daniel F. Egbers, Managing Attorney.

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

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

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

(b) Persons who wish to file this request may obtain a request from the Department of Personnel 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 compensation plan and pay incentives systems is KRS 18A.110(7)(b).

(b) The administrative regulation that the Kentucky Department of Personnel intends to promulgate will amend 101 KAR 2:036 Compensation plan and pay incentives systems. It will provide additional flexibility for appointment salaries; clarify the language dealing with salary adjustments and provide agencies the flexibility to award an increase to on board employees who are not adjusted when a special entrance rate is established; and clarify eligibility for supplemental shift premiums.

(c) The necessity and function of the proposed administrative regulation is as follows: To provide needed flexibility for various agencies to manage their employees compensation within the framework of good management and budget constraints.

(d) The benefits expected from administrative regulation are: To provide agencies the ability to be competitive upon employment while assuring equitable consideration for on board employees.

DATE: September 15, 1994

Department of Personnel

The subject matter of this amended regulation, is the manner in which unclassified employees are paid.

(1) **101 KAR 3:045** - Unclassified: classification and compensation incentive systems.

(2) The Department of Personnel 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 October 31, 1994, at 10 a.m., at 200 Fair Oaks Lane, Suite 508, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 5 persons, or and 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 October 31, 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: 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Attn: Daniel F. Egbers, Managing Attorney.

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

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

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

(b) Persons who wish to file this request may obtain a request from the Department of Personnel 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 unclassified service: classification and compensation incentive systems is KRS 18A.155(1)(b).

(b) The administrative regulation that the Kentucky Department of Personnel intends to promulgate will amend 101 KAR 3:045 Unclassified service: classification and compensation incentive systems. It will provide agencies the authority to award salary increases to unclassified employees not otherwise covered who work at least twelve (12) months without a salary increase.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To provide needed ability for agencies to reward their nonpermanent employees' willingness to perform regular but intermittent service.

(d) The benefits expected from administrative regulation are: To provide fair treatment and improve morale for specified unclassified categories not otherwise eligible for salary improvements.

# REVENUE CABINET

Office of General Counsel

Division of Tax Policy and Research

Date: September 15, 1994  
Kentucky Revenue Cabinet  
Office of General Counsel  
Division of Tax Policy and Research

(1) **103 KAR 15:080** - The subject of the proposed administrative regulation is how to calculate and report the depreciation transition amount for Kentucky income tax purposes.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m. on October 31, 1994, at the Third Floor Training Room, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 31, 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: Jennifer C. Hays, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy and Research, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to calculating and reporting the depreciation transition amount for Kentucky income tax purposes is KRS 131.130(1) and 141.050(4).

(b) The administrative regulation that the Kentucky Revenue Cabinet intends to promulgate will not amend an existing administrative regulation. It will provide the following guidance for computing the transition amount:

1. Define and explain depreciation terms;
2. Explain what information is necessary to correctly compute the transition amount;
3. Provide examples for computing the transition amount; and
4. Explain how and when to report the transition amount for income tax purposes.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed administrative regulation will specify how to compute and report the transition amount and whether such amount is reflected as income or deduction.

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

1. Improved taxpayer education;
2. Fewer mistakes made by taxpayers on returns filed; and
3. Fewer adjustments made by the cabinet to returns filed.

(e) The administrative regulation will be implemented as follows: The first taxable year beginning after December 31, 1993, will comprise the transition amount. Taxpayers will be instructed upon which forms to report the transition amount.

Date: September 15, 1994  
Kentucky Revenue Cabinet  
Office of General Counsel  
Division of Tax Policy and Research

(1) **103 KAR 15:090** - The subject of the proposed administrative regulation is how to calculate and report the amortization deduction for intangible assets and the related calculation of gain or loss upon disposition of such assets.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m. on October 31, 1994, at the Third Floor Training Room, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 31, 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: Jennifer C. Hays, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy and Research, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation relating to computing and reporting the amortization deduction for intangible assets and the related calculation of gain or loss upon disposition of such assets is KRS 131.130(1) and 141.050(4).

(b) The administrative regulation that the Kentucky Revenue Cabinet intends to promulgate will not amend an existing administrative regulation. It will provide the following guidance for computing and reporting the amortization deduction:

1. Define and explain amortization terms;
2. Explain what information is necessary to correctly compute the amortization deduction for intangible assets and the gain or loss upon disposition of such assets;
3. Provide examples for correctly computing the amortization deduction and the gain or loss upon disposition; and
4. Explain how and when to report the amortization deduction and the gain or loss for income tax purposes.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed administrative regulation will specify how to compute and report the amortization deduction for intangible assets and the gain or loss upon disposition of such assets.

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

1. Improved taxpayer education;
2. Fewer mistakes made by taxpayers on returns filed; and
3. Fewer adjustments made by the cabinet to returns filed.

(e) The administrative regulation will be implemented as follows: Taxpayers will be instructed upon which forms to report the Kentucky amortization deduction as well as which taxable periods the deduction may be different between the Kentucky and federal income tax returns.

Date: September 15, 1994  
Kentucky Revenue Cabinet  
Office of General Counsel  
Division of Tax Policy and Research

(1) **103 KAR 16:180** - The subject of the proposed administrative regulation is clarifying terms related to the submission to the Kentucky Revenue Cabinet of federal revenue agent reports reflecting the results of an Internal Revenue Service audit.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m. on October 31, 1994, at the Third Floor Training Room, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 31, 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: Jennifer C. Hays, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy and Research, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the submission of federal revenue agent reports is KRS 131.130(1) and 141.050(4).

(b) The administrative regulation that the Kentucky Revenue Cabinet intends to promulgate will not amend an existing administrative regulation. It will provide the following guidance for submission of

federal revenue agent reports:

1. Define and explain terms related to the federal revenue agent reports;

2. Explain what steps are necessary to protect the taxpayer's rights to protest, appeal, and claims for refunds; and

3. Explain how and when to report to the Kentucky Revenue Cabinet the beginning and conclusion of federal audits.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed administrative regulation will specify how to report the final determination of any federal audit to the Kentucky Revenue Cabinet.

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

1. Improved taxpayer education;
2. Fewer mistakes made by taxpayers when submitting revenue agent reports; and
3. Fewer adjustments made by the cabinet on such submissions.

(e) The administrative regulation will be implemented as follows: Taxpayers will be instructed how and upon which forms to report the final determinations of federal audits.

## KENTUCKY RETIREMENT SYSTEMS

Date: August 18, 1994  
Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:120**. Participation of Agencies.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 participation in the Kentucky Employees Retirement System and County Employees Retirement System is KRS 61.645(9)(e), 78.510(3), 78.780.

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:120 as follows: Section 3 will be amended so that the requirement for the effective date of participation of agencies entering the systems under the alternate participation will be the same as for agencies entering under the standard plan. Section 4 will be amended to require that agencies

desiring to participate under the alternate plan shall obtain a completed actuarial study before adopting an effective date of participation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The original requirement that agencies participating under the alternate plan elect an effective date 90 days following the date of the adoption was intended to provide sufficient time to complete an actuarial study. Compliance with the 90-day requirement became unfeasible when several agencies requested actuarial studies to determine alternate participation costs at the same time.

(d) The benefits expected from the administrative regulation are: Agencies requesting alternate participation will have greater flexibility in determining the effective date of participation.

(e) The administrative regulation will be implemented as follows: A new agency desiring to participate under the alternate participation plan will be allowed to choose a participation date under the same requirements as an agency participating under the standard plan.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:140**. Contribution Reporting.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 reporting of member and employer contributions for the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:140. It will specify the treatment of special employer payments, including bonuses or severance pay for the purpose of assisting employees in the purchase of service credit for which they are eligible.

(c) The Necessity and Function of the proposed administrative regulation is as follows: For many smaller agencies, the purchase of service credit in the retirement system for all employees who worked for the agency prior to the agency's participation is prohibitive.

Interest has been expressed in assisting employees in purchases by payment of a bonus. It is necessary to specify treatment of these payments for purposes of the employee's creditable compensation because inclusion as regular salary will artificially inflate both the employee's final compensation for retirement purposes and the ultimate cost of the service.

(d) The benefits expected from the administrative regulation are: By treating a bonus differently from regular compensation, such as spreading it over a period of time for compensation purposes, it will not grossly inflate the employee's creditable compensation for retirement purposes. As a result, the cost of the service will remain affordable to the employee.

(e) The administrative regulation will be implemented as follows: Employer payments to employees for purposes of purchasing retirement service credit will be treated differently from salary, wages, tips and other payments for work performed for the employer, so that the payment will not significantly increase the employee's current rate of pay.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:150**. Installment Purchase Procedures.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 purchase of retirement service through payroll deductions by state and local government employees is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:150. It will set out procedures for administering the restrictions placed on additional contributions by Section 415 of the Internal Revenue Code and will amend the agreement form to reflect changes enacted by the 1994 General Assembly.

(c) The Necessity and Function of the proposed administrative regulation is as follows: In order to remain a qualified plan under the Internal Revenue Code, the Kentucky Retirement Systems must

comply with the contribution restrictions contained in that code.

(d) The benefits expected from the administrative regulation are: The contributions of the members will remain tax-deferred and the assets of the systems will remain tax-exempt.

(e) The administrative regulation will be implemented as follows: Installment purchase agreements for purchases in excess of the federal limits will not be allowed and payments made in anticipation of earnings that exceed the limitations due to lower actual earnings will be refunded to the employee.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:180**. Death Before Retirement Procedures.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 death before retirement procedures is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:180. It will establish a new form to be completed to assure that funds being paid to a minor beneficiary are sent to the proper individual and will specify the proof required for dependent children receiving checks who are over 18.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Additional documentation is needed to assure that payments to a minor child beneficiary are paid to the individual with legal authority to accept funds on the child's behalf.

(d) The benefits expected from the administrative regulation are: The Kentucky Retirement Systems will have necessary information to assure that funds are being paid to the appropriate individuals following an employee's death.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement System will issue the new form to the guardians of named minor children and obtain proof of guardianship before issuing benefits. The retirement system will require proof in the form of class schedules that a dependent child over age 18 is a full-

time student.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:190**. Qualified Domestic Relations Orders.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 qualified domestic relations orders is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:190. It will amend Section 7 and Section 8 regarding the treatment of benefits where the qualified domestic relations order is filed after the member's retirement and the alternate payee dies prior to the member's death by deleting language providing for a payment to the estate of the alternate payee.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Section 8 of 105 KAR 1:190 without amendment could potentially result in a higher dollar amount being paid to an alternate payee, who is not a member of the system, than would have been paid to the member had the QDRO not been filed. Since the alternate payee is not a member and since it is not in the best interest of the members of the systems to pay benefits to non-members in excess of what would have been paid to members, it is necessary to amend future QDROs to specify the treatment of payments after the alternate payee's death.

(d) The benefits expected from the administrative regulation are: The member shall have his payment restored upon the death of the alternate payee, but the alternate payee's rights to a payment while living will not be affected.

(e) The administrative regulation will be implemented as follows: Upon adoption of the change, sample qualified domestic relations orders will be amended to reflect the change and will be provided to parties involved in post-retirement divorce actions.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:200**. Retirement Procedures and Forms.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to procedures and forms for retirement from KERS, CERS and SPRS is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:200. It will amend forms for direct deposit of benefits and for designation of a beneficiary for the \$2,500 death benefit to require additional information to speed processing. It will specify the forms for under age 65 insurance and over age 65 insurance and clarify the effective date of coverage when the insurance form is received following the member's effective date of retirement.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Authorization for Direct Deposit form requires revision to make it easier to complete and to help clarify whether the form is for the individual's retirement account or for an account resulting from payments following death or divorce. The Death Benefit Designation form needs revision for ease in completion and requires the beneficiary's birth date to be added as required information in order to determine where the beneficiary is a minor child. The effective date of insurance coverage needs to be clearly set out so that retiring employees may know when coverage is effective and whether or not COBRA coverage will be necessary.

(d) The benefits expected from the administrative regulation are: The forms for retirement will be more understandable and easier to complete as well as easier to process. Retiring employees will be able to anticipate the effective date of insurance coverage based on when they submit their form.

(e) The administrative regulation will be implemented as follows: Retiring employees will be supplied with the amended forms and with informational materials explaining the effective date of insurance coverage.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:210**. Disability Procedures.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to procedures for obtaining disability benefits from KERS, CERS and SPRS is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:210. It will amend various sections to comply with changes enacted by the 1994 General Assembly regarding procedures for members in hazardous positions and second application following a previous denial. The job description forms required of the employee and employer will be amended to reflect the physical exertion standards enacted during the 1994 General Assembly. The procedures for payment of benefits to dependent children of hazardous members is set out.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The 1994 General Assembly approved significant changes to the statutes governing disability procedures. The procedures were amended to make application and review the same whether the member was in a regular position or a hazardous position, and the language providing for different processing for hazardous members must be eliminated from the regulation. Specific physical exertion requirements and residual function capacity standards were enacted and must be reflected on the job description forms to assist the medical reviewers. A new form is required where there are dependent children to assure that payments are made to the individual legally responsible for the financial welfare of the minor child.

(d) The benefits expected from the administrative regulation are: The administrative process is simplified for hazardous members. Greater detail regarding the physical exertion requirements of the employees job will be obtained for use in making the determination of the employee's job classification.

(e) The administrative regulation will be implemented as follows: The new forms will be submitted to the applicants and their employers. Informational materials will be amended to inform members of the

changes.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:215**. Administrative Hearing.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 conduct of administrative hearings is KRS 61.645(16).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:215, relating to administrative hearings related to the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System. It will authorize the hearing officer to hold a pre-hearing conference and allow submission of new evidence. The language in Section 8 regarding recording of the proceedings will be deleted because the 1994 General Assembly amended KRS 61.645 to specify recording of administrative hearings.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The changes are needed to bring the hearing procedure into conformity with other state administrative hearing procedures.

(d) The benefits expected from the administrative regulation are: The hearing procedure will conform with other administrative hearing procedures.

(e) The administrative regulation will be implemented as follows: Affected persons may be granted pre-hearing conferences or allowed to submit new evidence prior to the administrative hearing.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:230**. Reemployment after Retirement.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 reemployment by retired KERS, CERS and SPRS members is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:230. It will amend the Reemployment After Retirement form to incorporate changes made by the 1994 General Assembly.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The 1994 General Assembly amended KRS 61.637 to conform with current Social Security Administration provisions regarding member reimbursements when the salary exceeds the maximum allowable for a retired reemployed individual.

(d) The benefits expected from the administrative regulation are: The form will indicate the lower reimbursement requirement for reemployed retirees over age 65.

(e) The administrative regulation will be implemented as follows: Retirees who are reemployed as provided in KRS 61.637 will be provided with the new forms.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:240**. Death after Retirement Procedures

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to procedures governing deaths of retired members of KERS, CERS and SPRS is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:240. It will conform with documentation requirements of 105 KAR 1:180 governing the deaths of a participating employees. A new form will be required of the guardian to assure that the individual is legally authorized to receive funds on behalf of a minor child who is a beneficiary.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Additional documentation is needed to assure that payments to a minor child beneficiary are paid to the individual with legal authority to accept funds on the child's behalf.

(d) The benefits expected from the administrative regulation are: The Kentucky Retirement Systems will have sufficient information to assure that funds designated for a minor child are being paid to the legal guardian of the child.

(e) The administrative regulation will be implemented as follows: The new form will be supplied to guardians where the beneficiary of the member's benefit is a minor child.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:260. Purchase of Out-of-State Service Credit.**

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 purchase of credit for out-of-state service in KERS or CERS is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:260. It will amend the Certification of Out-of-State Service to conform with changes made by the 1994 General Assembly. Section 5 will be amended to reflect the restriction on contributions contained in Section 415 of the Internal Revenue Code.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The form required for certifying out-of-state service requires a minor change to reflect the amendment to KRS 61.552(17) allowing purchase of public service in nonhazardous positions which was covered by a locally-administered retirement plan. Section 415 of the Internal Revenue Code sets a limit on the amount that an employee may contribute beyond the mandatory contribution. If the Kentucky Retirement Systems does not comply with the restriction, status as a qualified plan could be lost.

(d) The benefits expected from the administrative regulation are: The retirement system will be in compliance with federal laws.

(e) The administrative regulation will be implemented as follows: Employees seeking to purchase out-of-state service will be supplied with the revised form. Employees will not be allowed to purchase credit for out of state service that exceeds the federal maximum allowed in any fiscal year.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) Regulation Number and Title: **105 KAR 1:270. Special Federal Income Tax Withholding.**

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative

tive regulation relating to federal income tax withholding from KERS, CERS and SPRS retirement benefits is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:270. It will amend the forms required for withholding or rolling over funds to clarify that when the individual requests to receive all funds, 20% will be withheld for federal income tax purposes and to request the social security number of both the individual completing the form and the member from whose account the benefit is payable.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The additional social security number is needed where the request relates to a payment to a beneficiary following the death of the member.

(d) The benefits expected from the administrative regulation are: The additional social security number will speed the task of identifying the individual and will help speed processing of payments. The new language will assist applicants in understanding that requesting full payment will result in withholding of 20% federal income tax.

(e) The administrative regulation will be implemented as follows: The new forms will be supplied to those individuals whose payments are subject to the 20% federal income tax withholding rule.

Date: August 18, 1994

Administrative Body: Kentucky Retirement Systems

(1) **105 KAR 1:280** - The subject matter of the proposed administrative regulation is the restriction of service purchases in KERS, CERS and SPRS to comply with federal restrictions in Section 415 of the Internal Revenue Code.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for October 28, 1994, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, 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 October 28, 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: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601-6124.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 service purchase procedures is KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will not amend an existing regulation. It will set out procedures for handling service purchases that exceed the limits on additional contributions contained in Section 415 of the Internal Revenue Code and for refunding member payments in

excess of the limitations.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems must comply with the federal requirements or risk losing tax exempt status.

(d) The benefits expected from the administrative regulation are: The Kentucky Retirement Systems will be in compliance with federal law.

(e) The administrative regulation will be implemented as follows: Service purchases will be audited each year to assure compliance and funds in excess of the limits will be refunded to the member or designated beneficiary.

# FINANCE AND ADMINISTRATION CABINET Office of Financial Management and Economic Analysis

Date: September 15, 1994

Office of Financial Management and Economic Analysis  
Finance and Administration Cabinet

(1) Procedures for prequalification of underwriters and bond counsel for state bond issues - **200 KAR 21:010**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 28, 1994, at 9 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 28, 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: Mary Lassiter, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation establishing a procedure for resolving ties between offerors' rankings which arise during the selection process is KRS 45A.879.

(b) The administrative regulation the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate, will not amend an existing administrative regulation. The proposed administrative regulation will establish a procedure for resolving ties between offerors' rankings during the selection process established under KRS 45A.853 and 45A.857.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 45A.853 and 45A.857 establish a selection process for bond counsel and underwriter firms to provide



services for state bond issuing agencies. This proposed administrative regulation will establish a process for resolving tie rankings between offerors for underwriters and bond counsel services.

(d) The benefits expected from the administrative regulation are: The proposed administrative regulation will provide notice to underwriters and bond counsel of the systematic manner in which tie rankings will be resolved by the selection committee(s).

(e) This administrative regulation will be implemented by sending notice of the same to all underwriter and bond counsel firms who have expressed an interest in providing services to the Commonwealth.

Date: September 15, 1994

Finance and Administration Cabinet

Office of Financial Management and Economic Analysis

(1) Evaluation factors for bond counsel, managing underwriter(s) and financial advisor(s) - **200 KAR 21:020**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 28, 1994, at 9 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 28, 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: Mary Lassiter, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation establishing evaluation factors for bond counsel, underwriter(s) and financial advisors is KRS 45A.853 and 45A.879.

(b) The administrative regulation the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate, will not amend an existing administrative regulation. This administrative regulation will establish some of the evaluation factors which may be included in requests for proposals for bond counsel, underwriters and financial advisors.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 45A.853 provides that the Office of Financial Management and Economic Analysis shall consult with a bond issuing agency to arrive at a request for proposals for bond counsel and underwriter for a bond issuance. KRS 45A.853 further provides that the evaluation factors and the weight of those factors shall be included in the request for proposals. The proposed administrative regulation will establish some of the evaluation factors which

may be included in request for proposals for bond counsel, managing underwriters and financial advisors.

(d) The benefits expected from the administrative regulation are: This administrative regulation will provide notice to underwriter and bond counsel firms of some of the evaluation factors which may be included in a request for proposals for bond counsel and underwriting services for state bond issues.

(e) This administrative regulation will be implemented by sending notice of the same to all underwriters and bond counsel firms who have expressed an interest in providing services to the Commonwealth.

Date: September 15, 1994

Finance and Administration Cabinet

Office of Financial Management and Economic Analysis

(1) Preference for Kentucky bond counsel firms for state bond issues - **200 KAR 21:030**

(2) The Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate a 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 October 28, 1994, at 9 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 28, 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: Mary Lassiter, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation establishing a procedure for giving preference to Kentucky bond counsel firms for state bond issues, is KRS 45A.873 and 45A.879.

(b) The administrative regulation the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate, will not amend an existing administrative regulation. This administrative regulation will establish the manner in which preference will be given to Kentucky bond counsel firms for state bond issues.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 45A.873 requires that in competition for the Commonwealth's bond counsel business awarded pursuant to KRS 45A.840, et seq., a bond counsel firm with its principal place of business located in Kentucky shall receive a preference over a bond counsel firm with its principal place of business located outside of Kentucky. KRS 45A.873 further provides the preference, if any, shall

be equal to the preference that the out-of-state firm receives in its state of origin when the firm as an in-state firm competes against out-of-state firms for state bond counsel business. The Office of Financial Management and Economic Analysis is responsible for calculating this preference. This administrative regulation sets forth the manner in which the preference shall be calculated by the Office of Financial Management and Economic Analysis.

(d) The benefits expected from this administrative regulation are: The proposed administrative regulation will provide notice to bond counsel firms who propose to do business with the Commonwealth of Kentucky that a preference will be given for Kentucky bond counsel in accordance with the procedures set forth in the administrative regulation.

(e) This administrative regulation will be implemented by sending notice of the same to all bond counsel firms who have expressed an interest in providing services to the Commonwealth.

Date: September 15, 1994

Finance and Administration Cabinet

Office of Financial Management and Economic Analysis

(1) Selection of national comanaging underwriter(s) - **200 KAR 21:040**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 28, 1994, at 9 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 28, 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: Mary Lassiter, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation establishing the selection process for national comanaging underwriter(s) is KRS 45A.850(4) and 45A.879.

(b) The administrative regulation the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate, will not amend an existing administrative regulation. The proposed administrative regulation will establish a procedure for selecting national comanaging underwriter(s).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 45A.850(4) provides that for bond issues of state bond issuing agencies, national comanaging underwriter(s) shall be selected pursuant to an administrative regulation promulgated

by the Office of Financial Management and Economic Analysis. The proposed administrative regulation establishes the procedure for selecting national comanaging underwriter(s) for bond issues of state bond issuing agencies.

(d) The benefits expected from the administrative regulation are: This administrative regulation will provide notice to underwriting firms of the Commonwealth's selection process for national comanaging underwriter(s).

(e) This administrative regulation will be implemented by sending notice of the same to all underwriting firms who have expressed an interest in providing services to the Commonwealth.

Date: September 15, 1994

Finance and Administration Cabinet

Office of Financial Management and Economic Analysis

(1) Establishment of rates to be paid for underwriter's counsel - **200 KAR 21:050**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 28, 1994, at 9 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend public hearing, are not received from the required number of people at least 20 days prior to October 28, 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: Mary Lassiter, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation establishing rates to be paid underwriters counsel is KRS 45A.877 and 45A.879.

(b) The administrative regulation the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate, will not amend an existing administrative regulation. The proposed administrative regulation will establish the rates to be paid counsel providing services to underwriters on bond issues of state bond issuing agencies.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 45A.877 requires the Office of Financial Management and Economic Analysis to establish and maintain a schedule of rates at which underwriters will be reimbursed for fees and expenses of the counsel they retain for a state bond issuance. The proposed administrative regulation establishes the rate schedule for underwriter's counsel.

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

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The proposed administrative regulation will provide notice to underwriters of the rate which they will be reimbursed by the Commonwealth for fees and expenses of the counsel which they retain to work on bond issuances of state bond issuing agencies.

(e) This administrative regulation will be implemented by sending notice of the same to all underwriter firms who have expressed an interest in providing services to the Commonwealth.

Date: September 15, 1994

Finance and Administration Cabinet

Office of Financial Management and Economic Analysis

(1) Procedure for resolving a tie between offerors' rankings which occur during the selection process established under KRS 45A.853 and 45A.857 - **200 KAR 21:060**

(2) The Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intend 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 October 28, 1994, at 9 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend public hearing, are not received from the required number of people at least 20 days prior to October 28, 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: Mary Lassiter, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation establishing a procedure for prequalification of underwriters and bond counsel for state bond issues, is KRS 45A.853 and 45A.879.

(b) The administrative regulation the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate, will not amend an existing administrative regulation. The proposed administrative regulation will establish a procedure for prequalifying underwriter and bond counsel firms to provide services to bond issuing agencies.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 45A.853 provides that a firm shall not be considered for providing underwriting or bond counsel services to the Commonwealth unless the Office of Financial Management and Economic Analysis has prequalified the firm. KRS 45A.879 authorizes the Office of Financial Management and Economic Analysis to promulgate administrative regulations to carry out these requirements. The proposed administrative regulation will establish the procedure for prequalifying underwriting and bond counsel firms.

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

This administrative regulation will provide notice to underwriting and bond counsel firms of the process with which these firms must comply in order to be prequalified under KRS 45A.853.

(e) This administrative regulation will be implemented by sending notice of the same to all underwriter and bond counsel firms expressing an interest in providing services to the Commonwealth.

## BOARD OF EMBALMERS AND FUNERAL DIRECTORS

Date: August 23, 1994

State Board of Embalmers & Funeral Directors

(1) **201 KAR 15:100** - Designation of accredited schools of embalming which are recognized by the State Board of Embalmers & Funeral Directors pursuant to KRS 316.030.

(2) The State Board of Embalmers & Funeral Directors 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 October 31, at 9 a.m., in the Capitol Annex, 701 Capitol Avenue, Room 127, 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 October 31, 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 B. Pettus, Office of Attorney General, Civil and Environmental Law Division, P.O. Box 2000, Frankfort, Kentucky 40602-2000.

(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 William B. Pettus 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 designation of accredited schools of embalming which are recognized by the State Board of Embalmers & Funeral Directors is KRS 316.030.

(b) The administrative regulation that the State Board of Embalmers & Funeral Directors intends to promulgate will not amend an existing regulation. It will clarify the provisions of KRS 316.030 which provides that applicants for an embalmer's license must have graduated from an accredited school of embalming recognized by the State Board of Embalmers & Funeral Directors.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 316.030 requires all applicant's for an embalmer's license to have completed a course of study of one (1) year in the science and art of embalming, disinfection and sanitation in an accredited school of embalming recognized by the Board of Embalmers & Funeral Directors. This regulation clarifies which programs and schools are recognized by the Board.

(d) The benefit expected from this administrative regulation is that applicants for an embalmer's license will have clarification on which programs and schools of embalming will be recognized by the board.

**TOURISM CABINET  
DEPARTMENT OF FISH AND WILDLIFE RESOURCES**

Date: August 15, 1994

Tourism Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:260** Crow Hunting Season.

(2) The Department of Fish and Wildlife Resources 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 October 30 at 9 a.m., in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.390, 150.170, 150.175.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:260 as follows:

1. Change the closing date of the first split from November 12 to November 7.

2. Change opening date of the second split from January 9 to January 4.

(c) The necessity and function of the proposed administrative regulation is to permit and regulate the taking of crows. This amendment is necessary to conform to federal mandate 50 CFR Ch. 1 (10/01/91)/Part 20/Page 295/Paragraph 20.133, and 50 CFR Ch. 1 (10/01/91)/Part 21/Page 321/Paragraph 21.43.

(d) This administrative regulation will be implemented by informing hunters of these regulatory changes through print and electronic media and department publications, and by enforcing this administrative regulation through the department's Division of Law Enforcement.

**DEPARTMENT OF AGRICULTURE**

Date: September 1, 1994

Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:040**, Entry into Kentucky.

(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 October 24, 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 October 24, 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 302 KAR 20:040, Entry into Kentucky is KRS 257.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:040. This amendment makes changes for the entry into Kentucky of cattle, horses and swine and amends sections pertaining to the diseases associated with cattle, horses and swine. Also, this regulation adds a new section and amends other sections pertaining to the entry into Kentucky of sheep, goats, poultry and ratites.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish health requirements for entry, including sales and exhibition, for livestock and animals into Kentucky.

(d) The benefits expected from administrative regulation are: All livestock entering into Kentucky will be treated consistently.

Date: September 1, 1994

Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:055**, Brucellosis vaccination, testing and branding requirements.

(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 October 24, 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 October 24, 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 302 KAR 20:055, Brucellosis vaccination, testing and branding requirements is KRS 257.020 and 275.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:040. It will amend brucellosis vaccination, testing and branding requirements. Additionally, it amends the test eligible age for official calfhood vaccinations to 20 to 24 months of age.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To specify the requirements for vaccination against the disease brucellosis, and to define the requirements for testing and branding for eligible heifers not vaccinated.

(d) The benefits expected from administrative regulation are: The regulation will be current with the Code of Federal Regulations.

Date: September 1, 1994  
Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:065**, Sale and exhibition of Kentucky livestock in Kentucky.

(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 October 24, 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 October 24, 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 302 KAR 20:065, Sale and exhibition of Kentucky livestock in Kentucky.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:065. Generally, this proposed amendment "cleans up" the existing regulation. This amendment makes changes for the sale and exhibition of Kentucky cattle, bulls, horses and swine in Kentucky and amends sections pertaining to the diseases associated with cattle, horses and swine. Also, this regulation adds new sections pertaining to the sale of exhibition of Kentucky sheep, goats, and poultry and ratites in Kentucky.

(c) The Necessity and Function of the proposed administrative

regulation is as follows: To specify sanitary and health requirements for the sale and exhibition requirements for out-of-state livestock (refer to 302 KAR 20:040 - Entry into Kentucky).

(d) The benefits expected from administrative regulation are: All livestock sold and exhibition in Kentucky will be treated consistently.

Date: September 1, 1994  
Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:070**, Stockyards.

(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 October 24, 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 October 24, 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 302 KAR 20:070, Stockyards is KRS 257.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:070. This amendment does make changes in requirements for cattle brought through a stockyard. This amendment also adds a new section pertaining to swine purchased for farm slaughter.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To designate sanitary requirements and operational procedures in all stockyards relative to disease control.

(d) The benefits expected from administrative regulation are: This regulation addresses swine for farm slaughter only.

Date: September 1, 1994  
Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:110**, Treatment of imported mares.

(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 October 24, 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

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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 October 24, 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 302 KAR 20:110, Treatment of imported mares is KRS 257.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:110. These amendments are consistent with the Code of Federal Regulations by requiring a total of four sets of cultures. Additionally, this amendment requires an imported mare be bred the last of any group of mares bred during that session and that the covering stallion not cover another mare for a period of not less than twelve hours.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish a technique for treatment of mares imported into Kentucky from any country listed in Title 9 of the Code of Federal Regulations as a country infected with contagious equine metritis.

(d) The benefits expected from administrative regulation are: This regulation is consistent with the Code of Federal Regulations.

Date: September 1, 1994

Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:120**, Treatment of imported stallions.

(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 October 24, 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 October 24, 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 302 KAR 20:120; Treatment of imported stallions is KRS 257.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:120. This amendment exempts stallions from any CEM testing or treatment requirements after reaching 731 days of age and requires a set of cultures be obtained from the stallion before the first scrubbing and packing as prescribed in the Code of Federal Regulations.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish a technique for treatment of stallions imported into Kentucky from any country and state in the continental United States, its territories and possessions.

(d) The benefits expected from administrative regulation are: This regulation is in compliance with the Code of Federal Regulations and is consistent with foreign countries (i.e., Canada) import requirements.

Date: September 1, 1994

Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:130**, Treatment of contagious equine metritis.

(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 October 24, 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 October 24, 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 302 KAR 20:130, Treatment of contagious equine arteritis is KRS 257.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:130. There are several minor amendments to this regulation. Also, there is an amendment requiring a covering stallion to be scrubbed and heated and remain out of service for a minimum of twelve (12) hours.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Establishes the required treatment and standards for equines quarantined for the purpose of controlling contagious metritis (CEM) within the Commonwealth.

(d) The benefits expected from administrative regulation are: The regulation will be current with the Code of Federal Guidelines.



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Date: September 1, 1994  
Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:140**, Breeding shed for female equines.

(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 October 24, 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 October 24, 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 302 KAR 20:140, Breeding shed for female equine is KRS 257.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:140. This amendment exempts CEM testing or treatment requirements for female equine which have resided only in the United States or Canada since reaching 731 days of age as domestic equine animals. Additionally, this amendment prescribes the order in which import female equine are to be bred in accordance with 302 KAR 20:110.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish the necessary requirements to allow female equine over 731 days of age to enter a breeding shed in Kentucky.

(d) The benefits expected from administrative regulation are: The regulation will be consistent with export requirements to foreign countries.

Date: September 1, 1994  
Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:180**, Restrictions equine viral arteritis.

(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 October 24, 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 October 24, 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 302 KAR 20:180, Restrictions equine viral arteritis.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:180. This amendment requires the procedure for determining the EVA status of a serologically positive stallion be prescribed by the State Veterinarian. This will enable the Department of Agriculture to use the latest acceptable diagnostic procedures for determining if a serologically positive stallion is shedding arteritis virus. Additionally, Section 6 of the regulation is deleted which required all thoroughbred stallions standing at shed in Kentucky to be vaccinated annually against arteritis virus.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To protect the thoroughbred industry from the spread of Equine Viral Arteritis within the borders of the Commonwealth of Kentucky and to control the disease in the Commonwealth.

(d) The benefits expected from administrative regulation are: Kentucky will be current with breakthroughs in technology providing more timely and effective test for diagnosing the arteritis virus carrier state on the stallion.

Date: September 1, 1994  
Department of Agriculture

(1) This regulation is being renumbered to **302 KAR 20:185**, Equine infectious anemia positive horses. This regulation was formerly contained in 302 KAR 20:040 with minor amendments.

(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 October 24, 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 October 24, 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

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

(b) Persons who wish to file this request may obtain a request 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 302 KAR 20:185 is KRS 257.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend an existing administrative regulation. This regulation was formerly contained in 302 KRS 20:040 and includes minor changes.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To specify requirements for handling equine infectious anemia test positive horses.

(d) The benefits expected from administrative regulation are: The regulation is more properly placed in a new regulation rather than 302 KAR 20:040.

Date: September 1, 1994

Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:190**, Sero-positive mares.

(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 October 24, 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 October 24, 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 302 KAR 20:190, Sero-positive mares. This amendment deletes this entire regulation. Because of the protected stallion population, it is no longer necessary that these EVA positive mares be reported.

(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: This regulation is no longer needed.

(d) The benefits expected from administrative regulation are: This regulation is no longer needed.

Date: September 1, 1994

Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:220**, Pseudorabies: eradication and control.

(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 October 24, 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 October 24, 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 302 KAR 20:220, Pseudorabies, eradication and control is KRS 257.110, 257.120, 257.030, 257.480.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 20:220. This amendment changes the definition of "pseudorabies monitored feeder pig herd" as well as changes Section 5 pertaining to quarantine swine feedlots. This section has been renamed to "slaughter permitted swine feedlots."

(c) The Necessity and Function of the proposed administrative regulation is as follows: To provide procedures for enabling the Board of Agriculture to approve a pseudorabies herd cleanup plan and to eradicate pseudorabies from a porcine herd or animal upon a determination of infection or exposure to pseudorabies. These procedures are necessary in order to achieve pseudorabies control and eradication.

(d) The benefits expected from administrative regulation are: The regulation is current.

### JUSTICE CABINET Department of Corrections

Date: September 12, 1994

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: Transportation of inmates to funerals and bedside visits, storage, issue and use of weapons including chemical weapons, classification of the inmate, custody and security guidelines, Kentucky Correctional Psychiatric Center transfer procedures, interstate agreement on detainees, international transfer of inmates, public official notification of release of an inmate, inmate furloughs.

(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 October



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31, 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 October 31, 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 6:020, as follows:

1. Transportation of inmates to funerals and bedside visits policy (9.4) shall be amended to standardize procedures for bedside visits and required LRC language changes.

2. Storage, issue and use of weapons including chemical weapons policy (9.7) shall be amended to update requirements for training and issue of weapons, especially to Probation and Parole staff.

3. Classification of the inmate policy (18.1) shall be amended to clarify time guidelines for classification hearings.

4. Custody and security guidelines policy (18.5) shall be amended to add definitions and criteria for reduced custody, especially Class A felons.

5. Kentucky Correctional Psychiatric Center transfer procedures policy (18.11) shall be amended to change the title of the policy and to change the criteria for entrance into the program.

6. Interstate agreement on detainer policy (18.17) shall be added to provide the basic structure to the process of transferring inmates among states.

7. International transfer of inmates policy (18.18) shall be added to provide a procedure for transfer of an inmate to a foreign country and applications for transfers.

8. Public official notification of release of an inmate policy (25.2) shall be amended to comply with recent legislation.

9. Inmate furlough policy (25.4) shall be amended to clarify furlough criteria and application processing.

(c) The Necessity and Function of the proposed administrative regulation is: to provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.

(d) The benefits expected from the administrative regulation are: to provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.

(e) The administrative regulation will be implemented as follows: by promulgating and enforcing the components of the various policies to provide consistent policy for the department.

Date: September 12, 1994

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:030**, Kentucky State Reformatory: Consent decree notification to inmates; inmate motor vehicle operator's license; sanitation policy and standards; inmate rights; differential status for SU (QUIT) inmates; program services for special housing placement; operational procedures and rules and regulations for Unit A, B & C: staff operational procedures; operational procedures and rules and regulations for Unit A, B & C: inmate rules and regulations; operational procedures and rules and regulations for Unit A, B & C: institutional medical and fire safety services; operational procedures rules and regulations for Unit A, B & C: institutional inmate services; operational procedures and rules and regulations for Unit A, B & C: inmate honor housing criteria and regulations; Dorm 10 operations; assessment and orientation and consent decree notification to inmates; Identification Department admission and discharge procedures; returns from other institutions; intratransfers, identification department, departure-admission and discharge; classification; food service on-the-job training and worker rules.

(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 October 31, 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 October 31, 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. Consent decree notification to inmates (01-00-20) shall be incorporated into another institutional policy and deleted as a separate policy.

2. Inmate motor vehicle operator's license (09-00-25) shall be deleted because inmates are no longer permitted to drive institutional vehicles off institutional grounds.

3. Sanitation policy and standards (12-00-05) shall be amended in order to reflect current usage of Portion Pac products, and minor procedural changes in the Sanitation Department.

4. Inmate rights (14-00-01) shall be amended to delete repetitious information and to more clearly outline specific inmate rights and responsibilities.

5. Differential status for SU (QUIT) inmates (15-00-05) shall be deleted because the policy could not be practically applied due to staffing and physical plant restrictions.

6. Program services for special housing placement (15-00-10) shall be amended to clearly reflect responsibilities of the Division of Mental Health in regard to housing placement for Mental Health inmates, and to establish primary responsibility for Mental Health Treatment Services.

7. Operational procedures and rules and regulations for Unit A, B & C: Staff operational procedures (15-01-02) shall be amended to clarify minor operational changes for unit staff.

8. Operational procedures and rules and regulations for Unit A, B & C: Inmate rules and regulations (15-01-03) shall be amended to bring policy into conformance with Department of Corrections policy.

9. Operational procedures and rules and regulations for Unit A, B & C: Institutional medical and fire safety services (15-01-04) shall be amended to conform with LRC requirements and language referring to KSR firefighting unit shall be deleted.

10. Operational procedures rules and regulations for Unit A, B & C: Institutional inmate services (15-01-05) shall be amended to conform to LRC requirements and minor revisions in mail distribution procedure.

11. Operational procedures and rules and regulations for Unit A, B & C: Inmate honor housing criteria and regulations (15-01-06) shall be amended to bring policy into conformance with other institutional policies as well as Department of Corrections policy.

12. Dorm 10 operations (17-00-05) shall be deleted. Dormitory 10 was closed in this year.

13. Assessment and orientation and consent decree notification to inmates (NEW) (17-00-05) shall be added to replace and refine two other policies being deleted.

14. Identification Department admission and discharge procedures (17-00-06) shall be deleted because the pertinent information was incorporated into another policy.

15. Returns from other institutions (18-00-04) shall be deleted because pertinent information was incorporated into another policy.

16. Intratransfers, identification department, departure-admission and discharge (NEW) (18-00-04) shall be added to replace a former policy concerning transfers.

17. Classification (18-00-06) shall be amended to bring policy into conformance with the Department of Corrections policy.

18. Food service on-the-job training and worker rules (19-00-05) shall be deleted as this policy has been superseded by a Department of Corrections Policy.

(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 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.

Date: September 12, 1994  
Justice Cabinet  
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:120**, Blackburn Correctional Complex: restricted areas, inmate grievance procedures, meritorious living unit (B-1), room assignments, racial balance in living units, inmate work programs, religious services, release preparation.

(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 October 31, 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 October 31, 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 6:120, as follows:

1. Restricted area policy (09-02-01) shall be amended to delete any reference to visitation in certain housing areas.

2. Inmate grievance procedures (14-03-01) shall be deleted because it duplicates Department of Corrections Policy and Procedure.

3. Meritorious living unit (B-1) (15-02-01) shall be deleted due to the removal of inmate living space in the Administration Building.

4. Room assignments (15-02-02) shall be amended to establish new guidelines for assignment to rooms.

5. Racial balance in living area (18-02-01) shall be amended to delete specific references to meritorious housing.

6. Inmate work programs (19-01-01) shall be amended to bring this policy into compliance with Department of Corrections policy.

7. Religious services (23-01-01) shall be amended to permit obligatory individual prayer, provide religious programs and resources, access to services, instruction and counseling.

8. Temporary and community center releases (25-02-02) shall be amended to establish new eligibility requirements for placement in a community center.

(c) The Necessity and Function of the proposed administrative regulation is: To update operating procedures at Blackburn Correctional Complex to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

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

**JUSTICE CABINET  
DEPARTMENT OF STATE POLICE**

Date: September 1, 1994  
Justice Cabinet  
Department of State Police

(1) **502 KAR 10:035** relating to third party testing for the skills portion of the commercial driver's license exam.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 31, 1994 at 1 p.m. local prevailing time, at 919 Versailles Road, 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 October 31, 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: Captain John Barton, Department of State Police, 919 Versailles Road, Frankfort, Kentucky 40601.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation is KRS 281A.160(7) and 332.010.

(b) This administrative regulation will not amend an existing regulation. It will establish the requirements for third parties to administer the skills portion of the commercial driver's license examination.

(c) The necessity and function of this administrative regulation is as follows: KRS 281A.160 requires the Department of State Police to allow third parties to administer the skills portion of the commercial driver's license examination. The statute does not establish authorization procedures. The statute authorizes the Department of State Police to establish third-party testing procedures by administrative regulation.

(d) The benefits expected from this administrative regulation are: All interested third parties authorized by statute will be made aware of the procedures and requirements of third-party skills testing.

(e) This administrative regulation will be implemented as follows: The Department of State Police will process all requests for third-party skills testing authorization and grant authorization to qualified third parties.

**TRANSPORTATION CABINET**

Date: September 15, 1994  
Transportation Cabinet

(1) **600 KAR 3:010** relating to uniform relocation assistance program.

(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 October 28, 1994 at 11 a.m. local prevailing time, at 501 High Street, Room 1003, 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 October 28, 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 relocation assistance payments is KRS 56.610 to 56.760 and 49 CFR Part 24.

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

(c) The necessity and function of the proposed administrative regulation is as follows: The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensations to persons displaced by the land acquisition programs by the Transportation Cabinet. The policy set forth in the administrative regulation are further required by 49 CFR Part 24 on all federal-aid projects. The proposed amendment will provide an internal review of the administrative regulation to insure that consistency with the federal mandate remains as well as internal consistency with the way the program is being operated. However, the primary goal of the revision to the administrative regulation is to define advertising devices (billboards) as personal property in a relocation project if the billboard or advertising devices was not acquired as part of the real property.

(d) The benefits expected from administrative regulation are:

1. Continuing compliance with federal mandate; and
2. An alternative method of paying for the relocation of billboards and other similar advertising devices.

Date: September 15, 1994  
Transportation Cabinet

(1) **601 KAR 9:074** relating to Kentucky highway use licenses, records, and taxes.

(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 October 28, 1994 at 1 p.m. local prevailing time, at 501 High Street, Room 1003, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 28, 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, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation this administrative regulation is KRS 138.725.

(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 138.725 makes the Department of Vehicle Regulation in the Transportation Cabinet responsible for the application of the Kentucky motor carrier taxes covered by KRS 138.655 to 138.725. This administrative regulation provides procedures for licensees to follow in order to comply with the statutes. The administrative regulation needs to be amended at this time to bring it into compliance with the requirements of the single state insurance registration program of "Interstate For Hire Motor Carriers" as mandated by Congress.

(d) The benefits expected from administrative regulation are: Compliance with federal requirements.

Date: September 15, 1994

Transportation Cabinet

(1) **601 KAR 16:010** relating to motor vehicle safety glass.

(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 October 28, 1994 at 9 a.m. local prevailing time, at 501 High Street, Room 1003, 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 October 28, 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 types of approved safety glass is KRS 189.120.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.120 requires the Department of Vehicle to compile and publish a list of types of glass by name approved by the department as meeting the requirements of KRS 189.120 relating to safety glass. Nationwide the testing has been done and an approved list compiled by the American Association of Motor Vehicle Administrators. The Transportation Cabinet intends to incorporate by reference in this proposed new administrative regulation the list compiled by the American Association of Motor Vehicle Administrators.

(d) The benefits expected from administrative regulation are: Increased public awareness of the safety glass requirements of KRS 189.120.

(8) If any person who intends to attend the hearing has a disability for which the Transportation Cabinet needs to provide accommodations, please notify Ms. Pullen of your requirements by October 24, 1994. Her telephone number is 502/564-4890. The address is 501 High Street, 10th Floor State Office Building, Frankfort, Kentucky 40622. This request does not have to be in writing.

Date: September 15, 1994

Transportation Cabinet

(1) **603 KAR 5:190** relating to prohibition of vehicles on I-75 and I-71.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation repealing the restricted use of trucks on northbound I-75 and I-71 in northern Kentucky around the "Death Hill" reconstruction project.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 28, 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 October 28, 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 regulation of traffic on state maintained highways is KRS 189.231.

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

(c) The necessity and function of the proposed administrative

regulation is as follows: The administrative regulation 603 KAR 5:190 has been in effect since November, 1986. This administrative regulation has prevented the use of I-75 and I-71 northbound in Kenton County by larger more difficult to maneuver motor vehicles which were operating through northern Kentucky, southern Ohio area. This ban was necessary in order to improve highway safety during the time period when I-75 on the section commonly known as "Death Hill" was being reconstructed. Now that construction is virtually complete, it is appropriate to begin making plans to repeal the ban and the implementing administrative regulation.

(d) The benefits expected from administrative regulation are: A decrease in the distance required to be operated by the larger trucks in Kenton County and therefore an increase in their productivity.

(8) If any person who intends to attend the hearing has a disability for which the Transportation Cabinet needs to provide accommodations, please notify Ms. Pullen of your requirements by October 24, 1994. Her telephone number is 502/564-4890. The address is 501 High Street, 10th Floor State Office Building, Frankfort, Kentucky 40622. This request does not have to be in writing.

### EDUCATION, ARTS, AND HUMANITIES CABINET KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION

Date: August 22, 1994

Kentucky Authority for Educational Television

(1) The subject matter of the proposed administrative regulation, **700 KAR 2:010**, is televised gubernatorial forums or debates.

(2) The Kentucky Authority for Educational Television 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 October 31, 1994, at 10 a.m., at the KET Network Center, 600 Cooper Drive, Lexington, Kentucky 40502.

(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 October 31, 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: Sally J. Hamilton, KET, 600 Cooper Drive, Lexington, Kentucky 40502, (606) 258-7012.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Authority for Educational Television 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 televised gubernatorial forums or debates is KRS 121A.100.

(b) The administrative regulation that the authority intends to promulgate will not amend an existing administrative regulation. A new administrative regulation will be promulgated to establish the guidelines for televised gubernatorial forums or debates.

(c) The necessity and function of the proposed administrative

regulation is as follows: There are no existing regulations governing televised candidate forums or debates. KRS 121A.100 provides that a qualifying slate of candidates that receives public funds shall participate in a reasonable number of televised debates or forums. These administrative regulations will establish the precedent KET will follow to design and manage the debates or forums.

(d) The benefits expected from administrative regulation are: The gubernatorial candidates will be informed of the procedures which KET will employ to design and manage the debates or forums to ensure:

1. Participation of all slate of candidates; and

2. Public input and participation.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish the time frame for televised gubernatorial forums or debates, set criteria for hosts and panelists who appear on the programs, lay ground rules for participating candidates, outline possible formats for the debates or forums and delineate means of public participation.

### DEPARTMENT OF EDUCATION

Date: September 14, 1994

Department of Education

Bureau of Management Support Services

Office of Education Technology

(1) Regulation Number and Title: **701 KAR 5:110**; Use of local monies to reduce unmet technology need.

(2) The Kentucky Department of Education, Bureau of Management Support Services, Office of Education Technology 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 October 28, 1994, 10 a.m., at the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort KY 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 October 28, 1994 the public hearing will be canceled.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to use of local monies to reduce unmet technology need is KRS 156.070 and 156.160.

(b) The administrative regulation that the Kentucky Department of Education intends to promulgate will amend 701 KAR 5:110 as follows: The Kentucky Department of Education intends to amend 701 KAR 5:110 to incorporate by reference updates to the Master Plan for Education Technology.

(c) The Necessity and Function of the proposed administrative

regulation is: The State Board for Elementary and Secondary Education is required by KRS 156.160(1)(b) to promulgate administrative regulations governing the acquisition and use of education equipment for the schools. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technologies. Based on review of the unmet technology need, it has been determined that full implementation of the master plan cannot be achieved if funding is based solely on offers of assistance to local districts from the education technology trust fund. Therefore, this administrative regulation is promulgated to ensure that all school district procurements for technology will reduce the unmet technology need as defined by the master plan and the district technology plan.

(d) The benefits expected from administrative regulation are: School districts will be assured that investments in education technology are consistent with implementation of the master plan in the district, integrated into the Kentucky Education Technology System, and purchased for the lowest possible cost.

(e) The administrative regulation will be implemented as follows: The Kentucky Department of Education will prepare an update to the master plan for education technology for approval by the state board. Upon approval, the master plan update will be incorporated by reference into this administrative regulation, replacing the April 1992 edition of the master plan now in effect.

Date: September 14, 1994

State Board for Elementary & Secondary Education

(1) Kentucky School Facilities Planning Manual; **702 KAR 1:001**.

(2) 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 October 28, 1994 at 10 a.m. in the State Board Room, First Floor, Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 28, 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 State Board for Elementary and Secondary Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky School Facilities Planning Manual is KRS 156.070 and 157.420.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to promulgate will amend 702 KAR 1:001. It will:

► condense the education and transportation information,

► establish a maximum architect and engineer fee for building evaluation services,

► establish a fee guideline for facilitator services,

► develop a more efficient means of collecting transportation information,

► delete redundancy in Master Educational Facility Plan and the District Facility Plan for Capital Construction,

► restore the priority system of priority project listing in the District Facility Plan,

► provide a planning process waiver for qualifying districts, and

► streamline the facility planning process.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation provides requirements for the development of local school district facility plans. The proposed amendment streamlines and refines the scope of the aforementioned process.

(d) The benefits expected from the administrative regulation are as follows: (1) The administrative regulation provides a community based local school facility plan; (2) the proposed amendments will refine and streamline the existing regulation.

Date: September 14, 1994

State Board for Elementary & Secondary Education

(1) Capital construction process; **702 KAR 4:160**

(2) 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 October 28, 1994 at 10 a.m. at State Board Room, First Floor, Capital Plaza Tower, Department of Education, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 28, 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 State Board for Elementary and Secondary 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 capital construction process is KRS 156.070, 156.160, 157.420, 162.060, 162.065.

(b) The administrative regulation that the State Board for



Elementary and Secondary Education intends to promulgate will amend 702 KAR 4:160, Capital construction process. It will require that proposed construction projects with SFCC funds be selected in prioritized order in lieu of the existing category system.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation provides construction management and oversight responsibilities for entities involved in school facility projects. The proposed amendment will simplify accounting of local facility plans and allow districts to establish the priority of their proposed construction projects.

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

(1) The proposed amendment will aid districts in targeting state funds toward projects of their highest priority;

(2) The proposed format will reconcile finance structure with project needs.

Date: September 14, 1994

Division of Pupil Transportation

(1) **702 KAR 5:030**, Superintendents' responsibilities.

(2) The Kentucky Department of Education, Division of Pupil Transportation, intends to promulgate administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed changes to these administrative regulations has been scheduled for October 28, 1994, at 10 a.m., at the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to October 28, 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: Kevin Noland, Office of Legal Services, Department of Education, 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 Office of Legal Services at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the compliance of an alcohol and controlled substance testing policy is federally mandated in 49 CFR Part 40 and 49 CFR Part 382. Other statutory authority is provided in KRS 156.070 and 156.160.

(b) The administrative regulation that the Division of Pupil Transportation intends to promulgate will amend 702 KAR 5:030. It will insure Kentucky's compliance with the new federal regulations and is necessary for the safety standards for all Kentucky school children.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed revisions are necessary in meeting the Federal Department of Transportation mandate to require all employees possessing a commercial drivers license who drive a

commercial motor vehicle to be tested for alcohol and controlled substances.

(d) The benefits expected from the revisions to the administrative regulations are as follows: The changes insure full compliance with the federal regulations and are necessary safety standards for all Kentucky school children.

Date: September 14, 1994

Division of Pupil Transportation

(1) **702 KAR 5:040**, District board's responsibility.

(2) The Kentucky Department of Education, Division of Pupil Transportation, intends to promulgate administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed changes to these administrative regulations has been scheduled for October 28, 1994, at 10 a.m., at the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to October 28, 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: Kevin Noland, Office of Legal Services, Department of Education, 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 Office of Legal Services at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the compliance of an alcohol and controlled substance testing policy is federally mandated in 49 CFR Part 40 and 49 CFR Part 382. Other statutory authority is provided in KRS 156.070 and 156.160.

(b) The administrative regulation that the Division of Pupil Transportation intends to promulgate will amend 702 KAR 5:040. It will insure Kentucky's compliance with the new federal regulations and is necessary for the safety standards for all Kentucky school children.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed revisions are necessary in meeting the Federal Department of Transportation mandate to require all employees possessing a commercial drivers license who drive a commercial motor vehicle to be tested for alcohol and controlled substances.

(d) The benefits expected from the revisions to the administrative regulations are as follows: The changes insure full compliance with the federal regulations and are necessary safety standards for all Kentucky school children.

Date: September 14, 1994

Division of Pupil Transportation

## ADMINISTRATIVE REGISTER - 990

(1) **702 KAR 5:080**, Bus driver qualifications, responsibilities.

(2) The Kentucky Department of Education, Division of Pupil Transportation, intends to promulgate administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed changes to these administrative regulations has been scheduled for October 28, 1994, at 10 a.m., at the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to October 28, 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: Kevin Noland, Office of Legal Services, Department of Education, 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 Office of Legal Services at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the compliance of an alcohol and controlled substance testing policy is federally mandated in 49 CFR Part 40 and 49 CFR Part 382. Other statutory authority is provided in KRS 156.070 and 156.160.

(b) The administrative regulation that the Division of Pupil Transportation intends to promulgate will amend 702 KAR 5:080. It will insure Kentucky's compliance with the new federal regulations and is necessary for the safety standards for all Kentucky school children.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed revisions are necessary in meeting the Federal Department of Transportation mandate to require all employees possessing a commercial drivers license who drive a commercial motor vehicle to be tested for alcohol and controlled substances.

(d) The benefits expected from the revisions to the administrative regulations are as follows: The changes insure full compliance with the federal regulations and are necessary safety standards for all Kentucky school children.

proposed administrative regulation has been scheduled for October 28, 1994 at 10 a.m. at the Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, 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 October 28, 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 retraining incentive benefits is KRS 342.732.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will establish the conditions under which retraining incentive benefits may be paid to institutions providing training or education to employees who continue to work in the mining industry, and define eligible programs that may receive payment.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is being promulgated to comply with the legislative mandate contained in House Bill 928 of the 1994 General Assembly, in an amendment to KRS 342.732.

(d) The benefits expected from administrative regulation are: The regulation will provide guidance as to bona fide training or education programs eligible for retraining incentive benefit payment and assure that the benefits are spent for retraining the injured worker.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will define eligible programs of study for miners entitled to retraining incentive benefits, and provide for certification of attendance by the program for payment.

### DEPARTMENT OF WORKERS' CLAIMS

Date: September 15, 1994

Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is the eligible training or education programs which may receive retraining incentive benefit, and the conditions under which that benefit may be received by the injured worker - **803 KAR 25:120**.

(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

### DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION

Date: September 14, 1994

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 4:010** - Elevators, dumbwaiters, escalators and moving walks standards.

(2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10:30 a.m., local time, on Friday, October 28, 1994, in the Department of



Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to October 28, 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the above subject matter is KRS 198B.060(18), 490 and 520.

(b) The department intends to amend 815 KAR 4:010, Elevators, dumbwaiters, escalators and moving walks standards by incorporating the latest edition of ASME A17.1, the Safety Code for Elevators and Escalators.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 198B.490 requires the commissioner to make rules and regulations exclusively for the safety and inspection of passenger elevators as defined by KRS 198B.400(1) and (2). The function of this administrative regulation is to update safety standards for use by the contractors installing the elevators.

(d) The benefits expected from administrative regulation are: To allow the Commonwealth to stay abreast of the latest technology and standards available for the construction of all elevators and related equipment in the state. Existing elevators continue to be maintained under the update according to the code in effect when constructed. This amendment will create consistency with the Kentucky Building Code.

(e) This administrative regulation will be implemented by plan review and inspection by the department's elevator inspection program.

Date: September 14, 1994

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 7:100** - The Kentucky Building Code.

(2) The Board of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10:45 a.m., local time, on Friday, October 28, 1994, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least five (5) persons or an

administrative body or an association having at least five (5) members; and

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to October 28, 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.040(7) and 198B.050.

Summary of proposed amendments to existing regulation:

(b) The department intends to amend 815 KAR 7:100, The Kentucky Building Code, by proposing several technical changes for clarification to meet the intent of the code and to adopt the newest edition of the elevator code, as follows:

1. Amend Section 108.3 to correct time period for construction to commence on permit from one (1) year to six (6) months.

2. Amend Section 310.5 by deleting the reference to Section 709.0.

3. Amend Section 422.11 to read: "All new work shall comply with the applicable provisions of Chapter 11. Exception: Church day cares."

4. Amend Section 917.10 by deleting the reference to NFPA 72E.

5. Amend Sections 918.1, 918.4.3, and 918.8 (Exception) by deleting the reference to NFPA 72E and replacing it with reference to NFPA 72.

6. Amend Sections 919.1 and 919.6 by deleting the reference to NFPA 74 and replacing it with reference to NFPA 72.

7. Amend Section 1101.3 by changing "shall" to "may."

8. Amend Section 1806.1 by deleting the word "below" and replacing it with the word "to" in the first sentence.

9. Amend Section 2801.2 of the regulation to correct the reference to Chapter 38 to Chapter 35.

10. Amend Section 3014.1 by deleting the Exceptions listed in the building code.

11. Amend Chapter 35 under "ASME" by updating the edition of the Safety Code for Elevators and Escalators to "1993."

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 198B.040(7), the Kentucky Board of Housing, Buildings and Construction promulgated and adopted a uniform state building code establishing standards for construction of buildings in the state.

(d) The benefits expected from this administrative regulation are: Inconsistencies between certain provisions and technical clarifications make the code easier to understand and to be current with industry manufacturers standards for elevator construction.

(e) This administrative regulation will be implemented by supplementing the Kentucky Building Code with the amended provisions for applicability to construction plans submitted after the effective date of the amendments.

## ADMINISTRATIVE REGISTER - 992

Date: September 14, 1994

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:030** - License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

(2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10:15 a.m., local time, on Friday, October 28, 1994 in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to October 28, 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 318.030, 318.040, 318.050, 318.054.

(b) The department intends to amend 815 KAR 20:030, License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses, by amending Section 3 increasing the annual license renewal fee from \$150 to \$250 for master plumbers and from \$25 to \$40 for journeyman plumbers.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 318.040 requires the department to conduct examinations for master and journeyman plumber applicants. This administrative regulation relates to those requirements and the fees required. It also relates to the time, place and methods of examinations.

(d) The benefits expected from administrative regulation are: To allow the Division of Plumbing to enforce the plumbing laws and provide an adequate inspection program which benefits both the public and the licensed plumber.

(e) This administrative regulation will be implemented by the Division of Plumbing through each county area inspector writing the permit and receiving the fees from licensed master plumbers.

Date: September 14, 1994

Department of Housing, Buildings and Construction

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

(2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10:15 a.m., local time, on Friday, October 28, 1994, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to October 28, 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.030 and 318.134.

(b) The department intends to amend 815 KAR 20:050, Installation permits, by amending Section 3 regarding permit fees by increasing the base plumbing installation permit fee from \$10 to \$28.

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

(d) The benefits expected from this administrative regulation are: To allow the Division of Plumbing to have sufficient funds to support its plumbing inspection program at a time when the number of permits issued is down.

(e) This administrative regulation will be implemented by the Division of Plumbing through each county area inspector writing the permit and receiving fees from licensed master plumbers.

Date: September 14, 1994

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:070**, Plumbing fixtures.

(2) The Board of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Friday, October 28, 1994 in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to October 28, 1994, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.

(b) The department intends to amend 815 KAR 20:070, Plumbing Fixtures by amending Section 12 to bring the administrative regulation into compliance with the mandates of the federal government energy mandates concerning the amount of water usage of plumbing fixtures. Residential water closets will be reduced from 3.5 to 1.6 gallons per flush.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation relates to the kind, type and quality of plumbing fixtures that shall be used in the construction of plumbing systems and identifies the manufacturer's specification number of the material accepted in those installations.

(d) The benefits expected from this administrative regulation are: Conserve water and reduce the size of treatment plants by reducing the volume of water to be treated.

(e) This administrative regulation will be implemented by plan review and inspection by the Kentucky Division of Plumbing inspectors on new installations and replacement fixtures only.

#### **CABINET FOR HUMAN RESOURCES Office of Inspector General**

Date: August 29, 1994  
Cabinet for Human Resources  
Office of Inspector General

(1) Regulation Number and Title: **902 KAR 20:320** - Psychiatric residential treatment facility operation and services.

(2) The Office of Inspector General 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 October 31, 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 October 31, 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, 4-West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to psychiatric residential treatment facilities is KRS 216B.042 and 216B.450-459.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:320 - Psychiatric residential treatment facility operation and services. It will amend the general definition of professional staff, the activities exclusion between licensed psychiatric residential treatment facilities and the licensed facilities on common grounds, the specific requirements for professional staffing, staffing patterns for the living unit vis-a-vis the facility site, and clarifies the recreational program scheduling duties.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation currently implements and conforms to the statutory requirements listed in 7(a) of this Notice of Intent to promulgate an administrative regulation. Specifically, KRS 216B.450 empowers the Cabinet for Human Resources to establish minimum licensure standards to ensure safe, adequate and efficient health facilities and health services. KRS 216B.450 to 216B.459 sets forth statutory provisions specifically to psychiatric residential treatment facilities.

(d) The benefits expected from this proposed administrative regulation are that the amendments should make it easier for psychiatric residential treatment services to be provided in a cost effective manner. This should increase the accessibility of these services to the adolescent population of the Commonwealth.

#### **KENTUCKY HEALTH POLICY BOARD**

Date: September 1, 1994  
Administrative Body: Kentucky Health Policy Board

(1) **909 KAR 1:010** - This regulation establishes the conduct of meetings of the Kentucky Health Policy Board and the development of an agenda, public notice of meetings, the recording of minutes and the transaction of business.

(2) The Kentucky Health Policy 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 Monday, October 31, 1994 at 10 a.m., prevailing local time at Room 110, Capitol Building, 700 Capitol Boulevard, 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 October 31, 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: Donald B. Clapp, Chairman, Kentucky Health Policy Board, 3572 Ironworks Pike, Lexington, Kentucky 40511.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Health Policy Board, 3572 Ironworks Pike, Lexington, Kentucky 40511.

(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 Kentucky Health Policy Board's 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 meetings of the Kentucky Health Policy Board is KRS 216.2905(2)(t).

(b) The administrative regulation that the board intends to promulgate is a new administrative regulation and will not amend an existing regulation. It will establish the schedule for meetings of the board, detail the manner in which an agenda for board consideration is established and the requirements for public notice, and the maintenance of board records.

(c) The Necessity and Function of the proposed administrative regulation is to establish the board's meeting rules and schedule before it may function. The regulation shall allow the board to meet and consider matters within its jurisdiction in furtherance of the objectives of health care reform legislation enacted by the General Assembly.

(d) The benefit expected from administrative regulation is a functional Health Policy Board.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(Emergency administrative regulations filed on or after July 15, 1994,  
expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY  
301 KAR 2:044E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency administrative regulation will not be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor  
C. TOM BENNETT, Commissioner

TOURISM CABINET  
Department of Fish and Wildlife Resources

301 KAR 2:044E. Taking of migratory wildlife.

RELATES TO: KRS 150.015, 150.025, 150.170, 150.300, 150.320, 150.330, 150.340, 150.360, 150.603

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.170, 150.320, 150.340, 150.360

EFFECTIVE: August 15, 1994

NECESSITY AND FUNCTION: In accordance with KRS 150.015, this administrative regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this administrative regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate and add provisions governing use of steel shot.

Section 1. Seasons. Migratory birds in the section shall only be taken during the seasons listed.

(1) Doves: September 1 through September 30; October 8 [9] through October 31 [~~November 4~~]; December 3 [4] through December 8 [9].

(2) Woodcock: October 15 [~~16~~] through December 18 [~~19~~].

(3) Common snipe: September 14 [~~15~~] through October 28 [~~29~~] and November 24 [~~25~~] through January 24 [~~25, 1993~~].

(4) Wood duck and teal (blue-winged, green-winged and cinnamon teal): September 14 [~~15~~] through September 18 [~~19~~].

(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

Section 2. Bag and Possession Limits. The following bag and possession limits shall apply to all migratory birds listed in this section.

(1) Doves: bag limit fifteen (15) per day and thirty (30) in possession.

(2) Woodcock: bag limit five (5) per day and ten (10) in possession.

(3) Common snipe: bag limit eight (8) per day and sixteen (16) in possession.

(4) Virginia and sora rails: bag limit twenty-five (25) per day, singly or in aggregate and twenty-five (25) in possession.

(5) Common moorhen and purple gallinules: bag limit fifteen (15) per day singly or in aggregate and thirty (30) in possession.

(6) Wood duck and teal: bag limit four (4) per day of which not more than two (2) may be wood ducks and possession limit of eight (8) of which not more than four (4) may be wood ducks.

(7) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(8) The above species (except doves) dressed in the field, or being prepared for transportation, shall have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 3. Shooting Hours. The following shooting hours shall apply to all migratory birds listed in this section.

(1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 8 [9] through October 31 [~~November 4~~]; from sunrise to sunset during the period December 3 [4] through December 8 [9].

(2) Common snipe, woodcock, Virginia and sora rails, purple gallinule and common moorhen: from one-half (1/2) hour before sunrise to sunset.

(3) Wood duck and teal: from one-half (1/2) hour before sunrise to sunset.

Section 4. Falconry Hunting. The wildlife species listed in this administrative regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits shall apply to falconry hunting.

Section 5. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this administrative regulation shall apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County.

(a) Doves: September 1 through September 30; and October 8 [9] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock: seasons closed.

(c) Common snipe: September 14 [~~15~~] through October 13.

(d) Virginia and sora rails, purple gallinule and common moorhen: September 1 through October 13.

(e) Wood duck and teal: Same as statewide.

(f) For paragraphs (a) through (e) of this subsection, areas designated by signs are closed to hunting.

(2) West Kentucky Wildlife Management Area, located in McCracken County.

(a) Doves: September 1 through September 30; and October 8 [9] through October 13 and December 3 through December 8. Hunting December 3 through December 8 is permitted on tracts 2, 3, 6, and 7 only.

(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.

(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.

(3) Central Kentucky Wildlife Management Area, located in Madison County.

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(a) Doves: September 1 through September 30; and October 8 [9] through October 13 only.

(b) Woodcock: seasons closed.

(c) Common snipe: September 14 [16] through October 13.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Doves: open to conform with statewide seasons before the last Saturday in September and after November 30. [September 1 through September 24 and December 4 through December 9 only.]

(b) Woodcock: open to conform with statewide seasons before the last Saturday in September and after November 30. [December 1 through December 19 only.]

(c) Common snipe: open to conform with statewide seasons before the last Saturday in September and after November 30. [September 15 through September 24 and December 1 through January 25, 1993.]

(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties. Open hunting seasons for migratory gamebirds listed in this administrative regulation are limited to that period within the framework provided for in the statewide seasons.

~~[(a) Doves: postwide from September 1 through September 30, October 9 through November 3, and December 4 through 9.~~

~~(b) Woodcock: postwide from November 25 through December 17.~~

~~(c) Snipe: postwide from September 15 through September 24, November 25 through December 11 and January 2 through January 24. On designated areas only from December 10 through December 31.~~

~~(d) September wood duck and teal: September 19 only.]~~

(6) Paintsville Lake Wildlife Management Area located in Johnson and Morgan counties and Dewey Lake Wildlife Management Area located in Floyd County.

~~[(a) Doves: September 1 through September 30; and October 8 [9] through October 13 only.~~

~~[(b) Wood duck and teal: September 15 through September 19.]~~

(7) Grayson Lake Wildlife Management Area. All migratory bird hunters shall check in and out daily at designated check stations.

(8) Yatesville Lake Wildlife Management Area. All migratory bird hunters shall check in and out daily at designated hunter check stations.

(9) Closed areas.

(a) The hunting of doves, woodcock, common snipe, purple gallinule and common moorhen is prohibited on Camp Webb Refuge Area, Grayson Lake.

(b) Migratory bird hunting is prohibited on the following areas on Grayson Lake: within the no wake zone at the dam site marina, from the shores of Camp Webb and the State Park and on Deer Creek Fork of Grayson Lake.

(c) Migratory bird hunting is prohibited on the main block of Robinson Forest WMA as posted by signs.

(10)(a) The department shall set dove hunter density limits for fields on wildlife management areas after considering the:

1. Terrain of the fields;
2. Topography of the fields;
3. Providing for approximately forty (40) yards between hunters.

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

1. Of recommended hunter densities; and
2. That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(c) Any person behaving in an unsafe or uncooperative manner shall be required to leave the premises.

Section 6. Waterfowl Stamp Requirements. Those hunting ducks during the experimental September duck season shall possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

Section 7. Use of Steel Shot. Only steel shot shall be possessed and used by hunters when taking or attempting to take waterfowl statewide.

(1) Prohibition of lead shot for dove hunting. Lead shot shall not be used for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River, and Westvaco Wildlife Management Areas.

(2) Possession of lead shot shells.

(a) Persons hunting waterfowl shall not have lead shot shells in their possession.

(b) Persons hunting doves on wildlife management areas listed in subsection (1) of this section shall not have lead shot shells in their possession.

C. TOM BENNETT, Commissioner

CRIT LUALLEN, Secretary

DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: August 15, 1994 at 3 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: C. Tom Bennett

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. Steel shot will be required in two additional counties and half of another this year. Steel shot costs approximately \$2 more per box of 25 shells than does lead shot.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no anticipated impact on the cost of doing business.

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

1. First year following implementation: Persons participating in the hunting proposed for authorization by this administrative regulation are required to possess a valid hunting license (\$12.50 for residents) unless exempt by administrative regulations. Waterfowl hunters are required to possess a \$15 federal migratory bird hunting and conservation stamp and a \$5.25 state waterfowl stamp. These are existing requirements which this administrative regulation will not change.

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

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will not impose additional costs or create additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Randomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a Kentucky and Federal Waterfowl Survey in a postage paid envelope.

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(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$228 a season on food, lodging, transportation and equipment. This will add about \$20,520,000 to the income of local businesses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses and will be used for implementation and enforcement of this administrative regulation.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is intended to conserve populations of migratory birds, a positive impact on environmental welfare. It also allows utilization of these populations as a recreational resource, having a positive effect on the health and well-being of those who participate.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Reduction in the potential recreational opportunity and the loss of conservation of migratory birds.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20/Federal Register/Vol. 59, No. 132, Tuesday, July 12, 1994.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between September 1, 1994, and January 31, 1995, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10 in possession.

Wood duck and teal - season frameworks allow 5 days in September. Bag limits may total 4 per day with not more than two of these being wood ducks. Possession limit is 8 of which not more than 4 can be wood ducks.

Dove - season frameworks allow either 70 or 60 days between

September 1, 1994, and January 15, 1995. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season.

Common snipe - season frameworks allow a 107 day season between September 1, 1994 and February 28, 1995. Bag and possession limit is 8 and 16, respectively.

Virginia and sora rails - the season may not exceed 70 days with a season framework between September 1, 1994 and January 20, 1995. Bag and possession limit of 25 per day, singly or in aggregate.

Common moorhen and purple gallinule - the season may not exceed 70 days with a season framework between September 1, 1994 and January 20, 1995. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

### STATEMENT OF EMERGENCY 301 KAR 2:260E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor  
C. TOM BENNETT, Commissioner

### TOURISM CABINET Department of Fish and Wildlife Resources

#### 301 KAR 2:260E. Crow hunting season.

RELATES TO: KRS 150.015, 150.105, 150.170, 150.175, 150.235, 150.330, 150.340, 150.600, 150.630, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.105, 150.170, 150.175, 150.340, 150.600, 150.630

EFFECTIVE: August 15, 1994



**NECESSITY AND FUNCTION:** This administrative regulation pertains to seasons for the taking of crow. The framework of this administrative regulation falls within the season guidelines prescribed by the United States Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of crows within reasonable seasonal restrictions based upon an adequate supply.

**Section 1. Definitions.** (1) "Blind" means any form of concealing enclosure, including a pit, or anchored, stationary, or drifting boat from which hunting occurs.

(2) "Decoy" means any type of visual device used to entice birds into shooting range.

(3) "Call" means any type of auditory device used to attract crows into shooting range.

(4) "Depredation" means any act committed by crows which would result in a damage or economic loss of ornamental or shade trees, agricultural crops, livestock, or wildlife, or when crows are concentrated in such numbers as to constitute a health hazard or other nuisance.

**Section 2. Crow Hunting Requirements.** (1) Seasons: September 1 through November 7 and January 4 through the last day of February.

(2) Shooting hours: one-half (1/2) hour before sunrise until sunset.

(3) Persons taking crows must have a valid hunting license.

(4) Crow hunters may use mechanical or electronic calling devices during the open season.

**Section 3. Acts of Depredation.** (1) Persons may take crows committing or about to commit acts of depredation during the closed season.

(2) Persons taking depredating crows shall not use blinds, decoys, calls or other means of luring the birds into shooting range during the closed season. [Season: Crows shall be taken only during the period 1 September through 12 November and 9 January through 28 February. Persons taking or attempting to take crows must have a valid hunting license in possession.]

**Section 3. Shooting Hours.** One-half (1/2) hour before sunrise to sunset.

**Section 4. Use of Mechanical and Electronic Attracting Devices.** Mechanical and electronic attracting devices for crow hunting may only be used during the open season defined in Section 2 of this administrative regulation.

**Section 5. Acts of Depredation.** Crows observed committing or about to commit acts of depredation may be taken year-round; however, persons attempting to take depredating crows shall not use blinds, decoys, calls or other lures to attract birds into shooting range during the closed season.;

C. TOM BENNETT, Commissioner  
CRIT LUALLAN, Secretary  
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: August 15, 1994 at 3 p.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: C. Tom Bennett

(1) Type and number of entities affected:

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

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

received. Direct costs involve the purchase of a state hunting license. Indirect costs would be determined by the hunter, depending upon his level of participation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. No anticipated impact on the cost of doing business.

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

1. First year following implementation: Persons participating in the hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license (\$12.50 for residents) unless exempt by administrative regulations.

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

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will impose no additional costs or create any additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay any other state taxes on items purchased in connection with hunting and the hunting trip.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses will be used for implementation and enforcement of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated economic impact.

(b) Kentucky: No anticipated economic impacts.

(7) Assessment of alternative methods, reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Environmental benefits accrue both regionally and statewide from proper wildlife management; personal recreational benefits accrue to those who participate in the hunting activities permitted under this administrative regulation.

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

(c) If detrimental effect would result, explain detrimental effect: Without this administrative regulation, federal laws would prohibit taking crows in Kentucky. This could lead to overpopulation and resultant environmental damage.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Ch. 1 (10/01/91)/Part 20/Page 295/Para. 20.133, and 50 CFR Ch. 1 (10/01/91)/Part 21/Page 321/Para. 21.43.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Crow - season may not be scheduled to occur during the peak nesting period within the state (March - June) with a 124 day maximum season length.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

#### STATEMENT OF EMERGENCY

415 KAR 1:050E

The definition of terms used in 415 KAR Chapter 1 is contained in 415 KAR 1:050.

WHEREAS, the passage of House Bill 402, effective July 15, 1994, mandated changes to existing provisions of 415 KAR Chapter 1.

WHEREAS, the list of definitions have been expanded to address deficiencies with respect to technical terms and terms of art that have not been defined by statute or regulation.

WHEREAS, confusion exists within the regulated community respecting technical terms and terms of art resulting in needless litigation and nonremedial expenses.

It is necessary in the interest of fairness to the regulated community that the definitions of terms used in the provisions of 415 KAR Chapter 1 be defined to eliminate appeals of commission determinations that relate or depend on undefined terms. The appeal of these decisions result in allocation of commission and applicant funds unrelated to the remediation of petroleum contamination.

BRERETON C. JONES, Governor

JACK B. HALL, Executive Director

#### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

##### 415 KAR 1:050E. Definitions.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: September 13, 1994

NECESSITY AND FUNCTION: KRS 224.60-120 and 224.60-130 require the Petroleum Storage Tank Environmental Assurance Fund Commission to adopt regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This regulation defines essential terms used in connection with the regulations of the commission in this chapter. 1992 Kentucky Acts Chapter 450 amended the statutory provisions for the fund. This regulation repeals the prior regulations of the commission.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context terms in the Petroleum Storage Tank Environmental Assurance Fund Commission regulations shall have the meanings given in this regulation.

(1) "Abandoned" means a prior owner, of the tank, has relinquished all connections with or concern in ownership with no intention to return or claim again and that the owner seeking assistance from the fund acquired the property where the tank is located without knowledge of the tank's existence. Physical acts by the owner or operator, applying for assistance, will be considered in determining the applicants knowledge of the tank's existence.

(2) "Assets" shall have the meaning in KRS 224.60-120(3);

(3) [(2)] "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(4) [(3)] "Cabinet" means the Underground Storage Tank Branch or other branch or division of the Natural Resources and Environmental Protection Cabinet;

(5) [(4)] "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrical chemical cell;

(6) [(5)] "Claim" shall have the meaning in KRS 224.60-115(4);

(7) [(6)] "Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;

(8) "Contract" means the written agreement for performance of corrective action entered into by an owner or operator and a contractor certified pursuant to 415 KAR 1:114.

(9) [(7)] "Corrective action" shall have the meaning in KRS 224.60-115(5);

(10) "Corrective action plan" means a long-term remediation proposal employing corrective action technologies to obtain site closure. (Not depending solely on excavation and removal of contaminated soil.)

(11) [(8)] "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030;

(12) [(9)] "Currently exist" means an existing petroleum storage tank that has or does contain petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;

(13) [(10)] "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes, [or] storage of petroleum, or is in compliance when temporarily closed under the requirements of 401 KAR 42:070;

(14) [(11)] "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;

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(15) [(12)] "Eligibility" means compliance with the criteria for eligibility established in this chapter;

(16) [(13)] "Entry level" means the amount of financial responsibility determined by the commission to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

(17) [(14)] "Extent of environmental harm" means the extent of horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;

(18) [(15)] "Facility" shall have the meaning in KRS 224.60-115(7);

(19) [(16)] "Federal regulation" shall have the meaning in KRS 224.60-115(8);

(20) [(17)] "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;

(21) [(18)] "Guarantor" shall have the meaning in KRS 224.120(4);

(22) [(19)] "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;

(23) [(20)] "Net worth" shall have the meaning in KRS 224.60-120(3);

(24) [(21)] "Maximum contaminant level" means the maximum permissible level of a contaminant in water established pursuant to the regulations of the cabinet or applicable federal regulations;

(25) [(22)] "Newly discovered tanks" mean petroleum storage tanks at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;

[(23)] "~~Nonretail facility" means a facility that does not sell petroleum products from petroleum storage tanks to the general public;~~

(26) [(24)] "Occurrence" shall have the meaning in KRS 224.115(12);

(27) "Operation" with respect to a UST or UST system means a UST or UST system currently being used for the storage and dispensing of a regulated petroleum substance.

(28) [(25)] "Original invoice" means the original or a duplicate original of an invoice;

(29) "Permanently closed" means a UST or UST system that was closed after December 22, 1988 pursuant to the requirements of 40 CFR 280 Subpart G or a UST or UST system closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, applicable industry standards at the time of closure and closed in such manner as to prevent any future use of the UST or UST system.

(30) "Petroleum storage tank" shall have the meaning in KRS 224.60-115(15);

(31) [(26)] "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(15);

(32) [(27)] "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(17);

(33) [(28)] "Ranking system" means the system for determining financial ability and extent of environmental harm established by these regulations;

(34) [(29)] "Release" shall have the meaning in KRS 224.60-115(19);

(35) [(30)] "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;

(36) [(32)] "Release detection" means a method of determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it that complies with the require-

ments of 40 CFR 280 Subpart D;

(37) [(33)] "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum to comply with the regulations of the cabinet;

(38) [(34)] "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a level of a petroleum constituent in a drinking water supply significantly exceeds background;

(39) "Temporary closure" means taking a UST or UST system out of operation pursuant to the requirements of 40 CFR 280.70;

(40) [(34)] "Upgrade" means the addition or retrofit of some system such as cathodic protection, lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product, or the replacement of tanks with new tanks.

Section 2. These definitions are intended to be consistent with the definition of terms in the waste management regulations of the cabinet and in applicable federal regulations.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

### STATEMENT OF EMERGENCY 415 KAR 1:060E

The regulatory provisions pertaining to the financial responsibility account, of the fund, are delineated in 415 KAR 1:060.

WHEREAS, the passage of House Bill 402, effective July 15, 1994, mandated changes to the existing entry level requirements of the financial responsibility account.

WHEREAS, the revised entry level requirements, for participation in the financial responsibility account, apply retroactively to remediation projects at facilities that have not received closure letters prior to the effective date of House Bill 402.

WHEREAS, the financial responsibility account has been redrafted to specifically limit the participants as mandated by the federal regulatory scheme thus allowing greater flexibility in allocating funds to the petroleum storage tank account.

It is necessary that the regulatory changes be implemented in the most timely manner to enhance the commission's ability to access the financial responsibility account's economic demands on fund monies and to enable appropriate allocation of fund resources to the under financed petroleum storage tank account.

BRERETON C. JONES, Governor

JACK B. HALL, Executive Director

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

#### 415 KAR 1:060E. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: September 13, 1994

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This regulation establishes the eligibility requirements for the financial responsibility account, and establishes

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the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator of petroleum storage tanks in operation meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the commission, pursuant to 415 KAR 1:020 (1991) or 415 KAR 1:160 (1993), prior to the effective date of this administrative regulation shall be ~~pursuant to 415 KAR 1:020 (1991)~~ is eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2)(a), (b), (d), (e) and (f) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility, prior to the effective date of this administrative regulation ~~for the facility pursuant to 415 KAR 1:020 (1991)~~ shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040, or be permanently closed in compliance with 40 CFR 280.71 or temporarily closed in compliance with 40 CFR 280.70 ~~[401 KAR 42:070]~~;

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150; ~~and~~

(f) Have tanks "in operation" on or after the compliance dates set forth in 40 CFR 280.91 and be mandated by 40 CFR 280.90 to demonstrate financial responsibility as specified under 40 CFR 280.93; and

(g) Have demonstrated financial responsibility, as required, in the amount of entry level to the fund established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; ~~and [or the owner or operator was issued a certificate of eligibility prior to the effective date of this administrative regulation pursuant to 415 KAR 1:020 (1991)]~~

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991) or 415 KAR 1:060 (1993) may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Section 1(2)(a), (b), (d), (e), (f), (g) and Section 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the commission

a copy of the Eligibility and State Financial Responsibility Affidavit form dated July 1994 ~~[October 1992]~~ hereby incorporated by reference. Copies of this form may be obtained [eepied] and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive [59 Fountain Place], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the commission.

~~[(2) An owner or operator issued a written notification of eligibility by the commission pursuant to 415 KAR 1:020 (1991) is eligible to participate in the financial responsibility account for facilities that comply with the requirements of Section 1(1) of this administrative regulation without the issuance of a new certificate of eligibility pursuant to this administrative regulation.]~~

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. For the purpose of potential eligibility for participation in the financial responsibility account [fund], in no event shall the report of the release be made to the cabinet more than seven (7) [thirty (30)] days after discovery; and [-]

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at \$1,000 ~~[10,000]~~ per occurrence for taking corrective action and ~~[\$10,000 per occurrence for]~~ compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) [or more] tanks shall be established and maintained at \$5,000 ~~[25,000]~~ per occurrence for taking corrective action and \$5,000 ~~[25,000]~~ per occurrence for compensating third parties for bodily injury and property damage.

(3) The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$25,000 per occurrence for taking corrective action and \$25,000 per occurrence for compensating third parties for bodily injury and property damage.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the commission on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may

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be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the commission;

(c) A guarantor with a ~~direct or indirect~~ controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the commission in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the commission if the owner or operator has certified to the commission the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the commission within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time the commission determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the commission shall notify the owner or operator of the noncompliance.

(2) A facility shall ~~may~~ be deemed ineligible to receive payment from the financial responsibility account, pursuant to a previously approved assistance agreement or a certificate of eligibility issued pursuant to this administrative regulation, [in the event of a release] if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation during the ongoing corrective action and a release occurs during the period of noncompliance with the eligibility requirements of this administrative regulation.

(a) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the actions necessary to bring the facility into compliance are made to the satisfaction of the cabinet.

(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of a percentage of the total reimbursable remediation costs in the following amounts:

1. Failure to maintain compliance with release detection as required by 401 KAR 42:040, ten (10) percent;

2. Failure to report the release as required by 401 KAR 42:050, ten (10) percent;

3. Failure to comply with cabinet direction for corrective action as required by 401 KAR 42:060, ten (10) percent.

4. The owner or operator shall not be eligible for payment of the costs of third-party liability [for releases occurring before the facility is brought back into compliance].

(3) An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(4) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

(5) ~~[A facility issued a certificate of eligibility for the financial responsibility account pursuant to Section 3(2) of this administrative regulation shall not be eligible to participate in the petroleum storage tank account.]~~

~~(6)] An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation [pursuant to 415 KAR 1:020 (1994)] may be eligible to participate in the petroleum storage tank account [for facilities that do not qualify for eligibility in the financial responsibility account if the eligibility requirements of 415 KAR 1:070 are met.]~~

~~(6) [(7)] Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.~~

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than \$1,500,000 to ensure a \$1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a \$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. When funds are withdrawn for emergency abatement actions by the cabinet, the commission shall replace the amount immediately.

(2) If the unobligated balance of the financial responsibility account is \$1,500,000, or less, or the obligation [payment] of a claim shall cause the unobligated balance of the fund to be less than \$1,500,000, the commission shall immediately suspend the obligation [payment] of claims until the unobligated balance is greater than \$1,500,000. Obligations submitted for approval [Claims approved for payment] by the commission at the time of suspension shall be obligated [paid] in accordance with the date of initial submission [final approval] of the obligation [claims] when the suspension is lifted.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

### STATEMENT OF EMERGENCY 415 KAR 1:070E

The regulatory provisions pertaining to the petroleum storage tank account, of the fund, are delineated in 415 KAR 1:070.

WHEREAS, the passage of House Bill 402, effective July 15, 1994, mandated changes to the existing entry level requirements of the financial responsibility account with no corresponding statutory requirement on the petroleum storage tank account.

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WHEREAS, the revised entry level requirements, for participation in the petroleum storage tank account, are not dictated by statute and must be established by administrative regulation.

WHEREAS, the financial responsibility account has been redrafted to specifically limit the participants as mandated by the federal regulatory scheme, however, the redrafted petroleum storage tank account will address corrective action cost associated with all facilities not mandated by federal regulation to maintain financial responsibility and facilities that lose eligibility to participate in the financial responsibility account.

It is necessary that the regulatory changes be implemented in the most timely manner to enable the implementation of new petroleum storage tank account entry levels and to enable the commission to ensure fund coverage to all facilities not mandated by federal regulation to show financial responsibility.

BRERETON C. JONES, Governor  
JACK B. HALL, Executive Director

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

#### 415 KAR 1:070E. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: September 13, 1994

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases from petroleum storage tanks removed from the ground after January 1, 1974 [and before December 22, 1988] may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily [permanently] closed after December 22, 1988 [before January 1, 1974] may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 [2] of this administrative regulation are met; and

(d) [Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after January 1, 1974 and before December 22, 1988 may be eligible for payment by the petroleum storage tank account if the requirements of Section 2 of this administrative regulation are met;

(e) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(f) Costs of corrective action for releases from petroleum storage tanks removed from the ground after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(g) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily closed after December 22,

~~1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and~~

(h) Costs of corrective action for releases from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150;

(c) Submitted the Eligibility and State Financial Responsibility Affidavit form to the commission to certify eligibility for the petroleum storage tank account; and

(d) Filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirement of 401 KAR 42:020.

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b)(i)-(e), (d), (e) and (f) of this Administrative Regulation. An owner or operator of a facility of the class(es) described in Section 1(1)(b)(i)-(e), (d), (e) and (f) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(c) [(g)] of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(c) [(g)] of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a) 1. A release of petroleum is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a regulated substance until the upgrade is completed.

[(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.]

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(d) [(h)] of this Administrative Regulation. An owner or operator of a facility currently in use which is not in



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compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

- (1)(a) A release of petroleum is detected at the facility after April 9, 1990; or
- (b) Corrective action costs associated with a release are incurred after April 9, 1990;
- (2) The release has been reported to the cabinet;
- (3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and
- (4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at \$1,000 per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$5,000 per occurrence for taking corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$25,000 per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)(c) and (d) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) The entry level payments contained in subsections (1), (2) and (3) of this section shall apply retroactively to any facility involved in corrective action that had not been issued a closure letter by the cabinet prior to July 14, 1994.

~~(1)(a) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility was a retail facility and the facility is permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility was a nonretail facility. The entry level is:~~

- ~~1. \$10,000 for an owner or operator of five (5) or less tanks; or~~
- ~~2. \$25,000 for an owner or operator of six (6) or more tanks.~~

~~(2)(a) An owner or operator of a facility of the class described in Section 1(1)(e) and (f) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(e) and (f) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility, or the facility will continue in service. The entry level is:~~

- ~~1. \$10,000 for an owner or operator of five (5) or less tanks; or~~
- ~~2. \$25,000 for an owner or operator of six (6) or more tanks.~~

~~(3)(a) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation shall pay an entry~~

~~level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:~~

- ~~1. \$10,000 for an owner or operator of five (5) or more tanks; or~~
- ~~2. \$25,000 for an owner or operator of six (6) or more tanks.~~

~~(4)(a) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:~~

- ~~1. \$10,000 for an owner or operator of five (5) or less tanks; or~~
- ~~2. \$25,000 for an owner or operator of six (6) or more tanks.~~

~~(5) An owner or operator of a nonretail facility who meets the requirement of 415 KAR 1:090, Section 3(2)(a) as to financial ability may request the commission to waive the payment of an entry level required by this section on the basis of financial hardship, if the facility is taken permanently out of service.]~~

Section 6. Ineligibility. (1)(a) The commission may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) The commission shall [may] require an owner or operator to pay twenty (20) percent of the reimbursable remediation costs, [an entry level] for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42, instead of making a determination that the facility is not eligible for participation as provided in paragraph (a) of this subsection.

(c) The owner or operator of a facility placed in the petroleum storage tank account by the commission pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a), (b), and (c).

(2) An owner, operator with an assistance agreement [or contractor] may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(3) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

- (a) The amount was paid due to an error of the commission; or
- (b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for



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registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) Costs incurred at a facility for site investigation or corrective action at the direction of the cabinet at a facility that is later classified as a nonregulated tank shall be reimbursed if the requirements of this administrative regulation are met.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

### STATEMENT OF EMERGENCY 415 KAR 1:080E

The regulatory provisions pertaining to the claims procedures, of the fund, are delineated in 415 KAR 1:080.

WHEREAS, the claims procedure requirement linking the submittal of three (3) written bids to reimbursement eligibility has been overlooked by the less sophisticated petroleum storage tank owners and operators.

WHEREAS, the failure of applicants to obtain and submit three bids to the commission has resulted in the denial of reimbursement of eligible cost based on this regulatory requirement.

WHEREAS, the denial of reimbursement under this provision has consistently been exercised on owners or operators of small facilities resulting in extreme hardship on the applicants that are most dependant on fund reimbursements to address petroleum contamination.

It is necessary that the regulatory changes be implemented in the most timely manner to enable the commission to obligate funds for corrective action at facilities that have failed to follow the strict claims procedures that have effectively barred small owner or operator from obtaining corrective action cost reimbursement or impeded corrective action due to the lack of sufficient funds to pay remediation contractors.

BRERETON C. JONES, Governor

JACK B. HALL, Executive Director

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

#### 415 KAR 1:080E. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: September 13, 1994

NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the commission for reimbursement or payment of the costs of corrective action.

Section 1. Assistance Agreement. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for an assistance agreement with the commission.

(2) Application shall be made on the Assistance Agreement form dated October 1992, hereby incorporated by reference. This form may be inspected and obtained [copied] and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive [69 Fountain Place], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release from an eligible facility has occurred and has been reported to the cabinet.

(3) If the owner or operator meets the requirements of subsection (2) of this section the commission may enter into an assistance agreement and establish the amount to be obligated by the appropriate account based upon the approved contract [bid. The assistance agreement may be used as a guarantee of payment to a contractor performing corrective action to the extent of the approved amount.]

(a) Reimbursement pursuant to an assistance agreement is restricted to documented costs approved by the commission.

(b) The assistance agreement may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the commission.

(4) The assistance agreement may be amended upon application by the eligible owner or operator upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action[.] and that the additional costs are necessary to comply with the administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the commission.

(5) Payment under the terms of the assistance agreement may be made when the eligible owner or operator submits a claim form, and a certification by the certified contractor that the costs were consistent with the bid and necessary to comply with the administrative regulations of the cabinet. The requirement for a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the claim form established by the commission dated October 1992, hereby incorporated by reference. This form may be inspected and obtained [copied] and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive [69 Fountain Place], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The claim shall contain:

(a) Original invoices for all costs for which payment is sought;

(b) A copy of the contract [bid proposal] submitted to the owner or operator by the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating the necessity of the corrective action to be or having been performed; and

(e) Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.

(2) Commission staff may require additional information to determine the eligibility of a cost for payment.

(3)(a) Commission staff shall review all claims within ninety (90) days of submission, unless an extension of time is agreed to by the applicant;

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(b) If the claim [application] is determined to be incomplete, commission staff shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the commission within fifteen (15) days of the notice of receipt by the applicant. The commission may grant the applicant a thirty (30) day extension if the written request is received, by the commission, within fifteen (15) days of receipt of the notice of deficiency; [The applicant shall submit supplemental information to correct the deficiencies within fifteen (15) days of receipt of notice;]

(c) If the applicant fails to correct the deficiency or to supply the additional information required by commission staff, that portion of the claim shall be denied.

(4) The commission shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment [and the amount of payment shall be obligated in the appropriate account].

(5) The claim may be submitted with the application for an assistance agreement.

(6) An owner or operator of a facility, covered by a fund obligation, shall submit to the commission, a copy of all reports required by administrative regulation or requested, in writing, by the cabinet detailing the status of remedial action at the facility, including site check, site investigation, corrective action plans, quarterly reports, closure assessment reports, site classification documents and any correspondence with the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

(a) The documents shall be included with a claim for reimbursement. If a claim for reimbursement was not filed for costs incurred by the owner or operator at the facility in a calendar quarter, the documents shall be due no later than the last working day of the calendar quarter; and

(b) Failure to submit the documents to the commission in three (3) consecutive calendar quarters shall result in the disallowance of ten (10) percent of the total reimbursable costs or the remainder of the current obligation and no additional obligation shall be made.

Section 3. Contracts. [Bids from Contractors.] (1) Effective after July 14, 1993, an owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain an executed contract [bid-preposals] from one (1) certified [at least three (3)] contractor[s] to be eligible for reimbursement or payment from the fund. The contract [bid-preposals] shall be obtained prior to commencing the activity except emergency response measures as directed by the cabinet. The contract [bid-preposal] shall set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including, but not limited to, the costs of personnel, sampling, removal, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.

(2) A copy [Copies] of the contract [bid-preposals] shall be submitted with an application for assistance agreement.

(3) An application for assistance received prior to this administrative regulation shall be required to submit a copy of a signed contract setting forth the unit costs to be eligible to receive reimbursement or payment from the fund.

Section 4. Signatures. (1) A claim form or an application for [an] assistance [agreement] shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a

general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification.

(3) The authorized representative of an owner or operator signing the certification shall submit documentary evidence as requested by the commission staff to substantiate the legality of the authorized representatives power of agency.

Section 5. Criteria For Approval of a Claim. (1) Commission staff shall review all claims in the order in which they are received.

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied.

[(d) The claim is received within one (1) year from completion of the corrective action for which payment is sought.]

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) Claims shall be reviewed by the commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(2) Requests for payment under an assistance agreement may be submitted thirty (30) [sixty (60)] days following initiation of corrective action. Subsequent requests for payment may be made [and] at thirty (30) [sixty (60)] day[s] intervals thereafter, if the payment request exceeds \$1,000, until completion of the authorized activities. Upon request, the executive director [commission] may submit [approve] interim payments to the commission at more frequent intervals or for amounts below the \$1,000 payment request threshold. Each request shall be reviewed by commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(3) All payments shall be subject to approval of the commission.

Section 7. Payment Procedures. (1) When an owner or operator has submitted a claim for payment by the commission, payment shall be made by a check written to the eligible owner or operator, or to a third party designated in an assistance agreement.

(a) A request for an interim partial payment shall be accompanied by documentation required by Section 2(6) of this administrative regulation; or

(b) A final payment shall be accompanied by a closure letter issued by the cabinet; or

(c) A one (1) time payment in full shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying [verify] that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible Costs. Payment for costs of corrective action

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shall be limited to reasonable costs, expenses and other obligations incurred for corrective action or site investigation as the result of release into the environment from a petroleum storage tank.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure;

(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

(c) ~~Removal, treatment, and disposal of petroleum products from petroleum storage tank systems, liquids, and soils;~~

(d) Performance of site checks, and site investigation to assess the extent of contamination caused by release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(d) ~~(e)~~ Preparation of corrective action plans;

(e) ~~(f)~~ Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(f) ~~(g)~~ Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system;

(g) ~~(h)~~ Restoration or replacement of a private or public drinking water supply;

(h) ~~(i)~~ Removal, treatment, and disposal of contaminated liquids and soils resulting from corrective action;

(i) ~~(j)~~ The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(j) ~~(k)~~ The costs of implementation of corrective action technologies such as soil venting or bioremediation, and groundwater treatment systems, if approved by the cabinet for the facility;

(k) ~~(l)~~ Costs for replacing blacktop or concrete if removal was necessary to perform the corrective action;

(l) ~~(m)~~ Attorney fees integral to the performance of site corrective action, such as preparation of off-site access agreements; and

(m) ~~(n)~~ Other costs requested by the applicant and approved by the commission, demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(n) Purchases of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the commission or their appointed delegate.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs, earth moving equipment, ~~and pumps;~~

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on regulatory regulations;

3. Consultation on petroleum storage tank environmental assurance fund regulations;

4. Preparation or submittal of commission documentation; and

5. Any other services determined by the commission not to be integral to the performance of corrective action. [unless demonstrated to be integral to the performance of corrective action;]

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan;

(i) Aesthetic improvements to the facility;

(j) Interest on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

(n) Any costs associated with releases from aboveground tanks or aboveground piping;

(o) Contractor markup expenses for in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) Rush laboratory fees unless directed by the cabinet;

(r) Costs and cost recovery for governmental emergency services.

(s) Preparation and implementation of corrective action plans when a written notice of termination is issued by the cabinet.

Section 9. Delegation to Executive Director. The commission may delegate responsibility for the approval of a claim, an assistance agreement, or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the commission shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the commission for the performance of corrective action from the person responsible or liable for the release.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

### STATEMENT OF EMERGENCY

415 KAR 1:090E

The regulatory provisions pertaining to the ranking system, of the fund, are delineated in 415 KAR 1:090.

WHEREAS, the current ranking system was drafted by the commission to enable reimbursement for corrective action cost from the petroleum storage tank account.

WHEREAS, the current ranking system does not utilize the results of the risk based study as mandated by KRS Chapter 224.60.

WHEREAS, the proposed ranking system utilizes environmental harm criteria, based on the petroleum contaminant risk analysis, currently employed by the cabinet.

It is necessary that the regulatory changes be implemented in the most timely manner to enable the commission to obligate funds for corrective action from the petroleum storage tank account, for facilities pursuant to a risk based ranking system as mandated by KRS Chapter 224.60.

BRERETON C. JONES, Governor

JACK B. HALL, Executive Director

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

#### 415 KAR 1:090E. Ranking system.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: September 13, 1994

NECESSITY AND FUNCTION: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly require the commission to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the commission shall consider the financial ability of the

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petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Applicability. An owner or operator of petroleum storage tanks eligible to participate in the petroleum storage tank account, 415 KAR 1:070, shall not be classified pursuant to this administrative regulation for reimbursement if:

(1) The owner or operator, an individual, with an interest in only one (1) facility, or has five (5) or fewer tanks, whose average net income for the five (5) year period, prior to application for assistance from the fund, is less than \$50,000; or

(2) The owner or operator abandoned or permanently closed the tanks prior to December 22, 1988 and the facility was not under the direction of the implementing agency pursuant to 40 CFR 280.73 at the time the release is detected.

Section 2. [4-] Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the Petroleum Underground Storage Tank System Facility Classification Outline (1994) incorporated by reference pursuant to 401 KAR 42:080E, the study to be completed [performed] for the commission pursuant to KRS 224.60-137 and the administrative regulations [to be] adopted by the cabinet [to] establishing standards for corrective action for release into the environment from a petroleum storage tank.

(2) [Until the study is completed and the administrative regulations establishing standards for corrective action required by KRS 224.60-137 have been adopted by the cabinet,] Priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a domestic use well, domestic use spring or domestic use well head protection area, as defined in 401 KAR 12:080, or a drinking water supply in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level, or the facility has been determined to be the source of fumes in an occupied building;

(b) Second, where the facility has encountered groundwater and is required to meet the levels specified in Groundwater Table 2 of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080, for releases of petroleum which pose a direct threat of contamination to a domestic use well, domestic use spring, domestic use well head protection area, or a drinking water supply; or [release of petroleum poses a direct threat of contamination to a drinking water supply due to the hydrogeologic characteristics of the facility and the surrounding area, the proximity, quality and current or future uses of nearby surface and groundwater, and the potential for migration of the petroleum constituents, and contamination of the drinking water supply is very likely to occur unless corrective action is immediately undertaken,]

(c) Third, where areas outside the facility's property boundary have been impacted by a release and the facility is required to close under Class V of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080E or its superseding administrative regulation, but has not contaminated a domestic use well, spring or well head protection area, does not pose a threat to a domestic use well, domestic use spring, domestic use well head protection area or drinking water supply and has not been determined to be a source of fumes in occupied buildings, [the release of petroleum has contaminated off site property and poses a

threat to human health or the environment.]

(3) The owner or operator of the facility shall submit information to the commission to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the classification guide contained in the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080E or its superseding administrative regulation, (January 1994). [Environmental Harm Ranking Information form dated October 1992, hereby incorporated by reference, and shall be certified by a registered professional geologist or a registered professional engineer. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 69 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.]

Section 3. [2-] Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the commission shall consider the following factors:

(a) Whether the facility is owned by a public or private person;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability. Each individual shall certify that they do not have an ownership or operating interest in another facility;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility; and

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 4. [3-] Demonstration of Financial Ability [to Pay Entry Level]. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit to the commission the last five (5) years of income tax returns and a financial statement for the person, partnership or corporation. (2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to:

(a) First, a [an individual,] partnership or corporation whose average net income for the five (5) year period is less than \$50,000, [or] a public entity with an annual revenue and income of less than \$100,000, or an entity registered and recognized by the federal government as a tax exempt nonprofit organization;

(b) Second, an individual, partnership, or a corporation whose average net income for the five (5) year period is less than \$100,000 but more than \$50,000 or a public entity with annual revenue or income of less than \$250,000 but more than \$100,000;

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(c) Third, an individual, partnership or a corporation whose average net income for the five (5) year period is more than \$100,000 or a public entity with an annual revenue and income of more than \$250,000.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Subchapter S or closely held C Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) A public entity who is an applicant for consideration as to financial ability shall submit its annual budget for the last five (5) years to demonstrate financial ability.

(6) The commission may require that additional information be submitted to determine the financial ability of an applicant.

Section 5. The commission shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the commission is inaccurate or misrepresented.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(1) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2) of this administrative regulation shall have their claims paid second;

(3) [(4)] An owner or operator of a facility that meets the conditions of Section 2 [(4)](2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(a) of this administrative regulation shall have their claims paid third [(first)];

(4) [(2)] An owner or operator of a facility that meets the conditions of Section 2 [(4)](2)(b) [(a)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(a) [(b)] of this administrative regulation shall have their claims paid fourth [(second)];

(5) [(3)] An owner or operator of a facility that meets the conditions of Section 2 [(4)](2)(c) [(a)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(a) [(c)] of this administrative regulation shall have their claims paid fifth [(third)];

(6) [(4)] An owner or operator of a facility that meets the conditions of Section 2 [(4)](2)(a) [(b)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(b) [(a)] of this administrative regulation shall have their claims paid sixth [(fourth)];

(7) [(5)] An owner or operator of a facility that meets the conditions of Section 2 [(4)](2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(b) of this administrative regulation shall have their claims paid seventh [(fifth)];

(8) [(6)] An owner or operator of a facility that meets the conditions of Section 2 [(4)](2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(b) [(c)] of this administrative regulation shall have their claims paid eighth [(sixth)];

(9) [(7)] An owner or operator of a facility that meets the conditions of Section 2 [(4)](2)(a) [(c)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(c) [(b)] of this administrative regulation shall have their claims paid ninth [(seventh)];

(10) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial

ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid tenth;

(11) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid eleventh;

(12) [(8)] Claims in categories (1) through (11) of this section [(7)] shall be paid in order of the date of receipt of the claim;

(13) [(9)](a) All other claims of private persons for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 4 [(3)] of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net income more than \$100,000 is not required to submit income tax returns and shall be paid after the claims addressed by subsections (1) through (13)(a) of this section in order of receipt of the claim;

(14) [(4)](a) Claims from organizational units of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have their claims paid last in order of the date of receipt of the claim.

(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be paid based upon financial ability as determined in Section 4 [(3)](2) of this administrative regulation, in order of receipt of the claim, and shall be ranked in the same manner as a claim from a private person.

Section 7. Payment of Certain Classes of Claims. The commission may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

### STATEMENT OF EMERGENCY 415 KAR 1:100E

The regulatory provisions pertaining to the third party claims, of the fund, are delineated in 415 KAR 1:090.

WHEREAS, the current regulation on third party claims require no acquiescence by the commission on the decision to settle the action or to proceed to trial on the issue.

WHEREAS, the potential exposure pursuant to third party claims is great the commission submits that oversight is warranted to insure that third party claims do not proceed to trial prior to exhaustion of settlement options.

WHEREAS, the proposed regulation enables the commission the requisite oversight necessary to insure that third party claim are resolved in a timely and efficient manner.

It is necessary that the regulatory changes be implemented in the most timely manner to enable the commission to anticipate and manage third party claims resulting in reduced litigation and insuring the swift reimbursement of demonstrated injury.

BRERETON C. JONES, Governor

JACK B. HALL, Executive Director

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

#### 415 KAR 1:100E. Third party claims.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

## ADMINISTRATIVE REGISTER - 1010

EFFECTIVE: September 13, 1994

**NECESSITY AND FUNCTION:** The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to receive reimbursement or payment for third-party claims. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. Owners or operators are eligible to receive reimbursement or payment for third-party claims if they have been issued a certificate of eligibility pursuant to the provisions of 415 KAR 1:060 (1994) ~~[or received a certificate of eligibility pursuant to 415 KAR 1:020 (1991) prior to the effective date of this administrative regulation,]~~ and have maintained compliance with the eligibility requirements of 415 KAR 1:060. This administrative regulation applies only to third-party claims, including claims for bodily injury, ~~and~~ property damage and damage to natural resources, which are asserted against an owner or operator as a result of release into the environment from a petroleum storage tank at a facility eligible for participation in the financial responsibility account. Claims for property damage shall only be paid to the extent that the damages are not addressed by the performance of corrective action. Third-party claims shall be paid only to the extent specified in 401 KAR 42:090.

Section 2. Notice to the Commission. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall notify the commission of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(2) Third-party claims shall only be paid on the basis of a final and enforceable judgment, or pursuant to an agreement reviewed and approved by the commission.

(3) Settlement of claims.

(a) No settlement of a third-party claim shall be made by an owner or operator without the prior approval of the commission; and

(b) The fund shall not pay a final and enforceable third-party judgment or reimburse an owner or operator for payment of the judgment in any amount exceeding a settlement offer rejected by the owner or operator which was not submitted to the commission for consideration or after approval by the commission.

Section 3. Payment of Claims. (1) Payment of claims shall be limited to actual damages caused by the release of petroleum.

(2) Payment shall be made to the third party after approval of payment by the commission.

(3) The amount of payment of all third-party claims caused by a release shall not exceed \$1,000,000.

(4) The commission shall acquire by subrogation the right of the third party to recover the amount of damages paid to the third party from the person responsible or liable for the release.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

### STATEMENT OF EMERGENCY 415 KAR 1:120E

The regulatory provisions pertaining to the hearings, of the fund, are delineated in 415 KAR 1:120.

WHEREAS, the current regulation on hearings requires no submission of the commission record to the hearing officer.

WHEREAS, the proposed regulation enables the hearing officer

to ascertain the documents presented to the commission prior to determination on an issue.

WHEREAS, the proposed regulation bars submission of documentation withheld from the commission during claim review.

It is necessary that the regulatory changes be implemented in the most timely manner to reduce litigation pertaining to commission determinations and permits the applicant to request reconsideration prior to submission of a hearing request.

BRERETON C. JONES, Governor

JACK B. HALL, Executive Director

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

#### 415 KAR 1:120E. Hearings.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: September 13, 1994

NECESSITY AND FUNCTION: KRS 224.60-130(2)(f) requires the commission to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Requests for Hearing. (1) Any person aggrieved by a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or other competent evidence related to the disputed issue that was not previously considered by the commission staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice of the commission's action. The commission staff shall evaluate the documents and other competent evidence after receipt of the request. The commission staff shall resubmit the claim to the commission if the documentation or evidence, accompanying the request for reconsideration, warrants reconsideration of a prior recommendation on the issue. If the reconsideration, by the commission staff or the commission, fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to subsection (2) of this section.

(2) Any person aggrieved by a determination or the reconsideration of a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim may request in writing that a hearing be conducted by the commission. The writing shall set forth the grounds for the request and the relief sought. The commission, the executive director or a person designated by the commission shall be the hearing officer. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had notice. Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after receipt of the request.

(3) [(2)] The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.

(4) Upon receipt of notice of hearing, by the commission, summons shall issue upon petition directing the commission to send all pertinent portions of the commission file related to the determination before the hearing officer, properly bound to the clerk of the administrative hearing office after certifying that such record is the total content of commission file documents pertaining to the issue



before the hearing officer and that said record is the basis for the commission's determination. The hearing officer shall review the commission record, the commission's determination.

Section 2. The Burden of Persuasion. The person requesting the hearing shall have the burden of persuasion to establish a case for the relief sought.

(1) The standard to meet the burden is a preponderance of the evidence.

(2) Documentary evidence which is existing or obtained by any party during the time a claim is pending before the commission, and which is withheld by such party until the claim is forwarded to the Office of Administrative Hearings shall not be admitted into the hearing record in the absence of extraordinary circumstances, unless such admission is requested by the commission.

Section 3. Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation, agreed settlement, consent order, or default for nonappearance.

Section 4. Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(3) The hearing officer shall provide for the hearing to be stenographically, mechanically or electronically recorded. It is within the hearing officer's discretion to require official transcripts. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210 or 224.10-212, and 400 KAR 1:060. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The order shall contain the appropriate findings of fact and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the

commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The commission may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or issue its own written order based on the report and recommended order.

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extension.

(6) The commission shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(7) A final order of the commission shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the commission and the facts and law upon which the decision is based.

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may have recourse to the Franklin Circuit Court [courts of jurisdiction].

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

#### STATEMENT OF EMERGENCY 502 KAR 10:035E

The purpose of this emergency administrative regulation is to prescribe procedures by which third parties may administer the skilled portion of commercial driver's license examinations pursuant to KRS 281A.060. It is necessary to promulgate this emergency administrative regulation, because House Bill 341 took effect on July 15, 1994 without procedures for authorizing third parties to administer the tests. 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 JONES, Governor  
JERRY W. LOVITT, Commissioner

#### DEPARTMENT OF STATE POLICE

#### 502 KAR 10:035E. Commercial driver's license skill testing.

RELATES TO: KRS 281A.160, 332.010

STATUTORY AUTHORITY: KRS 281.160, 332.010

EFFECTIVE: September 1, 1994

NECESSITY AND FUNCTION: KRS 281A.160 authorizes third parties to administer the skills test for commercial driver's licenses. This administrative regulation establishes procedures for authorization and testing.

Section 1. Application for Authorization. Persons desiring to administer the skills test for commercial driver's licenses shall make a written request to the Driver Testing Section of the Department of State Police. The request shall be accompanied by a copy of a current driver's training school or instructor's license, and proof of satisfactory completion of a CDL examiner's training course approved by the U.S. Department of Transportation, Federal Highway Adminis-



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tration (FHWA).

Section 2. Issuance of Authorization. Upon receipt of a written request from a qualified person the Driver Testing Section of the Department of State Police shall issue a letter of authorization to conduct the CDL skills test. The letter of authorization shall be considered an endorsement to the drivers training school or instructor's license and shall be subject to the same terms and conditions as school or instructor's license.

Section 3. Skills Test Requirements. Persons authorized to administer the CDL skills test shall be subject to the following additional requirements.

(1) Administration of skills tests shall comply with 49 CFR 383.75, Subparts G and H.

(2) Persons administering the skills tests shall, without deviation, administer the test in accordance with the Kentucky State Police Driver Testing Section CDL Examiner's Manual. The manual is hereby incorporated by reference. Copies of the manual may be obtained from the Driver Testing Section of the Department of State Police, 919 Versailles Road, Frankfort, Kentucky 40601.

(3) Persons administering the skills tests shall, following the road test, immediately call the Driver Testing Section of the Department of State Police and report the score given to the person tested.

Section 4. Processing Fee. A processing fee of twenty-five (25) dollars shall accompany the written request to administer the skills test.

JERRY W. LOVITT, Commissioner

APPROVED BY AGENCY: August 30, 1994

FILED WITH LRC: September 1, 1994 at noon

### REGULATORY IMPACT ANALYSIS

Contact person: Captain John Barton

(1) Type and number of entities affected: All licensed driver's training schools and instructors, approximately 86 at present.

(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: \$25 fee, and initial cost of doing business.

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

1. First year following implementation: Cost of training and processing.

2. Second and subsequent years: Renewal applications and \$25 processing fee.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of processing requests, including inspections and verification of qualifications.

2. Continuing costs or savings: At least 3 additional examiners estimated at a cost of \$150,000 per fiscal year.

3. Additional factors increasing or decreasing costs: De minimis off-set of costs by the \$25 processing fee.

(b) Reporting and paperwork requirements: New reports on inspection and monitoring of third party testers.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Processing fee will not cover costs. Will require general fund expenditures. All dependent on

number of parties applying to be third party testers.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All qualified third parties are treated the same. All are charged the same processing fee and all will be subject to the same inspection, monitoring and regulations.

### STATEMENT OF EMERGENCY

600 KAR 4:010E

An emergency situation exists because of the language currently found in 600 KAR 4:010. After it was amended in June, 1994, the Federal Highway Administration notified the Kentucky Transportation Cabinet that Section 11(2)(b) and (c) of the administrative regulation were out of compliance with the federal mandate on certification/decertification of disadvantage business enterprise firms. Even though the Kentucky Transportation Cabinet is required by the federal mandate to have procedures for certifying/decertifying disadvantaged business enterprises, the Federal Highway Administration has ruled that the stated subsections cannot be applied to federal-aid projects. In order to continue with the federal-aid highway construction program this federal fiscal year and not risk the loss of fiscal year 1993-94 federal highway funding, the administrative regulation must be amended as quickly as possible. An ordinary administrative regulation is insufficient since the earliest it can be effective is after the end of the current federal fiscal year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Administrative Regulations Compiler after the notice of intent hearing.

BRERETON C. JONES, Governor

DON C. KELLY, P.E., Secretary

### TRANSPORTATION CABINET Office of Minority Affairs

**600 KAR 4:010E. Certification of disadvantaged, minority and women business enterprises.**

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23, 15 USC 637

STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR 23 EFFECTIVE: August 31, 1994

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or

business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the requirement that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

Section 1. Definitions. (1) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.

(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.

(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.

(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:

(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities.

(13) "Prequalified" means that the Transportation Cabinet has approved the firm [business enterprise] to perform certain functions on behalf of the cabinet in accordance with KRS Chapter 45A or 603 KAR 2:015.

(14) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Transportation Cabinet shall have a rebuttable presumption that individuals listed in paragraphs (a) through (f) of this subsection are socially and economically disadvantaged. The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the following groups are socially and economically disadvantaged:

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(15) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. Adoption of Federal Regulation. 49 CFR 23 effective June 1, 1992 is adopted without change. This federal regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

Section 3. Application Process. (1) Application for certification as a DBE, MBE, or WBE shall be made to the Transportation Cabinet's

## ADMINISTRATIVE REGISTER - 1014

Office of Minority Affairs on form TC 10-3. Each application form shall be completed in full. All documentation required by the application shall be attached to the completed application. The person signing the application shall be one (1) of the persons on whom the DBE, MBE, or WBE status is based and shall identify his position with the firm [business enterprise] applying for certification. The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Office of Minority Affairs.

(3) The Office of Minority Affairs shall perform an on-site inspection of the offices and any job sites in Kentucky on which the firm is working at the time of the application evaluation of any new applicant. Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Office of Minority Affairs to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Office of Minority Affairs shall be certified as a DBE, MBE, or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Office of Minority Affairs may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Office of Minority Affairs to deny the application.

(6) During the period prior to the formal submittal of the application, the Office of Minority Affairs or its supportive services contractor shall:

(a) When requested by the applicant, advise the applicant firm of any apparent existing structural, organizational, or financial impediments to the firm's certification;

(b) When requested by the applicant, provide technical advice needed by the applicant in completing the application form and the supporting documentation; or

(c) Allow the applicant to make any structural, organizational, or financial changes to its organization necessary to bring the applicant into compliance with the requirements of this administrative regulation.

(7) The form TC 10-3, Application for Certification Schedule A, last revised in January, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The [its] telephone number is (502)564-3601.

Section 4. Evaluation of Application. (1)(a) The Transportation Cabinet, Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE.

(b) The Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE.

(c) To be certified a firm shall:

1. ~~Perform a commercially useful function as set forth in 49 CFR Part 23.47;~~

2. Be operated with the intention of making a profit; ~~and~~

2. ~~[3.]~~ Be operational and performing as an independent business concern prior to the date the application for certification was filed; ~~and~~

3. ~~Submit evidence of the firm's operational status which includes, but is not limited to the following:~~

a. A copy of a bid or quotation on a publicly or privately funded project;

b. A copy of an invoice, purchase order, or bill of lading;

c. Proof of gross receipts or receivables due; or

d. A sworn statement executed by the person signing the application pursuant to Section 3(1) of this administrative regulation that the applicant is operational and meets all eligibility standards set forth in 49 CFR 23.53.

(2) The Office of Minority Affairs shall issue a written determination of eligibility for certification within ninety (90) days of receipt of a completed application provided that a challenge as set forth in Section 9 of this administrative regulation has not been received.

Section 5. Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE, or WBE is approved by the Transportation Cabinet, Office of Minority Affairs and a challenge to the status of a firm from a third party as set forth in Section 9 of this administrative regulation is not received during the time the Office of Minority Affairs is evaluating the application, the written notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE, or WBE.

(2) Certification as a DBE, MBE, or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a business enterprise shall expire immediately upon any change in ownership or control of the business enterprise. The business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. Recertification. (1) At least thirty (30) days prior to its certification expiration, a certified DBE, MBE, or WBE that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs. The application shall be in the same form and require the same information as in Section 3 of this administrative regulation except that beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway construction, design, or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 14 of this administrative regulation.

(2) Certification of a DBE, MBE, or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Office of Minority Affairs denies the request for recertification as set forth in Section 6 of this administrative regulation.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(5) If the Office of Minority Affairs' decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective immediately. However, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

Section 7. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, Office of Minority Affairs, the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within

thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm may not reapply for certification for one (1) year from the effective date of denial. The effective date of denial shall be the date the notice is received or delivery is attempted if the denial is not appealed. If the denial is appealed and the denial is upheld the effective date of the denial shall be the date of the notice of final action on behalf of the Transportation Cabinet.

Section 8. Decertification. (1) The Transportation Cabinet, Office of Minority Affairs may perform periodic reviews of each certified DBE, MBE, or WBE during its certification period to verify continued eligibility of the firm. If the Office of Minority Affairs finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Office of Minority Affairs as a part of the periodic review, the office may initiate a decertification proceeding.

(2) The Office of Minority Affairs shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the date the notice is received or delivery is attempted. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(4) If the Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

(5) The effective date of the decertification is thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current certification from the Small Business Administration issued pursuant to United States Code Title 15 Section 637, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging third party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Office of Minority Affairs shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Office of Minority Affairs determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This shall terminate the proceeding.

(5) If the Office of Minority Affairs determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to

evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Office of Minority Affairs shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Office of Minority Affairs shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 of this administrative regulation as it relates to challenge, the Office of Minority Affairs shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Office of Minority Affairs in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. Predetermination Meeting. (1) A predetermination meeting with the Office of Minority Affairs may be requested by any party as set forth in Sections 6, 8, and 9 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the predetermination meeting between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Office of Minority Affairs shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Office of Minority Affairs. The affected parties may be represented by legal counsel.

(5) The Office of Minority Affairs shall render a written decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Office of Minority Affairs shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Office of Minority Affairs.

Section 11. Appeal and Hearing. (1) Any party in Sections 6(2), 8(4) and 9(10) of this regulation adversely affected by a decision of the Transportation Cabinet, Office of Minority Affairs may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2)(a) The Transportation Cabinet shall schedule the hearing on the appeal between fifteen (15) and thirty (30) days after the appeal

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is received unless otherwise agreed to by all parties.

(b) If an appeal hearing is rescheduled beyond the thirty (30) days from the date of the notification to deny certification at the request of the applicant firm, the Office of Minority Affairs may [shall] not approve as part of an established DBE goal any of the work contracted by the applicant.

~~[(c) A firm for which decertification proceedings has been started shall not be approved by the Office of Minority Affairs to meet established DBE goals.]~~

(3) The Transportation Cabinet shall provide written notice to the appellant of the date, time, and location of the hearing.

(4) At the hearing, the hearing officer appointed by the Transportation Cabinet, shall provide an opportunity for the appellant to call witnesses and present evidence and arguments both written and oral as to why the decision of the Office of Minority Affairs should be overturned.

(5) The Office of Minority Affairs shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.

(6) The hearing officer appointed by the Transportation Cabinet has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.

(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.

(8)(a) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of final action within sixty (60) days of the hearing.

(b) The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection or [and] owner interview were conducted by the Office of Minority Affairs. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Office of Minority Affairs or a hearing examiner in determining the eligibility of the firm.

(c) The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.

(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.

(10) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 12. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE, or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE, or WBE program. Application for certification shall be on Transportation Cabinet Form TC 10-5 which is incorporated by reference as a part of this administrative regulation. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(3) If all firms involved in the joint venture are certified DBEs, MBEs, or WBEs, there shall not be a need for the joint venture to request certification as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(4) The form TC 10-5, DBE/WBE Joint Venture Eligibility Application, Schedule B, last revised in February, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. ~~The [its]~~

telephone number is (502) 564-3601.

Section 13. Additional Program Guidelines. 13 CFR 121.1-121.3, effective April 22, 1994, is adopted without change. The federal regulation sets forth the small business size standards established by the Small Business Administration. These size standards, when less than \$15.37 million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

Section 14. Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of KRS 45A.825, 600 KAR 1:101, or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend at least one (1), one (1) week management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky but which are within a seventy-five (75) mile (120.7 kilometer) proximity may be required by the Office of Minority Affairs to attend at least one (1) management development course. This attendance requirement shall be based on an assessment of the firm's managerial and operational capability in relationship to the regulatory requirements determined during the conduct of the on-site inspection, personnel interviews, and evaluation of the firm's prequalification status.

(3) DBE certified firms which have previously attended a management development course and which have been cited for a violation of this administrative regulation or 600 KAR 4:020 may be required to attend an additional management development course.

(4) The management development course shall be offered free of charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

(6) The owners of certified firms which are not required to attend the management development course may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 15. Disadvantaged Business Enterprise Orientation Program. (1) The Transportation Cabinet shall offer a one (1) day orientation program for any certified DBE firm. The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;

(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction" and "Standard Drawings"; and

(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under KRS 45A.825, 600 KAR 1:101, [600 KAR 1:100] or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be completed by telephone and mail.

(4) The owners of certified firms which are not required to attend the orientation program may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

MAURICE SWEENEY, Executive Director  
J.M. YOWELL, P.E. State Highway Engineer  
JERRY ANGLIN, Commissioner  
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: August 16, 1994  
FILED WITH LRC: August 31, 1994 at 3 p.m.

## ADMINISTRATIVE REGISTER - 1017

### REGULATORY IMPACT ANALYSIS

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: All firms applying to be certified or recertified as a DBE, MBE, or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: Requires new applicants to provide some type of proof that the firm is operational. Almost any business document or affidavit will suffice.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: By keeping the DBE program in compliance with the federal mandate, there will be no withholding of federal highway construction funds.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements:

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

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The do nothing alternative was rejected because the program was technically in noncompliance with the federal mandate and to prevent a loss of federal funds, immediate action had to be taken. In the change requiring the provision of the proof of operational status of a firm applying for certification, a more rigid standard was rejected pending the completion of a federal notice of proposed rulemaking which is in process. If the US Department of Transportation promulgates stricter standards, the Kentucky Transportation Cabinet will then follow suit.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: The Federal Highway Administration informed the Transportation Cabinet shortly after the effective date of the last change to the administrative regulation that the administrative regulation was out of compliance with the federal mandate. Due process was no longer afforded previously certified firms.

Tiering: Was tiering applied? Yes. Tiering was applied in that the firms to be prequalified are required to meet different standards if they are prequalifying for different classifications.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 Code of Federal Regulations Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the US Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms. The primary change to this administrative regulation is needed to allow the Kentucky Transportation Cabinet to resume compliance with the federal mandate. The Federal Highway Administration determined that a change promulgated by the Cabinet in May, 1994 did not provide adequate due process.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. US Department of Transportation has found the procedures to be consistent with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. The change in the management program has received federal approval and brought Kentucky Transportation Cabinet back into compliance with the mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### STATEMENT OF EMERGENCY 600 KAR 4:020E

An emergency situation exists because of the language currently found in 600 KAR 4:020. After it was amended in June, 1994, the Federal Highway Administration notified the Kentucky Transportation Cabinet that Section 3(2)(e) of the administrative regulation was out of compliance with the federal mandate on certification/decertification of disadvantaged business enterprise firms. Even though the Kentucky Transportation Cabinet is required by the federal mandate to have procedures for certifying/decertifying disadvantaged business enterprises, the Federal Highway Administration has ruled that the stated subsections cannot be applied to federal-aid projects. In order to continue with the federal-aid highway construction program this federal fiscal year and not risk the loss of fiscal year 1993-94 federal highway funding, the administrative regulation must be amended as quickly as possible. An ordinary administrative regulation is insufficient since the earliest it can be effective is after the end of the current federal fiscal year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Administrative Regulations Compiler after the notice of intent hearing.

BRERETON C. JONES, Governor  
DON C. KELLY, P.E., Secretary

### TRANSPORTATION CABINET Office of Minority Affairs

600 KAR 4:020E. The disadvantaged, minority and women business enterprise program.

RELATES TO: KRS Chapters 96A, 174, 176, 177 183

STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR Part 23

EFFECTIVE: August 31, 1994

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program of supporting the fullest possible participation of firms owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program that requires the participation of disadvantaged, minority, and women business enterprises in contracts financed in whole or in part with federal funds. This administrative regulation establishes the procedures to be followed by



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and requirements of contractors and subcontractors dealing with the Transportation Cabinet.

Section 1. Definitions. (1) "DBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a disadvantaged business enterprise.

(2) "MBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a minority business enterprise.

(3) "WBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a women business enterprise.

(4) "Good faith effort" means an attempt that can reasonably be expected to produce a level of disadvantaged, minority or women business enterprise participation sufficient to meet contract goals.

(5) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the firm's application for certification or bid documents.

(6) "Prime contractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that contracts with the Kentucky Transportation Cabinet for the performance of prescribed work.

(7) "Subcontractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that subcontracts any portion of a contract with the written consent of the Transportation Cabinet.

(8) "Suspension" means the action taken for cause by the Transportation Cabinet to disqualify for a specified period of time a person or firm from participating as a DBE, MBE, or WBE in Transportation Cabinet federal-aid projects.

(9) "Apparent successful competitor" means the bidder submitting the lowest and best bid in accordance with KRS 176.080 or Chapter 45A.

Section 2. Contract Goals. (1) Goals shall be established for DBE, MBE or WBE participation in a portion of the Transportation Cabinet projects in which there is United States Department of Transportation funding.

(2) A project proposal may contain goals for participation of DBE, MBE, or WBE subcontractors who are certified in accordance with 600 KAR 4:010.

(3) Any contractor who bids on and is the apparent successful competitor for a project with established DBE participation goals shall be responsible for meeting the goals for participation of certified DBE, MBE, or WBE subcontractors which are set forth in the project proposal. The contractor shall submit to the Transportation Cabinet DBE, MBE or WBE subcontractor participation information as specified in Sections 3(1) and 6 of this administrative regulation.

Section 3. Prime Contractor Guidelines. (1)(a) Before a prime contractor enters into a contractual agreement with the Transportation Cabinet on a project which contains goals for participation of DBE, MBE, or WBE subcontractors, he shall submit an original and two (2) copies of each agreement between the prime contractor and any DBE, MBE, or WBE to the Transportation Cabinet, Department of Highways.

(b) The agreement shall be signed and notarized by both parties to the agreement.

(c) The agreement shall set forth:

1. A description of the work the DBE, MBE, or WBE subcontractor is to perform or the materials or services to be supplied;

2. The unit price the DBE, MBE, or WBE subcontractor is to be paid for each item; and

3. The total dollar value of the subcontract.

(d) Contractual agreements shall be reviewed by the Transportation Cabinet, Office of Minority Affairs prior to the execution of the

project contract to ensure that the project goal will be met and that the DBE, MBE, or WBE subcontractors are certified in Kentucky and have completed the orientation program required by 600 KAR 4:010, Section 15 and are eligible to act as a certified DBE, MBE, or WBE.

~~[(e) The Office of Minority Affairs shall not approve a subcontractor as a DBE, WBE, or MBE to fulfill a goal requirement on a project if the DBE, MBE, or WBE is related in the first or second degree by birth or marriage to the prime contractor. This prohibition shall include a subcontractor to a joint venture.]~~

(2) Toward the DBE, MBE, or WBE participation goal established for the project, the prime contractor may count expenditures for materials and supplies obtained from certified DBE, MBE, or WBE suppliers and manufacturers, provided the DBE, MBE, or WBE assumes actual and contractual responsibility for providing the materials and supplies as follows:

(a) The prime contractor may count its entire expenditure to a DBE, MBE, or WBE manufacturer who operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor; and

(b) The prime contractor may count sixty (60) percent of its expenditures to DBE, MBE, or WBE regular dealers who own, operate or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

(c) Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this administrative regulation.

(3) The prime contractor may count toward its MBE, DBE, or WBE goals the following expenditures to certified MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(a) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services; and

(c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar service.

(4)(a) Toward the DBE, MBE, or WBE participation goal established for the project, the prime contractor may count only expenditures to certified DBEs, MBEs, or WBEs that perform a commercially useful function in the work of the specific [a] contract.

(b) A DBE, MBE, or WBE firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved.

(c) To determine if a DBE, MBE, or WBE is performing a commercially useful function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated.

(5) A prime contractor may count toward its certified DBE, MBE,



or WBE goal a portion of the total dollar value of a subcontract with a joint venture certified under the provisions of 600 KAR 4:010 equal to the percentage of ownership and control of the DBE, MBE or WBE partner in the joint venture.

(6) If the prime contractor fails to reach the goals of the project and fails to demonstrate sufficient good faith efforts as set forth in Section 5 of this administrative regulation, the Office of Minority Affairs shall in writing advise the Department of Highways that the contract agreement with the prime contractor shall not be executed because he has failed to reach the DBE, MBE, or WBE participation goals of the contract.

(7) If the prime contractor reaches the DBE, MBE, or WBE participation goals and the contractual agreement with the Transportation Cabinet is executed, the prime contractor is bound by the approved DBE, MBE, or WBE percentage participation of the contract.

(8)(a) If the prime contractor cancels the [-s] subcontract of a DBE, MBE, or WBE for any reason, [is cancelled for nonperformance or because the subcontractor has lost its program certification,] it shall make a good faith effort to replace the approved DBE, MBE, or WBE with another certified DBE, MBE, or WBE firm in the amount necessary to meet the project goal as originally established.

(b) An original and two (2) copies of the completed and executed agreement between the prime contractor and the new DBE, MBE, or WBE subcontractor shall be submitted to the Office of Minority Affairs.

(c) The agreement shall be reviewed by the Office of Minority Affairs as set forth in subsection (1) of this section prior to the replacement DBE, MBE, or WBE beginning work on the project.

(d) If the prime contractor is unable to replace the subcontractor with a certified DBE, MBE, or WBE he shall request a finding of good faith effort as set forth in Section 6 of this administrative regulation.

(9) If the prime contractor and DBE, MBE, or WBE subcontractor intend to amend their agreement which has previously been reviewed by the Office of Minority Affairs, the revision shall be submitted to the Office of Minority Affairs for review prior to the amendment being implemented to ensure that the DBE, MBE, or WBE participation goal will still be met.

(10) The prime contractor shall pay the DBE, MBE, or WBE subcontractor for work performed or materials furnished within seven (7) working days after receiving payment from the Transportation Cabinet.

(11) The prime contractor shall, upon request, make available to the Office of Minority Affairs information related to the conduct of the project.

Section 4. Prime Contractor Failure. (1) The following shall be deemed failure of the prime contractor to meet the approved DBE, MBE, or WBE percentage participation of the contract and thus violation of his contract provisions:

(a) Failure to use the approved DBE, MBE, or WBE subcontractor;

(b) Use of the approved DBE, MBE, or WBE subcontractors to an extent that provides a percentage participation less than indicated in the contract agreement with the Transportation Cabinet; and

(c) Use of a DBE, MBE, or WBE subcontractor other than those named in the subcontract reviewed by the Office of Minority Affairs.

(2) The Office of Minority Affairs shall notify the prime contractor of his failure to meet the approved DBE, MBE, or WBE percentage participation of the contract. The notice shall contain the reasons for the failure and a time deadline for correction of the failure. The prime contractor in accordance with the provisions of Section 11 of 600 KAR 4:010 may file an appeal within the time deadline. If the firm fails to file an appeal and fails to meet the DBE, MBE, or WBE percentage participation of the contract, the Office of Minority Affairs shall in writing advise the Department of Highways of the violation of contract provisions.

Section 5. Good Faith Efforts. (1) If the apparent successful competitor for the project is unable to meet his DBE, MBE, or WBE goals but believes he has made a good faith effort toward the goal, he may in writing request a finding of good faith effort from the Office of Minority Affairs. The written request shall substantiate his claim that reasonable efforts were put forth to obtain the project goals. The Office of Minority Affairs shall consider the application for a finding of good faith effort and provide notice to the apparent successful competitor of its decision within ten (10) days of receipt of the application.

(2) The Office of Minority Affairs shall in writing advise the Department of Highways of its decision.

(3) The criteria used by the Office of Minority Affairs for determining if an apparent successful competitor has demonstrated good faith efforts shall include:

(a) The apparent successful competitor's attendance at the prebid meeting regarding the specific project;

(b) The apparent successful competitor's providing written announcement of project to a reasonable number of DBEs, MBEs, or WBEs regarding subcontracting opportunities;

(c) The apparent successful competitor's allowing sufficient time for DBEs, MBEs, or WBEs to respond to the written announcement of project;

(d) The apparent successful competitor's following up written announcement of project with telephone calls or personal contact;

(e) The apparent successful competitor's contacting the Transportation Cabinet's supportive services contractor for assistance in identifying DBE, MBE, or WBE firms. The supportive services contractor is a contractor that provides services to the Transportation Cabinet relating to DBE, MBE, or WBE;

(f) The apparent successful competitor's selecting items of work on the project that DBEs, MBEs, or WBEs are prequalified in accordance with 603 KAR 2:015 to perform;

(g) The apparent successful competitor's providing DBEs, MBEs, or WBEs with adequate information about the project when requesting quotations;

(h) The apparent successful competitor's making efforts to assist DBEs, MBEs, or WBEs in obtaining bonding, credit or insurance;

(i) The apparent successful competitor's advertising in general circulation, trade association and minority focus media for a reasonable time, preferably at least twenty (20) days, before bids or proposals are due;

(j) The location of the project;

(k) The size of the project;

(l) The type of work required by the project; and

(m) The availability of DBEs, MBEs, and WBEs.

(4) If the apparent successful competitor is unable to meet the DBE, MBE, or WBE participation goal and either did not request a finding of good faith effort or failed to satisfy the Office of Minority Affairs that he has substantiated his claim of good faith efforts, the Office of Minority Affairs shall notify the apparent successful competitor of the reasons why his claim of good faith efforts was not accepted and additional efforts he may make to meet the contract goal.

(5) The apparent successful competitor for the project may file an appeal with the Transportation Cabinet in accordance with the provisions of Section 11 of 600 KAR 4:010 within ten (10) days of the date of the notice. If the firm fails to file an appeal or successfully make the additional efforts within the ten (10) days, the Office of Minority Affairs shall in writing advise the Department of Highways that the firm has neither met the project goals nor made a good faith effort to meet the project goals.

(6) If the apparent successful competitor elects not to file an appeal under the provisions of 600 KAR 4:010, he may within the ten (10) days appeal to the Commissioner, Department of Highways as provided in Sections 9 and 10 of 603 KAR 2:015. However, instead of departmental construction engineers a representative of the Office

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of Minority Affairs shall be present at the hearing. The hearing examiner and the Commissioner of the Department of Highways shall use the criteria set forth in subsection (3) of this section to determine if the apparent successful competitor has demonstrated good faith efforts.

Section 6. Subcontractor's Guidelines. (1) Only a subcontractor who is certified and has attended a Transportation Cabinet orientation program under the provisions of 600 KAR 4:010 prior to the date of the bid letting for the project may issue a quote on a USDOT assisted project in order to meet a DBE, MBE, or WBE goal.

(2) At least fifty (50) percent of the work outlined in the subcontract shall be performed by the DBE, MBE, or WBE subcontractor's work force.

(3) Second tier subcontracting by a DBE, MBE, or WBE subcontractor may only be accomplished if the proposed second tier subcontractor is a certified DBE, MBE, or WBE and the Office of Minority Affairs has reviewed and approved the second tier DBE, MBE, or WBE subcontract prior to execution.

(4) A DBE, MBE, or WBE subcontractor shall designate in writing a project superintendent who supervises the subcontractor's work force daily. The project superintendent shall not be employed by any other contractor on the same project for the life of the project.

(5) If the subcontractor rents equipment from another contractor, the rental agreement shall be in writing and be approved by the Transportation Cabinet's resident engineer on the project.

Section 7. DBE, MBE, or WBE as Contractor. (1) The provisions of this administrative regulation shall not be construed so as to prohibit a DBE, MBE, or WBE from competing on a project in the role of prime contractor.

(2) If a DBE, MBE, or WBE is the prime contractor on a project which has participation goals established for the project pursuant to Section 2 of this administrative regulation, the work performed by the DBE, MBE, or WBE shall count toward the participation goal.

Section 8. DBE, MBE, or WBE Noncompliance. (1) If any certified DBE, MBE, or WBE is found to be in noncompliance with any of the requirements of this administrative regulation, the firm may have its certification suspended for a specified period of time. The Office of Minority Affairs shall notify the certified firm of the pending suspension. The notice shall specify the reasons for the pending suspension.

(2) The firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days it shall be suspended for a specified period of time.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of 600 KAR 4:010.

(4) If the Transportation Cabinet, Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be suspended, the firm may appeal the decision in accordance with Section 11 of 600 KAR 4:010.

(5) The effective date of the suspension shall be thirty (30) days after the date the notice of suspension is mailed to the firm, providing the firm does not appeal the suspension to the Transportation Cabinet. If a firm appeals the suspension, the effective date of the suspension shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of 600 KAR 4:010.

MAURICE SWEENEY, Executive Director  
J.M. YOWELL, P.E., State Highway Engineer  
JERRY ANGLIN, Commissioner  
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: August 16, 1994

FILED WITH LRC: August 31, 1994 at 3 p.m.

## REGULATORY IMPACT ANALYSIS

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: All firms applying to be certified or recertified as a DBE, MBE, or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The do nothing alternative was rejected because the program was technically in noncompliance with the federal mandate and to prevent a loss of federal funds, immediate action had to be taken.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: The Federal Highway Administration informed the Transportation Cabinet shortly after the effective date of the last change to the administrative regulation that the administrative regulation was out of compliance with the federal mandate. Due process was no longer afforded previously certified firms.

Tiering: Was tiering applied? Yes. There are differing requirements for a prime and subcontractor. A prime contractor has more responsibilities.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 Code of Federal Regulations Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the US Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. U.S. Department of Transportation has found the procedures to be consistent with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. This management program has received federal approval.

## ADMINISTRATIVE REGISTER - 1021

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not Applicable.

### STATEMENT OF EMERGENCY 909 KAR 1:010E

The administrative regulation 909 KAR 1:010E sets forth the requirements for the conduct of meetings for the Kentucky Health Policy Board, the creation of agendas, the issuance of public notice for meetings and the keeping of minutes of the board. This administrative regulation is required in order to allow the Kentucky Health Policy Board to meet and to implement the provisions of the health care reform law as embodied in House Bill 250, 1994 Ky. Acts ch. 512. In order to allow the board to meet and to make decisions on issues within its jurisdiction, it is necessary to promulgate this emergency administrative regulation. The administrative regulation is also being promulgated as an ordinary administrative regulation for public comment.

BRERETON C. JONES, Governor  
DONALD B. CLAPP, Chairman

### KENTUCKY HEALTH POLICY BOARD

#### 909 KAR 1:010E. Kentucky Health Policy Board meetings, minutes and transactions.

RELATES TO: KRS Chapters 142, 164, 205, 216, 216B, 304  
STATUTORY AUTHORITY: KRS 216.2905(2)(t)  
EFFECTIVE: September 7, 1994

NECESSITY AND FUNCTION: KRS 216.2905(2)(t) requires the board to promulgate administrative regulations on minutes, meetings and transactions. These administrative regulations relate to the conduct of meetings of the Health Policy Board and its transaction of business.

Section 1. Definitions. (1) "Board" means the Kentucky Health Policy Board.

(2) "Chair" means the Chairman of the Kentucky Health Policy Board.

Section 2. Meetings. (1) Regular meetings shall be held at such times and places as established by the board. Special meetings shall be set upon the call of the chair or three (3) members of the board. Meetings shall be open to the public in accordance with the Kentucky Revised Statutes.

(2) Notice of meetings shall be published in accordance with Kentucky Revised Statutes.

(3) Three (3) members of the board shall constitute a quorum for the transaction of business. Meetings of the board shall be conducted according to The New Roberts Rules of Order, (1989) unless otherwise determined by the board.

Section 3. Minutes. (1) Written minutes shall be taken at all meetings of the board. Minutes shall include the time, date and place of meeting, a list of each member present and absent, a description of all action taken and matters discussed and the results of votes taken on action. The minutes will then be circulated to all board members and approved by the board at the next regular meeting. The chair shall certify that the minutes have been approved by the board. The certified minutes shall be kept on file at the board's offices.

(2) The chair shall designate staff to take and keep such minutes.

Section 4. Agenda. (1) The board may convene to discuss and transact business as well as to receive information related to the board's functions and to health care in general.

(2) The agenda will be available to the public at the board's office twenty-four (24) hours in advance of the meeting.

(3) Anyone requesting to place an item on the agenda shall submit a written request with supporting documentation to the board. The board may at its discretion, place such items on the agenda.

(4) The agenda may be amended at a regular meeting by a majority of the board present when it is deemed necessary and appropriate to do so.

Section 5. Chair. (1) The chair of the board will preside at all meetings. In addition, the chair shall exercise such authority as designated by the board including, but not limited to, the oversight of ministerial matters related to the internal operations of the board and its staff.

(2) In the chair's absence, the board shall delegate a member to preside over meetings. In addition, the board may from time to time delegate authority to other members of the board for the transaction of specific business.

DONALD B. CLAPP, Chairman

APPROVED BY AGENCY: September 7, 1994

FILED WITH LRC: September 7, 1994 at 4 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald B. Clapp

(1) Type and number of entities affected: This regulation only affects the Kentucky Health Policy Board. It regulates the conduct of meetings and the transaction of business of the board.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. None, this regulation only applies to the Kentucky Health Policy Board and is procedural in nature.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. None, see above.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: This regulation establishes the procedure for meetings, creating an agenda, notice of public meetings and the keeping of minutes.

(a) Direct and indirect costs or savings:

1. First year: \$10,000 in postage and printing of public notice.

2. Continuing costs or savings: \$10,000 per year for postage and printing.

3. Additional factors increasing or decreasing costs: Variation in postage rates would raise costs.

(b) Reporting and paperwork requirements: None, however, the regulation does establish the manner in which an agenda at a meeting is set.

(4) Assessment of anticipated effect on state and local revenues: None. This regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established in House Bill 2.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The regulation establishes the meeting schedules for the Health Policy Board which has broad jurisdiction over health care matters in KRS Chapters 216, 216B, and 205.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative was available. KRS 216.2905(2)(t)

## ADMINISTRATIVE REGISTER - 1022

mandates this regulation.

(8) Assessment of expected benefits: To provide the public adequate public notice of board meetings and business, and to provide for the accurate recording of minutes.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will allow the board to act on issues within its jurisdiction.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to enact a procedure regulation will delay the ability of the board to act to implement health care reform legislation.

(c) If detrimental effect would result, explain detrimental effect: Benefits will be to allow the Health Policy Board to function.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulation has been drafted in an effort to be consistent with the Kentucky open meetings law.

(a) Necessity of proposed regulation if in conflict: See above.

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

(10) Any additional information or comments: The function of this regulation is to allow the Health Policy Board to meet and establish an agenda upon which to act. The regulation also provides for the manner in which matters may be placed upon the board's agenda for consideration. It also provides for public notice of meetings.

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation addresses board procedures for public meetings and tiering was inappropriate.

## ADMINISTRATIVE REGISTER - 1023

### ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING COMMITTEE

#### KENTUCKY AGRICULTURAL EXPERIMENT STATION Division of Regulatory Services (As Amended)

##### 12 KAR 4:100. Slowly released nutrients.

RELATES TO: KRS 250.366(7), (17), (18)

STATUTORY AUTHORITY: KRS 250.421

NECESSITY AND FUNCTION: To interpret the fertilizer law as it relates to the proper labeling of slowly released nutrients.

Section 1. No fertilizer labeling shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the nutrient or nutrients are identified and guaranteed at a level of at least fifteen (15) percent of the total guarantee for that nutrient(s).

Section 2. Types of products with slow release properties recognized are:

(1) Water insoluble [~~(N-products-only)~~], such as natural organics, urea form materials, urea-formaldehyde products, isobutylidene diurea [IBDU], oxamide, etc.;

(2) Coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers; and

(3) Occluded slow release, where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and

(4) Products containing water soluble slowly available nitrogen such as urea-formaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), dicyanodiamide (DCD), urea-triazone solutions, etc.

The terms, "water insoluble, coated slow release, slow release, controlled release, slowly available water soluble, and occluded slow release" are accepted as descriptive of these products, [~~respectively;~~] provided the manufacturer can show a testing program substantiating the claim (testing under guidance of Kentucky Agricultural Experiment Station personnel or a recognized reputable researcher acceptable to the director). A laboratory procedure, acceptable to the director for evaluating the release characteristics of the product(s) shall [must] also be provided by the manufacturer.

Section 3. If an amount of nitrogen is designated as organic, then the water insoluble nitrogen or the slow release nitrogen guarantee shall [must] not be less than sixty (60) percent of the nitrogen so designated. Coated urea shall not be included in meeting the sixty (60) percent requirement. [To supplement Section 2 of this regulation when the nitrogen is organic, it should be established that if the labeling states the amount of organic nitrogen present in a phrase, such as "nitrogen in organic form equivalent to X% N," then the water insoluble guarantee must not be less than sixty (60) percent of the nitrogen so designated. For example: If the total nitrogen guarantee for a fertilizer is ten (10) percent and the label states, "Nitrogen in organic form equivalent to two and five tenths (2.5) percent N" then the water insoluble guarantee must not be less than one and five tenths (1.5) percent (2.5% x 0.6 = 1.5%).]

Section 4. Until more appropriate methods are developed, AOAC International method 970.04 is to be used to confirm the coated slow release and occluded slow release nutrients and others whose slow release characteristics depend on particle size. AOAC International method 945.01 shall be used to determine the water insoluble nitrogen of organic materials. AOAC International methods 970.04

and 945.01 are in Official Methods of Analysis 15th Edition (1990) and are hereby incorporated by reference. This material is available for inspection and copying at 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky, during regular business hours of 8 a.m. to 5 p.m., Monday through Friday. [When a slowly released nutrient is less than fifteen (15) percent of the guarantee for either total nitrogen (N), available phosphoric acid ( $P_2O_5$ ), or soluble potash ( $K_2O$ ), as appropriate, the labeling shall make no slowly available claims.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: July 7, 1994

FILED WITH LRC: July 12, 1994 at 10 a.m.

#### KENTUCKY AGRICULTURAL EXPERIMENT STATION Division of Regulatory Services (As Amended)

##### 12 KAR 4:110. Terms and definitions.

RELATES TO: KRS 250.406

STATUTORY AUTHORITY: KRS 250.421

NECESSITY AND FUNCTION: To utilize standard terms and definitions which reduces regulatory problems for companies selling fertilizer in Kentucky and other states.

Section 1. Definitions. (1) "Acid-forming fertilizer" means a fertilizer capable of increasing the residual acidity of soil.

(2) ~~[(70)]~~ "Acidulated bone" means a fertilizer made from ground bone or bone meal that has been treated with sulfuric acid.

(3) ~~[(44)]~~ "Acidulated fish tankage" means a fertilizer that is derived from rendered fish or fish scrap treated with sulfuric acid.

(4) ~~[(42)]~~ "Activated sewage" means a fertilizer made from sewage freed from grit and coarse solids and aerated after being inoculated with microorganisms. The resulting flocculated organic matter is withdrawn from the tanks, filtered with or without the aid of coagulants, dried, ground and screened.

(5) ~~[(33)]~~ "Ammoniated superphosphate" means a fertilizer obtained when superphosphate is treated with ammonia or with solutions which contain ammonia and other compounds of nitrogen. The guaranteed percentages of nitrogen and of available phosphate shall be stated as part of the name.

(6) ~~[(34)]~~ "Ammonium nitrate" means a fertilizer that is chiefly the ammonium salt of nitric acid. It shall contain not less than thirty-three (33) percent nitrogen, one-half (1/2) of which is in the ammonium form and one-half (1/2) in the nitrate form.

(7) ~~[(73)]~~ "Ammonium phosphate (fertilizer grade)" means a fertilizer obtained when phosphoric acid is treated with ammonia (anhydrous or aqueous), and consists principally of monoammonium phosphate and diammonium phosphate or a mixture of these two (2) salts. The guaranteed percentage of nitrogen and of available phosphate shall be stated as part of the name.

(8) ~~[(74)]~~ "Ammonium phosphate-sulfate (fertilizer grade)" means a fertilizer obtained when a mixture of phosphoric acid and sulfuric acid is treated with ammonia. It consists principally of a mixture of ammonium phosphate and ammonium sulfate. The guaranteed percentages of nitrogen and of available phosphate shall be stated as a part of the name.

(9) ~~[(40)]~~ "Ammonium sulfate nitrate" means a fertilizer that is a double salt of ammonium sulfate and ammonium nitrate which are present in equal molecular proportions. It shall contain not less than

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twenty-six (26) percent nitrogen, one-fourth (1/4) of which is in the nitrate form and three-fourths (3/4) in the ammonium form.

(10) [(70)] "Ammonium thiosulfate (fertilizer grade)" means a commercial fertilizer composed principally of  $(\text{NH}_4)_2\text{S}_2\text{O}_3$ . The guaranteed percentages of nitrogen and sulfur shall be stated as part of the name.

(11) [(46)] "Animal manure" means a fertilizer derived from the excreta of animals together with whatever bedding materials are needed to follow good dairy barn, feed lot, poultry house, etc., practice in order to maintain proper sanitary conditions.

(12) [(72)] "Available phosphate" means the sum of the water soluble and the citratesoluble phosphate in a fertilizer.

(13) [(76)] "Basic lime phosphate (lime-based superphosphate)" means a superphosphate to which liming materials have been added at least six (6) percent in excess of the quantity required to convert all water soluble phosphate to the citratesoluble form.

(14) [(76)] "Basic phosphate slag" means a fertilizer that is a by-product obtained in the manufacture of steel from phosphatic iron ores. The product shall:

(a) Contain no admixture of materials other than those resulting from the original process of manufacture;

(b) Contain not less than twelve (12) percent total phosphate of which at least eighty (80) percent shall be available phosphate; and

(c) Be ground so that not less than ninety (90) percent passes through a U.S. Standard No. 50 sieve (300 um opening) and seventy (70) percent of the material passes through a U.S. Standard No. 100 sieve (150 um opening). Any basic phosphate slag not conforming to this definition shall be designated low phosphate.

(15) [(43)] "Bat guano" means partially decomposed bat manure.

(16) [(89)] "Calcined phosphate" means a fertilizer made from phosphate rock which has been heated, with or without one (1) or more catalysts or reagents, sufficient to volatilize and remove most or all organic, carbonate, fluoride and other impurities, and/or thermally altered to more available calcium phosphate compounds, depending on the process. Included are compounds known as fused tricalcium phosphate, defluorinated phosphate, rhenania phosphate and various trade names. A significant portion of the phosphate is citrate soluble and such percentage shall be stated as part of the brand name.

(17) [(86)] "Calcium metaphosphate" means a fertilizer that is a vitreous product substantially free from crystalline phosphates, resulting from the treatment of phosphate rock with gaseous phosphorus pentoxide at high temperatures. The guaranteed percentage of available phosphate shall be stated as part of the name.

(18) [(35)] "Calcium nitrate" means a fertilizer that is chiefly the calcium salt of nitric acid. It shall contain not less than fifteen (15) percent nitrate nitrogen.

(19) [(48)] "Chelate" means the type of compound or chemical union in which a central metallic ion is joined to a chelating agent in the same molecule by two (2) or more bonds. Such linkages result in the formation of one (1) or more heterocyclic rings in which the metal is part of the ring.

(20) [(20)] "Chelated plant nutrients" means metallic secondary nutrients and micronutrients which have reacted with chelating agents and have the property of being available under pH conditions in which the nutrients normally form insoluble compounds.

(21) [(49)] "Chelating agent" means a compound having two (2) or more sites of attachment to a metallic ion to form a chelate. Examples are EDTA (ethylenediaminetetraacetic acid), NTA (nitrilotriacetic acid), polyphosphoric acid, proteins and polyflavonoids.

(22) [(77)] "Citrate-soluble phosphate" means that part of the total phosphate in a fertilizer that is insoluble in water but soluble in a solution of citrate of ammonia according to AOAC International Method 960.01.

(23) [(46)] "Coated slow release fertilizer" means a fertilizer containing sources of water soluble nutrients, release of which in the soil is controlled by a coating applied to the fertilizer.

(24) [(29)] "Compost" means a biologically stable material derived

from the composting process.

(25) [(28)] "Composting" means the biological decomposition of organic matter which may be accomplished by mixing and piling in such a way to promote aerobic and/or anaerobic decay. The process inhibits pathogens, viable weed seeds, and odors.

(26) "Continuous liquid feed" means the external application of water soluble nutrients in the irrigation water every time the plant requires water.

(27) [(66)] "Crude, inert, or slow-acting nitrogenous materials" means low value fertilizers made from unprocessed organic substances relatively high in nitrogen but having nitrogen activity indexes of less than fifty (50) percent by the alkaline (AOAC International Method 920.07) and less than eighty (80) percent by the neutral (AOAC International Method 920.06) permanganate methods.

(28) [(44)] "Cyanamide" means a commercial product consisting principally of calcium cyanamide ( $\text{CaNCN}$ ) and carbon and it shall contain not less than nineteen and five-tenths (19.5) percent nitrogen.

(29) [(90)] "DAP (fertilizer grade)" means a fertilizer composed of ammonium phosphates, principally diammonium phosphate, resulting from the ammoniation of phosphoric acid. It may contain up to two (2) percent nonammoniacal nitrogen. The guaranteed percentage of nitrogen and available phosphate shall be stated as part of the name.

(30) [(78)] "Dicalcium phosphate" means a manufactured fertilizer consisting chiefly of dicalcic salt of phosphoric acid.

(31) [(64)] "Dicyanodiamide (cyanoguanidine)" means a fertilizer that is a water soluble organic compound of formula  $\text{C}_2\text{N}_4\text{H}_4$  which contains at least sixty-five (65) percent nitrogen. It is a source of slowly available nitrogen.

(32) [(63)] "Dimethylenetriurea (DMTU)" means a fertilizer that is a water soluble condensation product resulting from the reaction of two (2) molecules of formaldehyde with three (3) molecules of urea, with the elimination of two (2) molecules of water. It has a minimum total nitrogen content of forty-one (41) percent and is a source of slowly available nitrogen.

(33) [(98)] "Double sulfate of potash and magnesia (langbeinite)" means a fertilizer containing not less than twenty-one (21) percent soluble potash ( $\text{K}_2\text{O}$ ) nor less than fifty-three (53) percent sulfate of magnesia and not more than two and one-half (2.5) percent chlorine.

(34) [(45)] "Dried blood" means a fertilizer that is the collected blood of slaughtered animals, dried and ground and containing not less than twelve (12) percent nitrogen.

(35) [(3)] "Fertilizer formula" means the quantity and analysis of the crude stock materials used in making a mixed fertilizer.

(36) [(41)] "Filler" means any substance added to fertilizer materials to provide bulk, prevent caking or serve some purpose other than providing essential plant nutrients.

(37) [(64)] "Fish tankage" means a fertilizer derived from dried, ground, rendered or unrendered whole fish or fish scrap.

(38) [(48)] "Garbage tankage" means the rendered, dried and ground product derived from waste household food materials.

(39) [(42)] "Granular fertilizer" means a fertilizer in which ninety-five (95) percent or more of the product is retained on a series of sieves within the range of U.S. No. 4 (4.75 mm opening) to and including U.S. No. 20 (0.850 mm opening) and in which the largest particle passes through a sieve having an opening not larger than four (4) times that of the sieve which retains ninety-five (95) percent or more of the product.

(40) [(80)] "Ground raw bone" means a fertilizer made from ground animal bones that have not been previously steamed under pressure, heated, or otherwise manipulated.

(41) [(84)] "Ground sterilized bone" means a fertilizer made from ground animal bones or bone meal that have been previously steamed under pressure, heated, or rendered sterile in some other acceptable manner.

(42) [(49)] "Hoof and horn meal" means a fertilizer derived from processed dried and ground hoofs and horns.

(43) [(25)] "Hydroponics" means a system in which water soluble



nutrients are placed in intimate contact with the plant's root system, being grown in an inert supportive medium which supplies physical support for the roots but which does not add or subtract plant nutrients.

(44) [(60)] "Isobutylidene diurea" means a fertilizer that is the condensation product of isobutyraldehyde and urea having a minimum total nitrogen content of thirty (30) percent. It is a source of slowly available nitrogen by virtue of particle size, solubility decreasing with increase in particle size. Material conforming to the description of a "granular fertilizer" will have ninety (90) percent of its nitrogen content in the water insoluble form prior to grinding as tested by AOAC International Method 945.01.

(45) [(94)] "Kainit" means a fertilizer that is a potash salt containing potassium and sodium chlorides and sometimes sulfate of magnesia with not less than twelve (12) percent soluble potash ( $K_2O$ ).

(46) [(400)] "Kelp (seaweed)" means a fertilizer derived from the dried marine algae of the botanical divisions of Rhodophyta (red algae), Phaeophyta (brown algae), and Chlorophyta (green algae).

(47) [(43)] "Liquid fertilizer" means a fluid fertilizer in which the plant nutrients are in true solution.

(48) [(406)] "Magnesium sulfate" means a fertilizer consisting chiefly of the chemical compound, magnesium sulfate, with or without combined water, such as, epsom salts ( $MgSO_4 \cdot 7H_2O$ ), kieserite ( $MgSO_4 \cdot H_2O$ ) and calcined kieserite ( $MgSO_4$ ).

(49) [(404)] "Manganese sulfate" means a fertilizer consisting of anhydrous manganese sulfate ( $MnSO_4$ ).

(50) [(22)] "Manipulation" means processed or treated in any manner, including drying to a moisture content of less than thirty (30) percent, composting, bagging, leaching, pelleting, dissolution and recrystallization.

(51) [(94)] "MAP (fertilizer grade)" means a fertilizer composed of ammonium phosphates, principally monoammonium phosphate, resulting from the ammoniation of phosphoric acid. The guaranteed percentage of nitrogen and available phosphate shall be stated as part of the name.

(52) [(67)] "Melamine" means a fertilizer that is a sparingly soluble organic compound of formula  $C_3H_6N_6$  which contains at least sixty-six (66) percent nitrogen. (CAS No. 10878-1-2, 4,6 triamino-1,3,5-triazine, triamino-s-triazine).

(53) [(62)] "Methylenediurea (MDU)" means a fertilizer that is a water soluble condensation product resulting from the reaction of one (1) molecule of formaldehyde with two (2) molecules of urea, with the elimination of one (1) molecule of water. It has a minimum total nitrogen content of forty-two (42) percent and is a source of slowly available nitrogen.

(54) [(6)] "Micronutrients" means the essential plants nutrients of boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium and zinc.

(55) [(95)] "Mine run potash salts" means fertilizers that are potash salts containing a high percentage of chloride and from twenty (20) percent to thirty (30) percent soluble potash ( $K_2O$ ).

(56) [(96)] "Muriate of potash (commercial potassium chloride)" means a fertilizer that contains forty-eight (48) percent to sixty-two (62) percent soluble potash ( $K_2O$ ) chiefly as chloride.

(57) [(402)] "Natural base fertilizer" means a mixed fertilizer where more than half of the fertilizer materials is natural and where more than half of the sum of the guaranteed primary nutrient percentages is derived from natural materials.

(58) [(34)] "Natural fertilizer" means a fertilizer composed only of natural organic and/or natural inorganic fertilizer materials and natural fillers.

(59) [(30)] "Natural inorganic fertilizer" means a mineral nutrient source that exists in or is produced by nature and may be altered from its original state only by physical manipulation.

(60) [(9)] "Natural organic fertilizers" means organic fertilizers derived from either plant or animal products. These fertilizers:

(a) May be subjected to biological degradation processes under

normal conditions of aging, rainfall, sun-curing, air-drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these; and

(b) Shall not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis, or pelleting.

(61) [(36)] "Nitrate of potash or potassium nitrate" means a fertilizer that is chiefly the potassium salt of nitric acid. It shall contain not less than twelve (12) percent nitrogen and forty-four (44) percent soluble potash.

(62) [(37)] "Nitrate of soda or sodium nitrate" means a fertilizer that is chiefly the sodium salt of nitric acid. It shall contain not less than sixteen (16) percent nitrate nitrogen and twenty-six (26) percent sodium.

(63) [(38)] "Nitrate of soda potash or sodium and potassium nitrate" means a fertilizer that is chiefly the sodium and potassium salts of nitric acid. It shall contain not less than fifteen (15) percent nitrate nitrogen, ten (10) percent soluble potash and eighteen (18) percent sodium.

(64) [(404)] "Nitrogen stabilizer" means a substance added to a fertilizer which extends the time the nitrogen component of the fertilizer remains in the soil in the ammoniacal form.

(65) [(47)] "Nitrophosphate" means a fertilizer obtained by acidulation of phosphate rock with nitric acid resulting in a complex mixture of nitrates and phosphates that does not contain nitrate nitrogen and phosphorus in the same molecule. The process is subject to modifications designed to remove the hygroscopic calcium nitrate formed such as ammoniation, physical separation, coacidulation with sulfuric or phosphoric acids, or subsequent treatment with carbon dioxide.

(66) [(2)] "Nonacid-forming fertilizer" means a fertilizer that is not capable of increasing the residual acidity of the soil.

(67) [(403)] "Organic base fertilizer" means a mixed fertilizer where more than half of the fertilizer materials is organic and where more than half of the sum of the guaranteed primary nutrient percentages is derived from organic materials.

(68) [(9)] "Organic fertilizer" means a fertilizer containing carbon combined covalently with one (1) or more elements essential for plant growth other than hydrogen and oxygen.

(69) "Oxamide (fertilizer grade)" means a fertilizer that is the diamide of oxalic acid of the formula  $C_2H_4N_2O_2$ , which contains twenty-eight (28) to thirty-two (32) percent nitrogen. It is a source of slowly available nitrogen.

(70) [(50)] "Peat" means the partly decayed vegetable matter of natural occurrence. It is composed chiefly of organic matter that contains some nitrogen of low activity.

(71) [(24)] "Pelletized fertilizer" means a fertilizer whose physical form is uniform in size and usually of globular shape containing one (1) or more nutrients produced by one (1) of several methods including:

(a) Solidification of a melt while falling through a countercurrent stream of air;

(b) Dried layers of slurry applied to recycling particles;

(c) Compaction;

(d) Extrusion; and

(e) Granulation.

(72) [(74)] "Phosphate" means the phosphorus in a fertilizer that is designated and guaranteed as equivalent to phosphorus pentoxide ( $P_2O_5$ ).

(73) [(82)] "Phosphate rock" means a natural rock containing one (1) or more calcium phosphate minerals of sufficient purity and quantity to permit its use, either directly or after concentration, in the manufacture of commercial fertilizers.

(74) [(27)] "Polymer coated fertilizer" means a coated slow release fertilizer consisting of fertilizer particles coated with a polymer (plastic) resin and is a source of slowly available plant nutrient(s).

(75) [(66)] "Polymer coated urea (PCU)" means a coated slow release fertilizer consisting of urea particles coated with a polymer (plastic) resin. It typically contains about forty (40) percent nitrogen and is a source of slowly available nitrogen.

(76) [(97)] "Polyphosphates" means a general class of phosphatic fertilizers made from the salts of any of a series of polyphosphoric acids, whose molecular structure contains two (2) or more phosphorus atoms linked by oxygen. Solutions may contain several ionic species such as orthophosphates, pyrophosphates, and polyphosphates containing three (3) or more phosphorus atoms, commonly known as tripolyphosphates or tetrapolyphosphates and water.

(77) [(92)] "Potash" means the potassium in a fertilizer that is designated and guaranteed as equivalent to potassium oxide (K<sub>2</sub>O).

(78) [(32)] "Potting soil" means a material suitable for holding and growing potted plants and usually made from natural materials. It may include fertilizers, pesticides and/or soil amendments.

(79) [(93)] "Precipitated phosphate" means a fertilizer that consists mainly of dicalcium phosphate obtained by neutralizing with calcium hydroxide the acid solution of either phosphate rock or processed bone.

(80) [(4)] "Primary nutrients" means nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>) or phosphorus (P), and soluble potash (K<sub>2</sub>O) or potassium (K).

(81) [(62)] "Process tankage" means a fertilizer made under steam pressure from crude inert nitrogenous materials, with or without the use of acids or bases, for the purpose of increasing the activity of nitrogen. These products shall be called "process tankage" with or without further qualification and the water insoluble nitrogen shall test at least fifty (50) percent active by the alkaline permanganate method (AOAC International Method 920.07), or eighty (80) percent active by the neutral permanganate method (AOAC International Method 920.06).

(82) [(6)] "Secondary nutrients" means the essential plant nutrients of calcium, magnesium, and sulfur.

(83) [(54)] "Sheep manure wool waste" means a fertilizer that is the by-product from wool-carding establishments consisting chiefly of sheep manure, seeds, and wool fiber.

(84) [(24)] "Slow or controlled release fertilizer" means a fertilizer containing a plant nutrient in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant significantly longer than a reference "rapidly available nutrient fertilizer" such as ammonium nitrate, urea, ammonium phosphate, or potassium chloride. Such delay of initial availability or extended time of continued availability may occur by a variety of mechanisms including:

(a) Controlled water solubility of the material by semipermeable coatings, occlusion, or by inherent water insolubility of polymers, natural nitrogenous organics, protein materials, or other chemical forms;

(b) By slow hydrolysis of water soluble low molecular weight compounds; or

(c) By other unknown means.

(85) "Soft phosphate with colloidal clay" means a very finely divided, low-analysis fertilizer that is a byproduct from mining Florida rock phosphate by a hydraulic process in which the colloidal materials settle at points in artificial basins farthest from the washer, and are later removed after the natural evaporation of the water.

(86) [(14)] "Slurry fertilizer" means a fluid fertilizer containing dissolved and undissolved plant nutrient materials which requires continuous mechanical agitation to assure homogeneity.

(87) [(93)] "Soluble potash" means the potash contained in a fertilizer which is soluble in aqueous ammonium oxalate, aqueous ammonium citrate, or water, according to an applicable AOAC International Method.

(88) [(46)] "Stabilized nitrogen fertilizer" means a fertilizer to which a nitrogen stabilizer has been added.

(89) [(39)] "Sulfate of ammonia or ammonium sulfate" means a

fertilizer that is chiefly the ammonium salt of sulfuric acid. It shall contain not less than twenty and five-tenths (20.5) percent nitrogen.

(90) [(99)] "Sulfate of potash (commercial potassium sulfate)" means a fertilizer containing not less than forty-eight (48) percent soluble potash (K<sub>2</sub>O), chiefly as sulfate, and not more than two and one-half (2.5) percent chlorine.

(91) [(97)] "Sulfate of potash magnesia" means a fertilizer containing not less than twenty-five (25) percent soluble potash (K<sub>2</sub>O) nor less than twenty-five (25) percent sulfate of magnesia and not more than two and one-half (2.5) percent chlorine.

(92) [(64)] "Sulfur coated urea" means a coated slow release fertilizer consisting of urea particles coated with sulfur. The product is usually further coated with a sealant (two (2) percent to three (3) percent of total weight) and a conditioner (two (2) percent to three (3) percent of total weight). It typically contains about thirty (30) percent to forty (40) percent nitrogen and about ten (10) percent to thirty (30) percent sulfur.

(93) [(84)] "Superphosphate" means a fertilizer that is obtained when phosphate rock is treated with either sulfuric acid, phosphoric acid, or a mixture of those acids. The guaranteed percentage of available phosphate shall be stated as a part of the name.

(94) [(88)] "Superphosphoric acid" means the acid form of polyphosphates, consisting of a mixture of orthophosphoric and polyphosphoric acids. Ionic species distribution varies with concentration, typically sixty-eight (68) to eighty-three (83) percent P<sub>2</sub>O<sub>5</sub>.

(95) [(45)] "Suspension fertilizer" means a fluid fertilizer containing dissolved and undissolved plant nutrients where the undissolved plant nutrients are suspended with the aid of a nonfertilizer suspending agent or by the inherent properties of the undissolved materials. Mechanical agitation may be necessary in some cases to facilitate uniform suspension of the undissolved plant nutrients.

(96) [(49)] "Synthetic" means any substance generated from another material or materials by means of a chemical reaction.

(97) [(53)] "Tankage (without qualification)" means a fertilizer made from the rendered, dried, and ground by-product, largely meat and bone, from slaughtered animals or those that have otherwise died.

(98) [(66)] "Triazone" means a fertilizer that is a water soluble compound of formula C<sub>4</sub>H<sub>3</sub>N<sub>3</sub>O which contains at least forty-one (41) percent total nitrogen. (CAS No. 709814-6, 1,3,5 triazin-2-one, tetrahydro-s-triazone)

(99) [(7)] "Unit" means twenty (20) pounds of plant food or one (1) percent of a ton.

(100) [(23)] "Unmanipulated" means materials not subjected to manipulation.

(101) [(56)] "Urea" means a fertilizer that is the commercial synthetic acid amide of carbonic acid and it shall contain not less than forty-five (45) percent nitrogen.

(102) [(59)] "Urea-formaldehyde products (sparingly soluble)" means fertilizers that are reaction products of urea and formaldehyde which:

(a) Contain less than thirty-five (35) percent total nitrogen, largely in water insoluble but slowly available form;

(b) Have not less than sixty (60) percent of the total nitrogen in water insoluble form; and

(c) Shall have activity indexes of the water insoluble nitrogen that are either:

1. Not less than forty (40) percent by the AOAC International Method 955.05 (nitrogen activity index for urea-formaldehyde products); or

2. Not less than fifty (50) percent by AOAC International Method 920.07 (alkaline permanganate) or eighty (80) percent by AOAC International Method 920.06 (neutral permanganate). They shall have the percentage of total nitrogen as part of the product name; for example: Twenty (20) percent N Urea-Formaldehyde.

(103) [(58)] "Urea-formaldehyde products (water soluble)" means fertilizers that are reaction products of urea and formaldehyde which:

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(a) Contain at least thirty (30) percent nitrogen, largely in water soluble form;

(b) Have some slowly available nitrogen products present;

(c) Form stable aqueous solutions; and

(d) Contain a maximum of fifty-five (55) percent free urea, with the remainder of the urea being chemically combined as methylolureas, methylolurea ethers, and/or methylenediurea (MDU) and dimethyl-enetriurea (DMTU).

(104) [(67)] "Ureaform materials (sparingly soluble)" means fertilizers that are reaction products of urea and formaldehyde which:

(a) Contain at least thirty-five (35) percent nitrogen, largely in water insoluble but slowly available form;

(b) Have at least sixty (60) percent of the total nitrogen content in water insoluble form; and

(c) Have a water insoluble nitrogen activity index of not less than forty (40) percent when determined by AOAC International Method 955.05.

(105) [(68)] "Urea-triazone solution" means a fertilizer that is a stable solution resulting from controlled reaction in aqueous medium of urea, formaldehyde, and ammonia which:

(a) Contains at least twenty-five (25) percent total nitrogen; and

(b) Shall contain no more than forty (40) percent nor less than five (5) percent of the total nitrogen from unreacted urea and not less than forty (40) percent of the total nitrogen from triazone. All other nitrogen shall be derived from water soluble, dissolved reaction products of the above reactants. It is a source of slowly available nitrogen.

(106) [(47)] "Vegetable manure" means plant material that has been composted. [Except as the director has designated otherwise in specific cases, the official terms and definitions for commercial fertilizers adopted by the Association of American Plant Food Control Officials are hereby adopted by reference.]

Section 2. The official terms and definitions adopted by the Association of American Plant Food Control Officials are generally recognized by industry and other regulatory agencies in North America as the standards. The terms are those commonly used in the fertilizer trade, such as brand, fertilizer grade, and primary nutrients; and the definitions include those for nitrogen, phosphorus, potassium, magnesium, sulfur, and manganese products.

Section 3. The official terms and definitions adopted are those found in Official Publication No. 38 (1985) of the Association of American Plant Food Control Officials. Copies are available from: Treasurer, Association of American Plant Food Control Officials, P.O. Box 1163, 1100 Bank Street, Room 412, Richmond, Virginia 23209 or may be viewed during regular business hours in Room 102, Seovell Hall, University of Kentucky, Lexington, Kentucky.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: July 7, 1994

FILED WITH LRC: July 12, 1994 at 10 a.m.

## KENTUCKY AGRICULTURAL EXPERIMENT STATION Division of Regulatory Services (As Amended)

### 12 KAR 4:130. Investigational allowances.

RELATES TO: KRS 250.366(19), 250.391(3), 250.396(1), (2), 250.401

STATUTORY AUTHORITY: KRS 250.421

NECESSITY AND FUNCTION: To prescribe scientifically sound and fair investigational allowances as a basis for declaring a fertilizer sample deficient in its guaranteed analyses and to detail the calculation of the index value of a fertilizer.

Section 1. A fertilizer shall be deemed deficient if the analysis of an official sample for any primary nutrient is below the guarantee by an amount exceeding the values in the following schedule.

Guaranteed percent	Total Nitrogen (N) percent*	Available Phosphate [Phosphoric acid] (P <sub>2</sub> O <sub>5</sub> ) percent*	Soluble Potash (K <sub>2</sub> O) percent*
05 or less	0.37	0.65	0.39
06	0.47	0.71	0.47
07	0.59	0.77	0.56
08	0.72	0.82	0.63
09	0.81	0.86	0.70
10	0.89	0.89	0.76
12	1.03	0.95	0.87
14	1.18	1.02	0.96
16	1.29	1.12	1.05
18	1.43	1.19	1.12
20	1.57	1.32	1.18
22	1.62	1.39	1.22
24	1.65	1.46	1.26
26	1.66	1.53	1.29
28	1.58	1.59	1.33
30	1.28	1.67	1.36
32 or more	1.28	1.67	1.36

For guarantees not listed, calculate the appropriate value by interpolation.

\*For these investigational allowances to be applicable, the [recom-mended Association of Official Analytical Chemists] procedures recommended by AOAC International for obtaining samples, preparation and analysis shall [must] be used. These are described in the 15th Edition (1990) [current edition] of the Official Methods of Analysis of the AOAC International [Association of Official Analytical Chemists, 13th Edition, 1980, and in succeeding issues of the Journal of the Association of Official Analytical Chemists]. In evaluating replicate data, Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5, October, 1966, shall [should] be followed. The above materials are hereby incorporated by reference and are available for inspection and copying at 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky, during regular business hours of 8 a.m. to 5 p.m., Monday through Friday.

Section 2. A fertilizer shall be deemed deficient in the overall index value if the overall index value is less than ninety-seven (97) percent.

(1) The overall index value is calculated by comparing the value guaranteed with the value found. Unit values of the nutrients used shall be those referred to in KRS 250.401.

(2) Overall index value. Example of calculation for a 10-10-10 grade found to contain ten and one-tenth (10.1) percent Total Nitrogen (N), ten and two-tenths (10.2) percent Available Phosphate [Phosphoric Acid] (P<sub>2</sub>O<sub>5</sub>) and ten and one-tenth (10.1) percent Soluble Potash (K<sub>2</sub>O). Nutrient unit values are assumed to be three (3) dollars per unit N, two (2) dollars per unit (P<sub>2</sub>O<sub>5</sub>), and one (1) dollar per unit K<sub>2</sub>O.

10.0 units N	x3=	10.0
10.0 units P <sub>2</sub> O <sub>5</sub>	x2=	20.0
10.0 units K <sub>2</sub> O	x1=	10.0
Commercial Value Guaranteed =		60.0

10.0 units of N	x3=	30.3
10.2 units of P <sub>2</sub> O <sub>5</sub>	x2=	20.4



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fund program was created by the General Assembly. This regulation implements the administration of the program.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing program, a minimum of two (2) semesters; and for a practical nursing program, the completion of the required program.

(2) ~~[(5)]~~ "Board" means the Kentucky Board of Nursing.

(3) ~~[(6)]~~ "Committee" means the Nursing Incentive Scholarship Fund Committee.

(4) ~~[(2)]~~ "Health facility" as used in this regulation shall have the same meaning as "health facility" as defined at KRS 216B.015(12).

(5) ~~[(8)]~~ "Program of nursing" means either a prelicensure or graduate nursing program.

(6) ~~[(3)]~~ "Resident" is defined by 13 KAR 2:045, Section 1(13). ~~[as used in this regulation shall be determined pursuant to 13 KAR 2:040.]~~

(7) ~~[(4)]~~ "Rural area" means a county with less than 50,000 population or a county which is not part of a federally designated metropolitan statistical area.

(8) ~~[(7)]~~ "Successful academic progression" means:

(a) For prelicensure nursing programs, the completion of a minimum of eight (8) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow admission or continuation in a program of nursing; or

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

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

(a) ~~[(shall)]~~ Be a Kentucky resident;

(b) ~~[(shall)]~~ Have applied for admission to an educational institution with an approved program of nursing in Kentucky;

(c) ~~[(shall)]~~ Have declared nursing as the major course of study; and

(d) ~~[(shall)]~~ Have obtained a Kentucky health facility or Kentucky educational institution as a sponsor.

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

(3) An applicant shall complete a "Nursing Incentive Scholarship Application". ~~[an application, on a form provided by the board.]~~ The application shall be received by the board between January 1 and June 1.

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

(5) ~~[(4)]~~ An ~~[(The)]~~ applicant shall attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year.

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

Section 3. The Committee. (1) Members of the committee shall serve for one (1) year and may be reappointed.

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

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

Section 4. Criteria for Awards. The committee may consider the following criteria in evaluating applicants:

(1) Prior health care work experience or education;

(2) Previous academic achievement as indicated by transcripts;

(3) Current acceptance as a declared nursing major in an educational institution with an approved program of nursing;

(4) Current admission or enrollment in an approved program of nursing.

Section 5. Amount of Award. (1) The committee shall be notified as to the current fund balance prior to making awards.

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

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

(4) The committee shall divide the remaining funds among the remaining applicants based on KRS 314.025(2), 314.026(3), 314.027(2) and on the criteria considered in Section 4 of this regulation. ~~[(If insufficient applications are received from LPNs, these funds earmarked pursuant to KRS 314.027(2) and unexpended shall be used for other applicants.)]~~

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

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

1. Highest annual tuition rate charged by a practical nursing program in a public institution in Kentucky; [the]

2. Highest annual tuition rate charged by an associate degree registered nursing program in a public institution in Kentucky; and [the]

3. Highest annual tuition rate charged by a prelicensure baccalaureate degree registered nursing program in a public institution in Kentucky; and [the]

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

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

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

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

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

(3) Each educational institution shall certify to the board that the recipient has enrolled in school. The educational institution shall send the certification to the board.

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

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

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board];

(b) A "Nursing Incentive Scholarship Fund Request for Continuance" form [Continuation];

(c) Grade reports, verified by an official transcript for the preceding academic year when available, and within thirty (30) days after the recipient has enrolled each semester. The educational institution shall immediately notify the board of any change in a recipient's enrollment status;

(d) A student aid report for the current year.

(2) The amount of the award shall be determined pursuant to Section 5(5) of this administrative regulation.

(3) Award recipients in practical nursing programs are not eligible for continued awards while enrolled in such programs.

(4) Award recipients in practical nursing programs are not eligible for continued awards while enrolled in such programs.

Section 8. Disbursement Contract. Prior to disbursement of funds for a particular year, the recipient shall sign a "Nursing Incentive Scholarship Fund Contract" [written contract] and a "Nursing Incentive Scholarship Fund Promissory Note" [in a form prescribed by the board].

Section 9. Repayment and Deferral. (1) If a recipient fails to complete the nursing program in which he is enrolled within the time specified by the program of nursing or if he fails to complete the required employment with the sponsor as specified in the contract, he shall immediately become liable to the board to pay the sum of all scholarships received and accrued interest thereon.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness or accident which prevents a recipient from completing an approved program of nursing or being employed by the sponsor.

(4) [In the case of pre-nursing students:] Repayment may be deferred if the recipient fails to obtain acceptance to a program of nursing. This deferral shall only apply for two (2) consecutive academic years. If the recipient fails to obtain acceptance to a program of nursing after that time, repayment shall be due. If the recipient obtains acceptance to a program of nursing within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5) A student [in the case of students] enrolled in a program of nursing may defer [:] repayment [may be deferred] if the student fails to achieve successful academic progression. This deferral shall only apply for two (2) consecutive academic years. If the student fails to achieve successful academic progression after that time, repayment shall be due. If the student achieves successful academic progression within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(6) If [in any situation where] a deferral is requested, the recipient shall submit the request [in writing] to the committee on a "Nursing Incentive Scholarship Fund Request for Deferral" form [supplied by the board].

(7) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and accrued interest thereon, shall become due and payable.

Section 10. Verification. [Miscellaneous.] (1) Verification of employment with the health facility or educational institution shall be submitted by the sponsor to the board when the recipient's employment commitment begins and when it is completed. Any termination of employment prior to completion shall be reported to the board

within thirty (30) days.

(2) Recipients shall notify the board immediately of any change of name or address or enrollment status in school.

**Section 11. Incorporation by Reference. (1) The following forms are incorporated by reference:**

(a) "Nursing Incentive Scholarship Fund Application (8/94)";

(b) "Nursing Incentive Scholarship Fund Request for Continuance (8/94)";

(c) "Nursing Incentive Scholarship Fund Verification of Academic Progression (8/94)";

(d) "Nursing Incentive Scholarship Fund Request for Deferral (8/94)";

(e) "Nursing Incentive Scholarship Fund Contract (8/94)"; and

(f) "Nursing Incentive Scholarship Fund Promissory Note (8/94)".

(2) These forms may be inspected, copied, or obtained at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, 8:30 a.m. to 4:30 p.m., Monday through Friday.

[(3) The forms required by this administrative regulation are included by reference as if fully incorporated herein and shall be on file in the Office of the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, and shall be available for public inspection during regular business hours.

(4) Recipients shall be required to pass the licensure examination within two (2) years of graduation. Failure to pass the examination within this period shall cause the sum of all nursing incentive scholarships received and accrued interest thereon to become due and payable.

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

ROBERTA G. SCHERER, President

APPROVED BY AGENCY: June 23, 1994

FILED WITH LRC: July 8, 1994 at 3 p.m.

**COMPILER'S NOTE:** The following administrative regulation, 401 KAR 5:037, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources. This administrative regulation became effective on August 24, 1994.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection  
Division of Water  
(As Amended)

#### 401 KAR 5:037. Groundwater protection plans.

RELATES TO: KRS 151.110, 151.232, 224, SB 241

STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.70-100, 224.70-110

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt administrative regulations to protect waters of the Commonwealth and to prevent pollution of waters of the Commonwealth. This administrative regulation establishes the requirement to prepare and to implement groundwater protection plans to ensure protection for all current and future uses of groundwater and to prevent groundwater pollution.

Section 1. Definitions. The following definitions describe terms used in this administrative regulation. Terms not defined below shall have the meanings given to them by KRS 224.01-010 or if not so defined, the meanings attributed by common use.

(1) "Abandoned well" means a well not currently in use and not



intended for future use.

(2) "Agriculture operation" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of farms, situated on ten (10) contiguous acres or more of land used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payment to agriculture programs under an agreement with the state or federal government.

(3) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(4) "Bore hole" means a hole drilled into the soil for exploratory or sampling purposes.

(5) "Bulk quantities" means undivided quantities of any substance equal to or greater than fifty-five (55) U. S. gallons liquid measure or 100 pounds net dry weight transported or held in an individual container.

(6) "Commercial" means services at stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding households and industries.

(7) "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise handled.

(8) "Core hole" means a hole drilled for the purpose of obtaining a rock sample.

(9) "Corrective action" means an activity or measure taken to remedy groundwater pollution.

(10) "Floor drain" means an opening in the floor used to collect spills, water, or other liquids.

(11) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(12) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, or solution conduits.

(13) "Groundwater pollution" means water pollution as defined in KRS 224.01-010 of groundwaters of the Commonwealth.

(14) "Groundwater protection plan" means a document that establishes a series of practices designed to prevent groundwater pollution.

(15) "Hydrogeologic sensitivity" means an assessment of the potential ease and speed of vertical infiltration or recharge of a liquid through the soil and the unsaturated zones combined with assessments of the maximum potential flow rate and dispersion potential after entry into the principal or uppermost saturated zone.

(16) "Industrial" means manufacturing or industrial processes, including, but not limited to, the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment.

(17) "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of the rock has occurred due to flowing groundwater.

(18) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(19) "Loading and unloading areas" means areas used for loading and unloading, and related handling of raw materials, intermediate substances, products, wastes, or recyclable materials. Loading and unloading areas include, but are not limited to, areas used to load and unload drums, trucks, and railcars.

(20) "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" and "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of sewage pretreatment unit, distribution box, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome the site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption systems or conventional, modified, or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system or connection to a municipal sewer.

(21) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; or

(c) Any substance or mixture of substances intended to be used as a spray adjuvant.

(22) "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a publicly-owned treatment works.

(23) "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

(24) "Sinking stream" means a surface stream in a karst region that disappears underground usually through gradual seepage of flow along the channel bottom.

(25) "Storing" means the containing of materials, products, substances, wastes, or other pollutants on a temporary basis in such a manner as not to constitute disposal.

(26) "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials, which is designed to hold an accumulation of liquids or solids.

(27) "Water well" or "well" means any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary and household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes and industrial, irrigation, and dewatering purposes.

(28) "Wellhead protection area" means the surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field or spring or an area defined as a wellhead protection area in a county water supply plan.

(29) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

Section 2. Scope and Applicability. (1) Scope. The goal of this administrative regulation is the prevention of groundwater pollution. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(2) Applicability. Except for activities as provided in subsections (3) and (4) of this section any person responsible for conducting any of the following activities shall prepare and implement a groundwater protection plan in accordance with the requirements of this administrative regulation:

(a) Storing or related handling of bulk quantities of pesticides or fertilizers for commercial purposes;

(b) Storing or related handling of bulk quantities of pesticides or fertilizers for the purpose of distribution to a retail sales outlet;

(c) Applying of pesticides or fertilizers for commercial purposes;

(d) Applying of fertilizers or pesticides for public right-of-way maintenance or institutional lawn care;

(e) Land treatment or land disposal of a pollutant;

(f) Storing, treating, disposing, or related handling of hazardous waste, solid waste, or special waste in landfills, incinerators, surface impoundments, tanks, drums or other containers, or in piles;

(g) Commercial or industrial storing or related handling in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants held in tanks, drums or other containers, or in piles;

(h) Transmission in pipelines of raw materials, intermediate substances or products, finished products, or other pollutants;

(i) Installation or operation of on-site sewage disposal systems;

(j) Storing or related handling of road oils, dust suppressants, or deicing agents at a central location;

(k) Application or related handling of road oils, dust suppressants or deicing materials;

(l) Mining and associated activities;

(m) Installation, construction, operation, or abandonment of wells, bore holes, or core holes;

(n) Collection or disposal of pollutants in an industrial or commercial facility through the use of floor drains which are not connected to on-site sewage disposal systems, closed-loop collection or recovery systems, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System [privately or publicly owned treatment works];

(o) Impoundment or containment of pollutants in surface impoundments, lagoons, pits, or ditches; or

(p) Commercial or industrial transfer, including loading and unloading, in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants.

(3) General exclusion. Any person who conducts an activity identified in subsection (2) of this section shall not be required to prepare or to implement a groundwater protection plan for that activity if that person can demonstrate by substantial evidence based on the factors set forth in this subsection, the activity has no reasonable potential of altering the physical, thermal, chemical, biological, or radioactive properties of the groundwater in a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life, to the use of groundwater as present or future sources of public water supply or to the use of groundwater for recreational, commercial, industrial, agricultural, or other legitimate

purposes. The demonstration shall at a minimum consider the following factors:

(a) Hydrogeologic sensitivity at or near the location of the activity;

(b) Quantity of the pollutants, including the cumulative potential to pollute from small discharges, spills, or releases which individually would not have the potential to pollute;

(c) Physical, chemical, and biological characteristics of the pollutants such as solubility, mobility, toxicity, concentration, and persistence;

(d) Use of the pollutants at the locations of the activities; and

(e) Present and potential uses of the groundwater.

(4) Specific exclusions. The provisions of this administrative regulation shall not apply to the following activities:

(a) Normal use or consumption of products sized and packaged for personal use by individuals;

(b) Retail marketing of products sized and packaged for personal use or consumption by individuals;

(c) Activities conducted entirely inside enclosed buildings if:

1. The building has a floor sufficient to prevent the release of pollutants to groundwater; and

2. There are no floor drains, or all floor drains within the building are connected to an on-site sewage disposal system, closed-loop collection or recovery system or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System [privately or publicly owned treatment works];

(d) Storing, related handling, or transmission in pipelines of pollutants that are gases at standard temperature and pressure;

(e) Storing municipal solid waste in a container located on property where the municipal solid waste is generated and which is used solely for the purpose of collection and temporary storage of that municipal solid waste prior to off-site disposal;

(f) Installing and operating [Activities associated with] sewer lines or water lines approved by the cabinet;

(g) Storing water in ponds, lakes or reservoirs;

(h) Impounding stormwater, silt, or sediment in surface impoundments;

(i) Application of chloride-based deicing materials used on roads or parking lots;

(j) Emergency response activities conducted in accordance with local, state, and federal law;

(k) Fire fighting activities;

(l) Conveyance or related handling by motor vehicle, rolling stock, vessel, or aircraft;

(m) Agricultural activities at agriculture operations; or

(n) Application by commercial applicators of fertilizers or pesticides on lands used for agriculture operations.

(5) Relationship to other programs. Nothing in this administrative regulation shall abrogate the duty of a person to comply with the statutes and other administrative regulations administered by the cabinet, with the statutes and administrative regulations administered by other state and federal agencies, or with statutes and ordinances administered by a local government.

Section 3. Preparation of Groundwater Protection Plans. (1) General requirements. A groundwater protection plan establishes a series of practices to be followed by the person required to prepare and to implement it. The practices established by a groundwater protection plan shall be designed and implemented in a manner that will prevent groundwater pollution. This section describes the contents of site-specific and generic groundwater protection plans. Any person conducting an activity identified in Section 2(2) of this administrative regulation shall determine if an exclusion of Section 2(3) or (4) of this administrative regulation applies to that activity.

(2) Deadlines for preparation and implementation. Except for [an] activities excluded by Section 2(3) or (4) of this administrative regulation, any person required to prepare and to implement a groundwater protection plan pursuant to Section 2 of this administra-

tive regulation, shall prepare and implement a site-specific or generic groundwater protection plan within one (1) year of the effective date of this administrative regulation, or upon commencement of the regulated activity, whichever is later.

(3) Elements of generic and site-specific groundwater protection plans. Both generic and site-specific groundwater protection plans shall contain the following:

(a) General information regarding the facility and its operation, including the name of the facility, the address of the facility, and the name of the person responsible for implementing the plan;

(b) Identification of all activities identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation;

(c) Identification of all practices chosen for the plan to protect groundwater from pollution;

(d) An implementation schedule for the practices selected for the plan;

(e) A description of and implementation schedule for employee training necessary to ensure implementation of the plan;

(f) An inspection schedule requiring regular inspections as needed to ensure that all practices established are in place and properly functioning;

(g) A certification by the person responsible for implementing the plan or a duly authorized representative that the plan complies with the requirements of this administrative regulation, and that the person responsible for implementing the plan has reviewed the terms of the plan and will implement its provisions.

(4) Selection of practices for groundwater protection. Any person required to prepare a groundwater protection plan pursuant to this section shall evaluate technological means for protection of groundwater from pollution that may result from activities addressed by the plan and shall select practices for the plan which protect groundwater from pollution. The groundwater protection practices chosen for a groundwater protection plan may include but are not limited to:

(a) Equipment design;

(b) Operational procedures;

(c) Preventive maintenance techniques;

(d) Construction techniques;

(e) Personnel training;

(f) Spill response capabilities;

(g) Alternative materials or processes;

(h) Implementation of new technology;

(i) Modification of facility or equipment;

(j) Spill prevention control and countermeasure plans;

(k) Best management practices;

(l) Hazardous waste contingency plans;

(m) Other plans prepared pursuant to other programs which protect groundwater from pollution;

(n) Runoff or infiltration control systems;

(o) Siting considerations; and

(p) Any other practice which will protect groundwater from pollution.

(5) Specific practices. In selecting practices to protect groundwater for the activities identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation any person preparing a groundwater protection plan shall consider the nature of the pollutant and the hydrogeologic characteristics at or near the location of the activity and shall comply with the provisions of this subsection in selecting those practices:

(a) Loading and unloading areas. Loading and unloading areas shall have spill prevention and control procedures and operation procedures designed to prevent groundwater pollution. Spill containment and cleanup equipment shall be readily accessible.

(b) On-site sewage disposal systems. No person shall install a new or replace an existing on-site sewage disposal system if a publicly- or privately-owned treatment works capable of treating the pollutants to be discharged is available.

(c) Floor drains. Any person using existing floor drains shall evaluate those floor drains to determine if they discharge to an on-site sewage disposal system, to a closed-loop collection or recovery system, or to a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System [privately- or publicly-owned treatment works]. If drains are identified which do not discharge to an on-site sewage disposal system, a closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System [privately- or publicly-owned treatment works], that person shall terminate the discharge or connect it to an on-site sewage disposal system, a closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System [privately- or publicly-owned treatment works]. No person shall install a floor drain unless it is connected to an on-site sewage disposal system, closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System [privately- or publicly-owned treatment works].

(d) Tanks and sumps. Any person using a tank or sump shall prepare and implement good housekeeping practices, operating procedures, operator training, and spill response procedures. In addition, any person using a tank or sump shall consider leak control devices, secondary containment, integrity testing, mechanical inspections, and overfill protection devices. Additional containment is not required for sumps and tanks that are used solely to provide secondary containment.

(e) New surface impoundments, lagoons, pits or ditches. Any person who constructs a new surface impoundment, lagoon, pit or ditch which will contain a pollutant shall evaluate the site's hydrogeology and shall design and operate it to minimize discharges to soil. However, soils may be used to construct liners under appropriate conditions. All necessary and appropriate measures shall be taken to prevent groundwater pollution. The person shall consider the use of liners, secondary containment, leak detection devices, and other appropriate and effective control systems. Additional containment is not required for new surface impoundments, lagoons, pits, and ditches that are used solely to provide secondary containment.

(6) Exceptions to specific requirements.

(a) The provisions of subsection (5) of this section shall not apply to activities that are governed by other federal, state or regulatory programs that meet the requirements of subsection (7) of this section while the person conducting the activities remains in compliance with the other program.

(b) Variances from the provisions of subsection (5) of this section may be granted by the cabinet upon a showing of good cause, but in no event shall any person required to prepare a groundwater protection plan pursuant to this section take any actions contrary to the provisions of subsection (5) of this section without prior written approval of the cabinet.

(7) Incorporation of requirements of other regulatory programs.

(a) Groundwater protection activities required by other federal, state, or local regulatory programs may be incorporated into a site-specific or generic groundwater protection plan by reference if the other regulatory program contains the following:

1. Management and design standards;

2. Mandatory monitoring for groundwater pollution or methods of detecting discharges, spills, or releases to groundwater; and

3. Specific corrective action criteria.

(b) The plan shall identify each activity covered by the other regulatory program. The person responsible for implementing the plan shall certify compliance with the other regulatory program. The provisions of the other program shall be the groundwater protection plan for purposes of this administrative regulation for the activities covered by the other regulatory program. If activities identified in Section 2(2) of this administrative regulation and not excluded in Section 2(3) or (4) of this administrative regulation are conducted which are not covered by the other regulatory program, the plan shall

contain separate practices designed to protect groundwater from pollution for each activity not covered by the other regulatory program.

(8) Generic groundwater protection plans. A generic groundwater protection plan may govern all or part of a person's activities. A generic groundwater protection plan shall not be sufficient by itself if it does not address all activities conducted by the person that are identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation. A generic groundwater protection plan shall be prepared in accordance with subsections (1) through (7) of this section.

(a) A person responsible for preparing and implementing a groundwater protection plan required by this administrative regulation may apply one (1) provision of the plan to all substantially identical activities if factors identified in Section 2(3) of this administrative regulation do not cause substantial differences in the potential to pollute among locations. If substantial differences do exist, the plan shall provide separate site-specific or region-specific preventive measures, as necessary, for the activities.

(b) A person responsible for preparing a groundwater protection plan governed by this section may use a generic groundwater protection plan prepared by another person or group, including a trade organization, if:

1. The activities identified in the generic groundwater protection plan are substantially identical;
2. The factors identified in Section 2(3) of this administrative regulation do not cause substantial differences in the potentials to pollute among locations; and
3. The groundwater protection plan has been reviewed and approved by the cabinet.

(c) A generic groundwater protection plan may consist of requirements imposed by other regulatory programs designed to protect groundwater or programs offering technical assistance for groundwater protection if the cabinet has approved the requirements of the other program as a generic groundwater protection plan. Any person using a generic groundwater protection plan from another program pursuant to this paragraph as a part of, or all of, his plan shall certify in his plan that he is subject to the program and in compliance with its provisions. Any activities which are not addressed by the program shall be addressed separately in the groundwater protection plan.

(d) Any person conducting an activity listed in this subsection who does not prepare a groundwater protection plan for that activity or does not use another approved generic groundwater protection plan for that activity shall implement the provisions of the generic groundwater protection plan prepared by the cabinet. The cabinet, in cooperation with other appropriate state agencies, shall prepare generic groundwater protection plans for:

1. Use of existing residential septic systems; and
2. Construction, operation, closure, and capping of water wells.

(e) A generic groundwater protection plan that has been approved by the cabinet may be incorporated by reference in a facility's groundwater protection plan; however, each person responsible for implementing the generic plan at a site shall maintain a copy of the plan at an appropriate, accessible location. Any person using a generic groundwater protection plan shall identify the activities governed by the plan and attach the identification to the copy of the generic plan.

(f) Any person preparing a new or revised generic groundwater protection plan to be approved by the cabinet shall submit that plan to the cabinet for approval. When that person submits that plan to the cabinet that person shall also place a notice in a statewide newspaper and a trade publication likely to be read by those affected by the groundwater protection plan. That notice shall provide for a thirty (30) day comment period and shall identify activities that are addressed by the proposed generic groundwater protection plan. The notice shall describe the procedure for review by the public of the plan and the

procedures and time frames for providing comments. The cabinet shall also notify by mail anyone who has requested in writing to be placed on a mailing list for purposes of this administrative regulation.

#### Section 4. Implementation of Groundwater Protection Plans. (1) Record retention requirements.

(a) Any site-specific groundwater protection plan required by Sections 2 through 4 of this administrative regulation, and any documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, at the location of the activity if the location is normally attended at least eight (8) hours per day, or at the nearest office of that person's activity if the facility is not so attended.

(b) Any generic groundwater protection plan and any documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, in as many locations as necessary to ensure compliance. Individual homeowners are not required to maintain a copy of the generic groundwater protection plan for residential septic systems at their residences.

(c) Unless the cabinet approves another retention period for a person, all records evidencing compliance shall be maintained and available for review by the cabinet for a period of six (6) years after their preparation.

(2) Amendment of groundwater protection plans. Prior to conducting any new or modified activity, any person conducting that activity shall amend the groundwater protection plan, as necessary, to address the new or modified activity.

(3) Review and recertification of groundwater protection plans. Each groundwater protection plan shall be reviewed in its entirety every three (3) years, by the persons responsible for the plan, updated if necessary, and recertified. To the extent possible, the review shall include a reevaluation of the design and operation procedures for the pollution prevention practices previously selected for the plan to ensure that they are effective.

(4) Submission of groundwater plans to cabinet.

(a) Upon written request of the cabinet, any person required to prepare a groundwater protection plan pursuant to this administrative regulation shall submit a copy of the plan to the cabinet within thirty (30) days.

(b) Upon written request of the cabinet, any person who has made a determination pursuant to Section 2(3) of this administrative regulation that a groundwater protection plan is not required for a specific activity shall submit a written demonstration to the cabinet within thirty (30) days.

(5) Submission of additional information to the cabinet. Upon review of a groundwater protection plan which has been submitted to the cabinet, the cabinet may require any person responsible for preparation or implementation of a plan to submit any of the following information that the cabinet deems necessary:

(a) For a site-specific groundwater protection plan, and for a generic groundwater protection plan in effect at a specific location, the location of all buildings, structures, roads, utilities, drainage pathways, and boundaries by using a narrative description or by using a map, diagram, or drawing;

(b) For a generic groundwater protection plan that applies to more than one (1) location, identification of the geographic region to which the generic groundwater protection plan applies, and an explanation as to why that region was selected and why one (1) plan is appropriate for all activities addressed by the plan for all sites within the region;

(c) For a generic groundwater protection plan that applies to more than one (1) location, to the extent possible, a description of the nature and number of activities, and their associated facilities, that are expected to be governed by the generic groundwater protection plan;

(d) Summary of reasonably available hydrogeologic information as follows:

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1. Identification of location of sinkholes, sinking streams, springs, streams, lakes, ponds, and ditches;

2. Description of soil survey information;

3. Identification and location of currently usable wells, abandoned wells, and wellhead protection areas;

4. Identification of subsidence areas; and

5. Description of any other relevant hydrogeologic data known to the person preparing or implementing the groundwater protection plan; and

(e) Any other site-specific groundwater or geologic information, which is known and readily available to the person responsible for preparing or implementing the plan but not to the cabinet, that the cabinet deems necessary.

(6) Revisions to plans after cabinet review. If the cabinet reviews a groundwater protection plan and determines that it does not meet the requirements of this administrative regulation, the cabinet shall notify the person responsible for preparing or implementing the plan of the deficiency in the plan. That person shall revise the plan to correct the deficiencies identified by the cabinet and submit the revised plan to the cabinet for further review. Unless an extension of time is granted by the cabinet or the notice of deficiency is withdrawn by the cabinet, the person submitting the revised plan shall have thirty (30) days from issuance of the notice of the deficiencies to submit the revised plan. The cabinet shall review the revised plan and notify the person submitting the revised plan of its final determination.

(7) Public inspection of groundwater protection plans.

(a) Any person who desires to review a groundwater protection plan shall send a written request to the person required to prepare and to implement the groundwater protection plan.

(b) Any person who receives a written request to review the groundwater protection plan shall within ten (10) working days:

1. Send a written response to the person requesting to inspect the groundwater protection plan stating that the groundwater protection plan may be reviewed at:

- a. The Division of Water in Frankfort;
- b. A regional office of the Division of Water;
- c. The facility; or
- d. A local public library; or

2. Send a written response to the person requesting to inspect the groundwater protection plan, stating the reason that a groundwater protection plan was not required to be prepared.

(c) Any person who designates a review location for a groundwater protection plan shall send a copy of the groundwater protection plan to the location designated for review within ten (10) working days of receiving a written request to review the plan.

(8) Requirements upon transfer of property. Upon any subsequent transfer of a facility for which a groundwater protection plan has been prepared, the seller shall provide the purchaser with a copy of the most recent groundwater protection plan prepared for the facility pursuant to this administrative regulation.

PHILLIP J. SHEPHERD, Secretary

E. DOUGLAS STEPHAN, Commissioner

APPROVED BY AGENCY: June 8, 1994

FILED WITH LRC: June 8, 1994 at 10 a.m.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (As Amended)

#### 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 51, 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) ~~[(8)]~~ "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 ~~[on 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) [(9)] "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) [(49)] "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) [(44)] "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) [(42)] "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038, made effective November 29, 1993.

(15) [(43)] "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) [(44)] "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) [(45)] "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) [(46)] "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) [(47)] "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) [(48)] "Fugitive emissions" means those emissions which could not reasonably ~~do not~~ pass through a stack, chimney, vent, or other functionally-equivalent opening.

(21) [(49)] "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(22) [(20)] "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 (i.e., all have the same two (2) digit code as described in the 1987 Standard Industrial Classification Manual, which is incorporated by reference in 401 KAR 51:017, Section 21) 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 (PM<sub>10</sub>) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM<sub>10</sub>.

(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. [(c)] 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) [(28)] "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 [en 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:

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(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; [i], 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 63:005.]

(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; [Emitting 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 53:010 [59:010] [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 67; 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 63:010 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 59:019.

(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 50 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 10 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.]

[e.] 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

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~~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. [5.] 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



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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.

(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. ~~[(+)]~~ 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.

4. ~~[3-]~~ Final permit. The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.

5. ~~[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.

6. ~~[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 determination to the U.S. EPA and shall provide notice for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

b. Final determination. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA, public, and affected state review is completed. The cabinet shall notify the applicant in writing of the final determination. If a permit is issued, the cabinet shall make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

c. The source shall construct and operate in compliance with the permit issued in subparagraph 1b of this paragraph until a final 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 modification 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. [e-] 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)3 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 source's authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information requested pursuant to Section 3(1)(b)3 of this administrative regulation.

(6) General requirements. 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 combined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements

in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts 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;

(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 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, [316 St. Clair Mall:] Frankfort, Kentucky, 40601, (502) 573 [564]-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, [211 West Second Street:] Owensboro, Kentucky, 42303, [42301], (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.

LABOR CABINET  
Department of Workplace Standards  
Division of Employment Standards and Mediation  
(As Amended)

803 KAR 1:035. Hearing procedure.

RELATES TO: KRS 337.020 to 337.405

STATUTORY AUTHORITY: KRS 337.295

NECESSITY AND FUNCTION: KRS 337.310 requires the Commissioner of Workplace Standards, Labor Cabinet, to decide all questions of fact arising under KRS 337.020 to 337.405. KRS Chapter 13A and 337.295 authorizes the commissioner to issue regulations pertaining to these statutes. The function of this regulation is to set up the procedure to be followed by the Commissioner of Workplace Standards in deciding the questions of fact as required by the statute and to insure that the parties to proceedings concerning alleged violations of the statutes are afforded a fair opportunity to present any and all relevant proof on the matter.

Section 1. Procedure. (1) The Commissioner of Workplace Standards, or his authorized agent, shall investigate any complaint or routinely inspect records relating to an alleged violation of KRS 337.020 to 337.405.

(2) Where a settlement cannot be reached between the employer and employee and if an investigation reveals that questions of fact are in issue or the complaint or routine inspection gives the commissioner, or his authorized agent, good cause to believe that factual issues need to be resolved, then the commissioner, or his authorized agent, shall evaluate all proof submitted and render his tentative findings of fact. The proof to be evaluated by the commissioner, or his authorized agent, shall include, but is not limited to: the findings of the investigator, sworn affidavits, contractual agreements, payroll records, and other evidence relating to an alleged violation of KRS 337.020 to 337.405.

(3) The party suffering adversely from these tentative findings of facts shall have fifteen (15) days from the issuance of the findings to submit a petition for a fact-finding hearing to the commissioner. The petition shall contain a brief statement of the petitioner's grounds for believing the tentative findings of fact to be in error and any affirmative defense to the findings. Failure to state such grounds or defenses shall be cause for the commissioner, or his authorized agent, to deny the petitioner a hearing. The commissioner, or his authorized agent, shall set a hearing date in order to make final findings of fact concerning the alleged statutory violation. The parties shall be notified of the hearing date by return receipt mail at least fifteen (15) days prior to the hearing. If a petition for a fact-finding hearing is not sought or granted, then the tentative findings of fact shall become a final order fifteen (15) days after the issuance of the tentative order.

(4) The commissioner, or his authorized agent, may conduct the hearing in either the Frankfort or Louisville offices of the Labor Cabinet. However, with unanimous consent of the parties and the commissioner, or his authorized agent, the hearing may be held at a site in the Commonwealth mutually agreeable to the parties and the commissioner, or his authorized agent.

(5) The hearings shall not be governed by the rules of evidence prevailing in the courts of the Commonwealth. However, due regard will be had for generally accepted rules of administrative agency hearings in the Commonwealth. A written transcript of the hearing shall be made, unless the parties and the hearing officer agree that the hearing be video taped, in which event the video tape shall serve as record of the proceedings.

(6) Subsequent to the hearing, but within thirty (30) [fifteen (15)] days of receipt of the hearing record [transcript], the commissioner, or his authorized agent, shall evaluate the proof and render his final findings of fact and order, unless otherwise agreed to by the parties.

## ADMINISTRATIVE REGISTER - 1052

CAROL M. PALMORE, Secretary  
APPROVED BY AGENCY: July 13, 1994  
FILED WITH LRC: July 14, 1994 at noon

### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (As Amended)

#### 806 KAR 5:050. Motor vehicle warranties.

RELATES TO: KRS 304.5-070

STATUTORY AUTHORITY: KRS Chapter 13A, 304.2-110, 304.5-070

NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt administrative regulations necessary for or as an aid of the effectuation of any provision of the Kentucky Insurance Code. KRS 304.5-070(1)(p) authorizes the Commissioner of Insurance to adopt administrative regulations to interpret the provisions of KRS 304.5-070(1)(p). This administrative regulation interprets the 1986 amendment to KRS 304.5-070(1)(p) (1986 Ky. Acts ch. 146). Under 1994 Ky. Acts ch. 375, §1(1)(p), a warranty service company can be a maker of auto guaranties through a motor vehicle dealer.

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

(1) "Authorized insurer" means an insurer holding a certificate of authority from the Commonwealth of Kentucky to transact motor vehicle insurance or insurance to indemnify motor vehicle dealers for the cost of repairs under motor vehicle warranties.

(2) "Motor vehicle dealer" means a motor vehicle dealer licensed pursuant to KRS Chapter 190.

(3) "Motor vehicle warranty" means a contract covering only defects in material and workmanship in exchange for a separately stated charge where it is merely incidental to the business of selling or leasing motor vehicles. [automobile guaranty insurance as defined in KRS 304.5-070(1)(p).]

(4) "Person" has the meaning set forth in KRS 304.1-020.

(5) "Warranty service company" means a company which issues motor vehicle warranties through a motor vehicle dealer and has an insurance policy with an authorized insurer to assure performance of warranties.

Section 2. Only the following may issue motor vehicle warranties covering Kentucky risks:

(1) Authorized insurers; or

(2) Motor vehicle dealers who meet the conditions of KRS 304.5-070(1)(p) and this administrative regulation; or

(3) Warranty service companies:

(a) Which issue motor vehicle warranties through a motor vehicle dealer, in which the motor vehicle dealer is the seller but not the obligor under the contract; and

(b) Which meet the conditions of KRS 304.5-070(1)(p) and this administrative regulation.

Section 3. Motor vehicle dealers are permitted to sell motor vehicle warranties only if the sale of the motor vehicle warranty is merely incidental to the sale or lease of motor vehicles.

(1) A motor vehicle dealer shall not solicit or sell motor vehicle warranties as to motor vehicles not sold or leased by the motor vehicle dealer.

(2) A [No] person [(other than an authorized insurer)] may not solicit the general public for the sale of motor vehicles warranties.

Section 4. Motor vehicle dealers are permitted to sell motor vehicle warranties if the obligor of the contract obtains [they obtain] from an authorized insurer an insurance policy which meets the

requirements of KRS 304.5-070(1)(p) for such period of time as such coverage is maintained in full force and effect.

(1) Motor vehicle dealers which market motor vehicle warranties, where the obligor under the contract has [have] obtained and maintained an appropriate insurance policy from an authorized insurer and has [have] complied with all other requirements of KRS 304.5-070(1)(p) and this administrative regulation, are deemed to have received a permit to sell motor vehicle warranties.

(2) Motor vehicle dealers selling motor vehicle warranties, where the obligor of the contract has [which have] not obtained and continuously maintained an appropriate insurance policy from an authorized insurer and are not in compliance with the other provisions of KRS 304.5-070(1)(p) and this administrative regulation, are deemed to have been denied a permit to sell motor vehicle warranties.

Section 5. Nothing in this administrative regulation shall affect warranties provided by motor vehicle manufacturers.

Section 6. Incidental Benefits Arising from Defects in Material or Workmanship. Motor vehicle warranties may provide incidental benefits arising from defects in material or workmanship, such as reimbursement for the cost of towing and substitute transportation.

~~[Section 7. Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]~~

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: July 11, 1994

FILED WITH LRC: July 12, 1994 at 10 a.m.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (As Amended)

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

RELATES TO: 1994 Ky. Acts ch. 358

STATUTORY AUTHORITY: 1994 Ky. Acts ch. 358, §§10, 23

NECESSITY AND FUNCTION: 1994 Ky. Acts ch. 358, §10 provides that the Commissioner of Insurance shall promulgate reasonable administrative regulations as are necessary to provide for the licensing of agents appointed or sponsored by the liability self-insurance group and the termination or revocation of such license. 1994 Ky. Acts ch. 358, §23 provides that the commissioner may promulgate reasonable administrative regulations that are necessary to properly administer this subtitle.

Section 1. Definitions. (1) The definition of "agent" is governed by 1994 Ky. Acts ch. 358, §2(12).

(2) The definition of "general lines agent" is governed by KRS 304.9-030.

(3) "Profit or pecuniary gain" means any type of compensation that a person receives from the liability self-insurance group for which the solicitation or enrollment of members is made.

Section 2. Anyone who engages for profit or pecuniary gain in the solicitation or enrollment of persons in a liability self-insurance group shall be licensed as a general lines agent in accordance with the requirements of KRS Chapter 304 and any applicable administrative regulations.

Section 3. Any agent exercising their general lines license under the 1994 Ky. Acts ch. 358 shall be subject to probation, suspension,

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revocation, and civil penalties in accordance with KRS Chapter 304 and any applicable administrative regulations.

Section 4. (1) An agent shall not place any insurance with a liability self-insurance group unless that agent has a general lines license and an appointment with the liability self-insurance group.

(2) A liability self-insurance group shall not accept any insurance from an agent unless that agent has a general lines license and an appointment with the liability self-insurance group.

(3) Each liability self-insurance group appointing an agent shall notify the commissioner by filing written notice in duplicate with the commissioner on Appointment/Termination form number 8302 [~~forms prescribed and furnished by him.~~] and shall pay the fee as provided in KRS 304.4-010. If the agent is then licensed, or as soon as licensed, the commissioner shall mail the appointment certificate to the liability self-insurance group. Appointment/Termination form number 8302, effective March 1994, is incorporated by reference and available for inspection and copying at the Kentucky Department of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. (ET).

(4) Each appointment shall continue in force until:

(a) The commissioner notifies the liability self-insurance group that the agent's license is suspended or revoked;

(b) The appointment is terminated by the liability self-insurance group by written notice of termination filed with the commissioner; or

(c) The liability self-insurance group fails to renew the appointment.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 28, 1994

FILED WITH LRC: July 1, 1994 at 3 p.m.

### CABINET FOR HUMAN RESOURCES Department for Health Services (As Amended)

902 KAR 8:070. 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

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 as specified in subsection (2) of this section [~~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 ~~such~~ 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 Employment", 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

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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.

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; ~~or~~

(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 14, 1994 at 4 p.m.

**CABINET FOR HUMAN RESOURCES**  
**Department for Health Services**  
**(As Amended)**

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet

shall establish policies and procedures for the local health department personnel program. KRS 212.170, 212.230, and 212.870 describes the requirements for and process of appointing a health officer or a health department director for a local health department. This administrative regulation describes the process of appointing a health officer or a health department director of a health department and the provision of coverage or noncoverage of the merit system.

Section 1. Appointment of Health Officer. (1) An agency shall be under the direction of a health officer appointed in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office at the pleasure of both the board of health of the agency and the department.

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments; and

(b) 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation; and

(c) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(d) 902 KAR 8:140, Appointment of a health officer or a health department director of a local health department.

Section 2. Appointment of Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a health department director who shall meet minimum qualifications of education and experience established by the department.

(2) A qualified individual appointed or promoted to the position of health department director after the effective date of this administrative regulation, shall be employed in the unclassified service and hold office at the pleasure of both the board of health of the agency and the department.

(3) Individuals who are in the position of physician director or health department director shall maintain their status after the effective date of this administrative regulation.

(4) A health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments; ~~[and]~~

(b) 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation; ~~[and]~~

(c) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(d) 902 KAR 8:140, Appointment of health officers of local health departments.

Section 3. Removal of a Health Officer or Health Department Director in the Unclassified Service. (1) Except as provided for in Section 2(3) and (4) of this administrative regulation, if a health officer or health department director in the unclassified service is removed by the board of health or the department, he shall be notified in writing, and within fourteen (14) days may make a written request for a hearing.

(2) If no request is made, the removal shall become effective upon the expiration of fourteen (14) days.

(3) If a request for hearing is made, the hearing shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or director of health shall not be removed until the hearing has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was promoted to the health officer or health department director position may revert to the position from which he was promoted or may be

considered for a vacant position for which he qualifies in the agency. The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion. The reversion shall be subject to the approval of the board of health of the agency.

(6) An employee originally appointed to the health officer or health department director position[.] may only be reverted to a position in the classified service for which he qualifies.

RICE C. LEACH, M.D., Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

**CABINET FOR HUMAN RESOURCES**  
**Office of Inspector General**  
**(As Amended)**

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2), 42 USC Part 254

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 authorize the Kentucky Cabinet for Human Resources to regulate health facilities and health services. This administrative regulation sets forth the requirements for the operation and services of rural health clinics.

Section 1. Scope of Operations and Services. A rural health clinic is a health facility located in a rural area that has a shortage of health manpower ~~[as provided by the Rural Health Clinic Services Act of 1977 (PL 95-210)]~~. Rural health clinics provide a broad range of diagnostic and treatment services, on an outpatient basis for a variety of health conditions. The clinic does not have to be freestanding, but may be an integral and subordinate part of a licensed health facility, or health service.

Section 2. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the clinic and for compliance with federal, state, and local laws and regulations pertaining to the operation of the clinic.

(2) The rural health clinic shall be under the medical direction of a physician.

(3) The licensee shall establish written policies, lines of authority, and designate the person who shall ~~[will]~~ be principally responsible for the daily operation of the clinic.

(4) The licensee shall develop patient care policies with the advice of a group of professional personnel that include one (1) or more physicians and one (1) or more advanced registered nurse practitioners or physician assistants. At least one (1) member shall not be a member of the rural health clinic staff. The policies shall include:

(a) A description of the services the rural health clinic provides directly and those provided through agreement;

(b) Guidelines for the medical management of health problems which include the conditions requiring medical consultation ~~[and]~~ for patient referral, and the maintenance of health records;

(c) Procedures to be followed in the storage, handling, and administration of drugs and biologicals; and

(d) Procedures for review and evaluation of the services provided by the clinic at least annually.

(5) Personnel. The rural health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner or physician assistant. The clinic shall

employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

(a) The physician shall:

1. Be responsible for all medical aspects of the center and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

2. In conjunction with the advanced registered nurse practitioner(s) or physician assistant(s), participate in developing, executing, and periodically reviewing the rural health clinic's written policies and services;

3. Periodically review the rural health clinic's patient records, provide medical orders, and provide medical care services to patients of the rural health clinic; and

4. Be present for consultation weekly, and be immediately available (within one (1) hour) through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(b) The advanced registered nurse practitioner or physician assistant shall:

1. Participate in the development, execution and periodic review of the written policies governing the services the rural health clinic provides;

2. Participate with the physician in periodic review of patient health records;

3. Provide services in accordance with rural health clinic policies, established protocols; and

a. For an advanced registered practitioner, the Nurse Practice Act (KRS Chapter 314), and with regulations promulgated thereunder relating to the practice of an advanced registered nurse practitioner; or

b. For a physician assistant, KRS 311.565 and with administrative regulations promulgated thereunder relating to the practice of a physician assistant;

4. ~~[a-]~~ Arrange for, or refer patients to needed services that cannot be provided at the rural health clinic; and

5. ~~[b-]~~ Assure that adequate patient health records are maintained and transferred when patients are referred.

(6) The rural health clinic shall have linkage agreements or arrangements with each of the following:

(a) Inpatient hospital care;

(b) Physician services in a hospital, patient's home, or long term care facility;

(c) Additional and specialized diagnostic and laboratory services that are not available at the rural health clinic;

(d) Home health agency;

(e) Local health department;

(f) Emergency medical services; and

(g) Pharmacy services.

(7) The rural health clinic shall maintain a clinical record system in accordance with written policies and procedures. A member of the professional staff shall be designated to be responsible for maintaining the records and for insuring that the records are systematically organized, readily accessible and accurately documented.

(8) For each patient receiving health care services, the rural health clinic shall maintain a record that includes, as applicable:

(a) Identification and social data, evidence of consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient for each patient contact;

(b) Reports of physical examinations, diagnostic and laboratory test results, and consultative findings;

(c) All orders, reports of treatments rendered and medications given and other pertinent information necessary to monitor the patient's progress;

(d) Signatures of the physician or other health care professionals on each order written or treatment provided.

(9) The rural health clinic shall maintain the confidentiality of

medical record information and provide safeguards against loss, destruction, or unauthorized use. Written policies and procedures shall govern the use and removal of records from the clinic and the condition for release of information.

(10) Medical records shall be retained for a minimum of five (5) years or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

(11) The rural health clinic shall carry out or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

- (a) The utilization of clinic services including at least the number of patients served and the volume of services;
- (b) A representative sample of both active and closed clinical records;
- (c) The rural health clinic's health care policies.

Section 3. Services. (1) The rural health clinic shall develop and maintain written protocols (i.e. standing orders, rules of practice, and medical directives) which apply to services provided by the center and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected and include rationale for each decision made. The protocols shall be signed by the staff physician.

(2) The rural health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(3) The rural health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

- (a) Chemical examinations of urine by stick or tablet methods or both (including urine ketones);
- (b) Microscopic examinations of urine sediment;
- (c) Hemoglobin or hematocrit;
- (d) Blood sugar;
- (e) Gram stain;
- (f) Examination of stool specimens for occult blood;
- (g) Pregnancy tests;
- (h) Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and
- (i) Test for pinworms.

(4) The rural health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

(5) The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

WILLIAM M. GARDNER, Inspector General  
MASTEN CHILDERS II, Secretary

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**CABINET FOR HUMAN RESOURCES**  
**Department for Health Services**  
**Division of Environmental Health & Community Safety**  
**(As Amended)**

**902 KAR 100:010. Definitions.**

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 20.1003-20.1005

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 CFR 20.1003-20.1005

NECESSITY AND FUNCTION: ~~[The Cabinet for Human Resources is authorized by]~~ KRS 211.844 authorizes the Cabinet for Human Resources to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. ~~[The purpose of]~~ This administrative regulation provides ~~[is to provide for]~~ definitions as applicable to 902 KAR Chapters 100 and 105 ~~[other Cabinet for Human Resources radiation administrative regulations].~~

Section 1. Definitions. As used in these administrative regulations, these terms have the definitions set forth below:

(1) "A<sub>1</sub>" and "A<sub>2</sub>."

(a) "A<sub>1</sub>" means the maximum activity of special form radioactive material permitted in a Type A package;

(b) "A<sub>2</sub>" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package;

(c) These values are ~~[either]~~ listed in 902 KAR 100:070, Section 21, or may be derived under [in accordance with] the procedure prescribed in 902 KAR 100:070, Section 20.

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(3) ~~[(2)]~~ "Accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV, ~~such as [it includes, but is not limited to,]~~ the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(4) ~~[(3)]~~ "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(5) ~~[(4)]~~ "Act" means KRS 211.842 to 211.852.

(6) "Activity" means the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(7) ~~[(5)]~~ "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(8) "Adult" means an individual eighteen (18) or more years of age.

(9) ~~[(6)]~~ "Agreement state" means a state with which the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(10) ~~[(7)]~~ "Airborne radioactive material" means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) ~~[(8)]~~ "Airborne radioactivity area" means:

~~(a)~~ a room, enclosure, or ~~[operating]~~ area in which airborne radioactive material, composed wholly or partly of radioactive material, exists in concentrations;

~~(a)~~ In excess of the derived air concentrations (DACs) ~~[amounts]~~ specified in 902 KAR 100:019, Section 44 ~~[Table 1, Column 1, of 902 KAR 100:025]; or~~

(b) To a degree that an individual is present [A room, enclosure, or operating area in which airborne radioactive material exists in concentrations which, averaged over the number of hours in a week during which individuals are] in the area without respiratory protective equipment may exceed during the hours an individual is present in a week, an intake of six-tenths (0.6) percent of the annual limit on intake (ALI) or twelve (12) DAC-hours [; exceed twenty-five (25) percent of the amounts specified in Table I, Column 1, of 902 KAR 100:026].

(12) [(9)] "Aluminum equivalent" means the thickness of type 1100 (ninety-nine (99.0) percent minimum aluminum, 0.12 percent copper) aluminum affording the same attenuation, under specified conditions, as the material in question.

(13) [(40)] "Analytical x-ray systems" means a system which utilizes x-rays for the examination of the structure of materials, such as ~~[- This includes, but is not limited to,]~~ x-ray diffraction and spectrographic equipment.

(14) "Annual limit on intake (ALI)" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of five (5) rems (0.05 Sv) or a committed dose equivalent of fifty (50) rems (five-tenths (0.5) Sv) to an individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in 902 KAR 100:019, Section 44, Table I, Columns 1 and 2.)

(15) [(44)] "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

(16) [(42)] "As low as reasonably achievable (ALARA)" means making every reasonable effort to maintain exposures to radiation as far below the dose limits in 902 KAR 100:019 as practical, consistent with the purpose for which the licensed activity is undertaken. ALARA shall take [as low as is reasonably achievable taking] into account the state of technology, [and] the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of nuclear [atomic] energy and radioactive materials in the public interest.

(17) [(43)] "Attenuation" means the reduction of exposure rate upon passages of radiation through matter.

(18) [(44)] "Attenuation block" means a block or stack, having dimensions twenty (20) cm by twenty (20) cm by three and eight-tenths (3.8) cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(19) [(45)] "Automatic exposure control" means a device which automatically controls one (1) or more technique factors in order to obtain at a preselected location[(e)] a required quantity of radiation.

(20) [(46)] "Authorized user" means a physician, dentist, or podiatrist [practitioner of the healing arts], identified as an authorized user on a cabinet, U.S. Nuclear Regulatory Commission, or another agreement state license that authorizes the medical use of radioactive material.

(21) "Background radiation" means radiation from cosmic sources, naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material), and global fallout as it exists in the environment from the testing of nuclear explosive devices. Background radiation shall [does] not include radiation from radioactive materials regulated by the Cabinet for Human Resources.

(22) [(47)] "Beam axis" means a line from the source through the centers of the x-ray fields.

(23) [(48)] "Beam limiting device" (collimator) means a device which provides a means to restrict the dimensions of the x-ray field.

(24) [(49)] "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(25) "Bioassay (radiobiassay)" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of

radioactive material in the human body, by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(26) [(20)] "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(27) [(21)] "Broker" (waste broker) means a person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(28) [(22)] "By-product material" means:

(a) Radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations shall [de] not constitute by-product material within this definition.

(29) [(23)] "Cabinet" means Cabinet for Human Resources, or its duly authorized representatives.

(30) "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 11.

(31) [(24)] "Cabinet x-ray systems" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated. The enclosure may be the architectural structure or may be independent of the architectural structure, but regardless [in either case], the structure of the enclosure shall provide attenuation of the radiation to meet the requirements of 902 KAR 100:105, relating to the possession, use, and operation of x-ray systems, and shall exclude personnel from its interior during the generation of x-radiation. This definition shall [does] not include x-ray systems used by licensed practitioners of the healing arts.

(32) [(25)] "Calendar quarter" means not less than twelve (12) consecutive weeks nor more than fourteen (14) consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be [e] arranged so that no day is included in more than one (1) calendar quarter and no day in a one (1) year period is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method observed [by him] of determining calendar quarters [for purposes of these regulations] except at the beginning of a calendar year.

(33) [(26)] "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(34) [(27)] "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(35) [(28)] "Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(36) [(29)] "Certified components" means components of x-ray systems which shall be [are] subject to regulations promulgated under 21 CFR Subchapter J.

(37) [(30)] "Certified system" means an x-ray system which has one (1) or more certified component[(e)].

(38) "Certified cabinet x-ray system" means an x-ray system which has been certified under 21 CFR 1010.2 as being manufactured and assembled according to the provisions of 21 CFR 1020.40.

(39) [(31)] "CFR" means Code of Federal Regulations.

(40) [(32)] "Changeable filters" means a [any] filter, exclusive of inherent filtration, which can be removed from the useful beam

through an electronic, mechanical, or physical process.

(41) "Class (or lung class or inhalation class)" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials shall be ~~are~~ classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten (10) days, and for Class W (Weeks) from ten (10) to 100 days, and for Class Y (Years) of greater than 100 days.

(42) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(43) "Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam.

(44) "Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

(45) "Committed dose equivalent ( $H_{T,50}$ )" means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty (50) year period following the intake.

(46) "Committed effective dose equivalent ( $H_{E,50}$ )" means the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ( $H_{E,50} = \sum W_T H_{T,50}$ ).

(47) [(33)] "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(48) [(34)] "Contact therapy system" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within five (5) centimeters of the surface being treated.

(49) [(35)] "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(50) "Controlled area" means an area, outside of a restricted area but inside the site boundary, to which access can be limited by the licensee or registrant for a reason.

(51) [(36)] "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(52) [(37)] "Curie" means a quantity of radioactivity. One (1) curie (Ci) is that quantity of radioactive material which decays at the rate of  $3.7 \times 10^{10}$  disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie and the microcurie. One (1) millicurie (mCi) = 0.001 curie =  $3.7 \times 10^7$  dps. One (1) microcurie ( $\mu$ Ci) = 0.000001 curie =  $3.7 \times 10^4$  dps.

(53) [(38)] "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(54) "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(55) "Decommission" means to remove, as a facility, safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

(56) [(39)] "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(57) "Deep-dose equivalent ( $H_d$ )" which applies to external whole-body exposure, means the dose equivalent at a tissue depth of one (1) centimeter (cm) ( $1000 \text{ mg/cm}^2$ ).

(58) [(40)] "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(59) "Derived air concentration (DAC)" means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate one and two-tenths (1.2) cubic meters of air per hour),

results in an intake of one (1) ALI. DAC values are given in 902 KAR 100.019, Section 44, Table I, Column 3.

(60) "Derived air concentration-hour (DAC-hour)" means the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one (1) ALI, equivalent to a committed effective dose equivalent of five (5) rems (0.05 Sv).

(61) "Diagnostic clinical procedure manual" means a collection of written procedures that describes each method, and other instructions and precautions, by which the licensee performs diagnostic clinical procedures where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

(62) [(41)] "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(63) [(42)] "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from the source cannot exceed 100 milliroentgens in one (1) hour if the tube is operated at its maximum continuous rated current for the maximum tube potential.

(64) [(43)] "Diagnostic x-ray system" means an x-ray system designed for irradiation of a part of the human body for the purpose of diagnosis or visualization.

(65) [(44)] "Direct scatter radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(66) [(45)] "Disposal" means the disposition of waste as authorized by 902 KAR 100.021.

(67) [(46)] "Dose" or "radiation dose" is a generic term that means absorbed dose, ~~or~~ dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent, ~~as appropriate.~~

[(a) "Absorbed dose" is the energy imparted to matter by ionizing radiation per unit mass of irradiated material at the place of interest. The special unit of absorbed dose is the rad (see "Rad").

(b) "Dose equivalent" is a quantity that expresses on a common scale for all radiation a measure of the postulated effect on a given organ. It is defined as the absorbed dose in rads times certain modifying factors. The unit of dose equivalent is the rem (see "Rem").]

(68) [(47)] "Dose commitment" means the total radiation dose to a part of the body that results from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material shall not exceed fifty (50) years.

(69) "Dose equivalent ( $H_T$ )" means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(70) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment ( $H_{E,50} = \sum W_T H_{T,50}$ ).

(71) "Effective dose equivalent ( $H_E$ )" means the sum of the products of the dose equivalent to the organ or tissue ( $H_T$ ) and the weighting factors ( $W_T$ ) applicable to each of the body organs or tissues that are irradiated ( $H_E = \sum W_T H_T$ ).

(72) "Embryo or fetus" means the developing human organism from conception until the time of birth.

(73) "Entrance or access point" means a location through which an individual may gain access to radiation areas or to radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(74) [(48)] "Entrance exposure rate" means the roentgens per unit time at the point the center of the useful beam enters the patient.



(75) [(49)] "Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor in which initial, intermediate, and final loading and unloading are carried out under [in accordance with] the direction of the consignor or consignee.

(76) [(60)] "Exposure" means being exposed to ionizing radiation or to radioactive material [the quotient of dQ by dm where dQ is the absolute value of the total charge of the ions of one (1) sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass dm are completely stopped in air. (The special unit of exposure is the roentgen (R).) Exposure also means one (1) or more irradiations of a person for a healing arts purpose].

(77) [(64)] "Exposure rate" means the exposure per unit of time, such as [i.e.,] roentgen per minute and milliroentgen per hour.

(78) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(79) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(80) "Eye dose equivalent" means to the external exposure of the lens of the eye and means the dose equivalent at a tissue depth of three-tenths (0.3) centimeter (300 mg/cm<sup>2</sup>).

(81) [(62)] "Facility" means the location at which one (1) or more devices or sources are installed or located within one (1) building, vehicle, or under one (1) roof and are under the same administrative control.

(82) [(63)] "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(83) [(64)] "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(84) [(65)] "Filter" means [is] the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and the permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(85) [(66)] "Fissile material" means special nuclear material consisting of or containing one (1) or more fissile radionuclides. Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235. Neither natural or depleted uranium is fissile material. (Cabinet jurisdiction extends only to special nuclear material if quantities are not sufficient to form a critical mass as defined in this administrative regulation.)

(a) Fissile Class I: a package which may be transported in unlimited numbers and in an unspecified arrangement, and which requires no nuclear criticality safety controls during transportation. A transport index is not assigned for purposes of nuclear criticality safety, but may be required because of external radiation levels.

(b) Fissile Class II: a package which may be transported together with other packages in an unspecified arrangement but, for criticality control, in numbers which do not exceed an aggregate transport index of fifty (50). These shipments require no other nuclear criticality safety control during transportation. Individual packages may have a transport index not less than 0.1 and not more than ten (10).

(86) [(67)] "Fluoroscopic imaging assembly" means a component which comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if present, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(87) [(68)] "Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(88) [(69)] "Former U.S. Atomic Energy Commission (AEC) or

U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(89) [(60)] "General purpose radiographic x-ray system" means a radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(90) "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of 42 USC § 2011 et seq. that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(91) [(64)] "Generator" (waste generator) means a person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, education or other activity.

(92) [(62)] "Gonad shield" means a protective barrier for the testes or ovaries.

(93) "Gray (Gy)" means the SI unit of absorbed dose. One (1) gray shall be [is] equal to an absorbed dose of one (1) Joule/kilogram (100 rads).

(94) [(63)] "Half-value layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent that the exposure rate is reduced to one-half (1/2) of its original value. In this definition, the contribution of scattered radiation, other than that which might be present initially in the beam concerned, shall be [is] deemed to be excluded.

(95) [(64)] "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications if [when] these tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe these x-ray tests for the purpose of diagnosis or treatment.

(96) [(65)] "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds, such as [i.e.,] kVp x mA x seconds.

(97) [(66)] "High radiation area" means an area, accessible to individuals, in which [there exists] radiation [at] levels may result in an individual receiving a dose equivalent [that a major portion of the body could receive in one (1) hour period a dose] in excess of one-tenth (0.1) rem (1m Sv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates. [400 millirems.]

(98) [(67)] "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(99) [(68)] "Image intensifier" means a device which converts instantaneously by means of photoemissive surfaces and electronic circuitry an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(100) [(69)] "Image receptor" means a device as a fluorescent screen or radiographic film which transforms incident radiation [either] into a visual image or into another form which can be made into a visual image by further transformations.

(101) [(70)] "Image receptor support" means for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(102) [(74)] "Individual" means a human being.

(103) "Individual monitoring" means the assessment of:

(a) Dose equivalent by the use of devices designed to be worn by an individual;

(b) Committed effective dose equivalent by bioassay (see bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, such as DAC-hours; or

(c) Dose equivalent by the use of survey data.

(104) "Individual monitoring devices (individual monitoring



equipment)" means devices designed to be worn by a single individual for the assessment of dose equivalent, such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(105) [(72)] "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(106) [(73)] "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(107) [(74)] "Inspection" means an examination or observation, such as [including but not limited to:] tests, surveys, and monitoring, to determine compliance with rules, administrative regulations, orders, and requirements of the cabinet.

(108) [(75)] "Interlock" means a device arranged or connected so that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(109) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(110) [(76)] "Irradiation" means the exposure of matter to ionizing radiation.

(111) [(77)] "Kilovolt peak (kVp)" means the crest value in kilovolts of the potential difference of a pulsating potential generator. If only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(112) [(78)] "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(113) [(79)] "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for the useful beam.

(114) [(80)] "Leakage technique factors" means the technique factors associated with the tube housing assembly which are used in measuring leakage radiation. They shall be [are] defined as follows:

(a) For capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being ten (10) milliamperere seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation, the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment, the maximum rated continuous tube current for the maximum rated peak tube potential.

(115) [(81)] "License" means a license issued by the cabinet under 902 KAR Chapter 100. [in accordance with these administrative regulations.]

(116) [(82)] "Licensed material" means radioactive material received, possessed, used, [or] transferred, or disposed under a general or specific license issued by the cabinet under 902 KAR Chapter 100. [pursuant to these administrative regulations.]

(117) [(83)] "Licensee" means the holder of a license. [a person who is licensed by the cabinet in accordance with these administrative regulations and the Act.]

(118) "Limits (dose limits)" means the permissible upper bounds of radiation doses.

(119) "Lixiscope" means a portable light-intensified imaging device using a sealed source.

(120) [(84)] "Logging assistant" means an individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who uses survey instruments in well-logging activities.

(121) [(85)] "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(122) [(86)] "Logging tool" means a device used subsurface to perform well-logging.

(123) "Lost or missing licensed material" means licensed material

whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(124) [(87)] "Low specific activity material" means:

(a) Uranium or thorium ores and physical or chemical concentrates of those ores;

(b) Unirradiated natural or depleted uranium or unirradiated natural thorium;

(c) Tritium oxide in aqueous solutions provided the concentration does not exceed five (5.0) millicuries per milliliter; or

(d) Material in which the radioactivity is essentially uniformly distributed and in which the estimated average concentration per gram of contents shall [does] not exceed:

1. 0.0001 millicurie of radionuclides for which the  $A_2$  quantity in 902 KAR 100:070 is not more than 0.05 curie;

2. 0.005 millicurie of radionuclides for which the  $A_2$  quantity in 902 KAR 100:070 is more than 0.05 curie, but not more than one (1) curie; or

3. 0.3 millicurie of radionuclides for which the  $A_2$  quantity in 902 KAR 100:070 is more than one (1) curie; or [-]

(e) Objects of nonradioactive material externally contaminated with radioactive material, if the radioactive material is not readily dispersible and the surface contamination, averaged over an area of one (1) square meter, does not exceed 0.0001 millicurie (220,000 disintegrations per minute) per square centimeter of radionuclides for which the  $A_2$  quantity in 902 KAR 100:070 is not more than 0.05 curie, or 0.001 millicurie (2,200,000 disintegrations per minute) per square centimeter for other radionuclides.

(125) [(88)] "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954 (42 USC 2014).

(126) [(89)] "mA" means milliamperere.

(127) [(90)] "Management" means the chief executive officer or that individual's designee.

(128) [(91)] "mAs" means milliamperere second.

(129) [(92)] "Medical institution" means an organization in which several medical disciplines are practiced.

(130) [(93)] "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to humans in the practice of the healing arts.

(131) "Member of the public" means an individual in a controlled or unrestricted area. An individual shall not be [is not] a member of the public during a period in which the individual receives an occupational dose.

(132) [(94)] "Microscopic analytical x-ray equipment" means a device which utilizes x-rays for examining the microscopic structure of materials. This includes x-ray diffraction and spectrographic equipment.

(133) "Minor" means an individual less than eighteen (18) years of age.

(134) [(95)] "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or wrong radiopharmaceutical; or

2. If both the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage and the difference between the administered dosage and prescribe dosage exceeds thirty (30) microcuries.

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

1. Involving the wrong patient, radiopharmaceutical, or route of administration; or

2. If the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

1. Involving the wrong patient or treatment site; or

2. If the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent of the total prescribed dose.

(d) A teletherapy radiation dose:

1. Involving the wrong patient, mode of treatment, or treatment site;

2. If the treatment consists of three (3) or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent of the total prescribed dose;

3. If the calculated weekly administered dose is thirty (30) percent greater than the weekly prescribed dose; or

4. If the calculated total administered dose differs from the total prescribed dose by more than twenty (20) percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

1. Involving the wrong patient, radioisotope, or treatment site (excluding permanent implant seeds that were implanted in the correct site but migrated outside the treatment site);

2. Involving a sealed source that is leaking;

3. If, for a temporary implant, one (1) or more sealed sources are not removed upon completion of the procedure; or

4. If the calculated administered dose differs from the prescribed dose by more than twenty (20) percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient, radiopharmaceutical, route of administration, or if the administered dosage differs from the prescribed dosage; and

2. If the dose to the patient exceeds five (5) rems effective dose equivalent or fifty (50) rems dose equivalent to an individual organ, [or radiation from a sealed source other than that one intended;

(b) A radiopharmaceutical or radiation to the wrong patient;

(c) A radiopharmaceutical or radiation by a route of administration other than the intended by the prescribing physician;

(d) A diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than fifty (50) percent;

(e) A therapeutic dosage of a radiopharmaceutical differing from the prescribed dosage by more than ten (10) percent; or

(f) A therapeutic radiation dose from a sealed source so that errors in the source calibration, time of exposure, or treatment geometry resulted in a calculated total treatment dose differing from the final prescribed total treatment dose by more than ten (10) percent.]

(135) [(96)] "Mineral logging" means logging performed for the purpose of mineral exploration other than oil or gas.

(136) [(97)] "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(137) "Monitoring (radiation monitoring, radiation protection monitoring)" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(138) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).

(139) [(99)] "Normal form radioactive material" means radioactive material which has not been demonstrated to quality as "special form radioactive material."

(140) "NRC" means the Nuclear Regulatory Commission or its duly authorized representatives.

(141) [(99)] "Occupational dose" means exposure of an individual to radiation:

(a) In a restrictive area; or

(b) In the course of employment in which the individual's assigned duties involve exposure to radiation and to radioactive material from licensed and unlicensed sources of radiation, whether in the posses-

sion of the licensee or other person. [;except that] Occupational dose shall not [be deemed to] include dose received from background radiation as a patient from [exposure of an individual to radiation for the purpose of] medical practices, from voluntary participation in medical research programs, or as a member of the general public. [diagnosis or medical therapy of that individual.]

(142) [(100)] "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(143) [(101)] "Operating procedures" means detailed written instructions, such as [including but not limited to] the normal operation of equipment and movable shielding, closing of interlock circuits, manipulation of controls, radiation monitoring procedures for personnel and areas, testing of interlocks, and recordkeeping requirements.

(144) [(102)] "Package" means the packaging together with its radioactive contents as presented for transport.

(145) [(103)] "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 902 KAR 100:070. It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(146) [(104)] "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(147) [(105)] "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(148) [(106)] "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(149) [(107)] "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state or other state, or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

(150) [(108)] "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in proximity so that contact can be maintained and immediate assistance given as required.

(151) [(109)] "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual, such as [(e.g.)] film badges, pocket dosimeters, and thermoluminescent dosimeters (TLD).

(152) [(110)] "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

(153) [(111)] "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device[(s)]. The radiation monitoring device[(s)] is part of an electronic circuit which controls the duration of time the tube is activated (see "automatic exposure control").

(154) [(112)] "Physician" means an individual licensed to practice medicine or osteopathy in this state.

(155) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(156) [(113)] "Position indicating device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(157) [(114)] "Preregistrant" means a person who is preregistered with the cabinet for the intent of obtaining a radiation producing machine registerable under 902 KAR 100:110 [these administrative regulations].

(158) [(115)] "Preregistration" means preregistration with the cabinet as specified in 902 KAR 100:110 [these administrative regulations].

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(159) "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

- (a) In a written directive;
- (b) In the diagnostic clinical procedures manual; or
- (c) In an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(160) "Prescribed dose" means:

- (a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;
- (b) For teletherapy, the total dose and dose per fraction as documented in the written directive; or
- (c) For brachytherapy, the total source strength and exposure time or the total dose, as documented in the written directive.

(161) [(116)] "Primary dose monitoring system" means a system which monitors the useful beam during irradiation and which terminates irradiation if [when] a preselected number of dose monitor units have been acquired.

(162) [(117)] "Protective apron" means an apron made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the apron is not less than 0.25 mm lead at normal operating voltages.

(163) [(118)] "Protective barrier" means a barrier of radiation absorbing material[(s)] used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(164) [(119)] "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(165) "Public dose" means the dose received by a member of the public from exposure to radiation and to radioactive material released by a licensee, or to another source of radiation within a licensee's controlled area or in unrestricted areas. It shall [does] not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(166) [(120)] "Qualified expert" means an individual who has demonstrated to the satisfaction of the cabinet that he possesses the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

(167) "Quality factor (Q)" means the modifying factor that is used to derive dose equivalent from absorbed dose.

(a) Quality factors and absorbed dose equivalencies:

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent <sup>a</sup>
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1
<sup>a</sup> Absorbed dose in rad equal to one (1) rem or the absorbed dose in gray equal to one (1) sievert.		

(b) Mean quality factors, Q, and fluency per unit dose equivalent for monoenergetic neutrons:

	Neutron Energy (MeV)	Quality Factor <sup>a</sup> (Q)	Fluency per Unit Dose Equivalent <sup>b</sup> (neutrons cm <sup>-2</sup> rem <sup>-1</sup> )
(thermal)	2.5 x 10 <sup>-8</sup>	2	980 x 10 <sup>6</sup>
	1 x 10 <sup>-7</sup>	2	980 x 10 <sup>6</sup>
	1 x 10 <sup>-6</sup>	2	810 x 10 <sup>6</sup>
	1 x 10 <sup>-5</sup>	2	810 x 10 <sup>6</sup>
	1 x 10 <sup>-4</sup>	2	840 x 10 <sup>6</sup>
	1 x 10 <sup>-3</sup>	2	980 x 10 <sup>6</sup>
	1 x 10 <sup>-2</sup>	2.5	1010 x 10 <sup>6</sup>
	1 x 10 <sup>-1</sup>	7.5	170 x 10 <sup>6</sup>
	5 x 10 <sup>-1</sup>	11	39 x 10 <sup>6</sup>
	1	11	27 x 10 <sup>6</sup>
	2.5	9	29 x 10 <sup>6</sup>
	5	8	23 x 10 <sup>6</sup>
	7	7	24 x 10 <sup>6</sup>
	10	6.5	24 x 10 <sup>6</sup>
	14	7.5	17 x 10 <sup>6</sup>
	60	5.5	16 x 10 <sup>6</sup>
	1 x 10 <sup>2</sup>	4	20 x 10 <sup>6</sup>
	2 x 10 <sup>2</sup>	3.5	19 x 10 <sup>6</sup>
	3 x 10 <sup>2</sup>	3.5	16 x 10 <sup>6</sup>
	4 x 10 <sup>2</sup>	3.5	14 x 10 <sup>6</sup>

<sup>a</sup>Value of quality factor (Q) at the point at which the dose equivalent is maximum in a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

<sup>b</sup>Monoenergetic neutrons incident normally on a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

(168) "Quarter" means a period of time equal to one-fourth (0.25) of the year observed by the licensee (approximately thirteen (13) consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(169) [(121)] "Rad" means the special unit of absorbed dose. One (1) rad equals an absorbed dose of 0.01 joule per kilogram (0.01 gray) or [of material; for example, if tissue is the material of interest; then one (1) rad equals] 100 ergs per gram [of tissue].

(170) [(122)] "Radiation" means ionizing radiation which includes the following: gamma rays, x-rays, alpha particles, beta particles, high speed electrons, neutrons, high-speed protons, and other atomic particles capable of producing ions. This definition shall [does] not include nonionizing radiations, such as [i.e.,] sound, microwaves, radiowaves, or visible, infrared, or ultraviolet light.

(a) "Leakage radiation" means radiation coming from within the tube or source housing except the useful beam.

(b) "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction. It may also have been modified by a decrease in energy.

(c) "Useful radiation" means radiation which passes through the window, aperture, cone, or other beam limiting device of the tube or source housing. Sometimes called "primary beam."

(d) "Stray radiation" means the sum of leakage and scattered radiation.

(171) [(123)] "Radiation area" means an area, accessible to individuals, in which there exists radiation at levels that an individual may [a major portion of the body could] receive in [any one (1) hour a dose in] excess of five (5) millirems (0.05 mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates [or in any five (5) consecutive days a dose in excess of 100 millirems].

(172) [(124)] "Radiation machine" means a device capable of producing radiation except devices which produce radiation only from radioactive material.

(173) [(125)] "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection

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administrative regulations.

(174) [(426)] "Radiation therapy simulation system" means a fluoroscopic or radiographic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(175) [(427)] "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(176) [(428)] "Radioactive material" means a solid, liquid, or gas, which emits radiation spontaneously.

(177) [(429)] "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(178) [(430)] "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

(179) [(431)] "Radiographer" means an individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these administrative regulations and license conditions.

(180) [(432)] "Radiographer's assistant" means an individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(181) "Radiographer instructor" means a radiographer who has been authorized by the cabinet to provide on-the-job training to radiographer trainees under 902 KAR 100:100, Section 11(1).

(182) "Radiographer trainee" means an individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of instruction.

(183) [(433)] "Radiographic exposure device" means an instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

(184) [(434)] "Radiographic imaging system" means a system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(185) "Radiographic personnel" means a radiographer, radiographer instructor, or radiographer trainee.

(186) [(435)] "Rating" means the operating limits as specified by the component manufacturer.

(187) "Recordable event" means the administration of:

(a) A radiopharmaceutical or radiation without a written directive if a written directive is required;

(b) A radiopharmaceutical or radiation if a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131 if:

1. The administered dosage differs from the prescribed dosage by more than ten (10) percent of the prescribed dosage, and

2. The difference between the administered dosage and prescribed dosage exceeds fifteen (15) microcuries;

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, if the administered dosage differs from the prescribed dosage by more than ten (10) percent of the prescribed dosage;

(e) A teletherapy radiation dose if the calculated weekly administered dose is fifteen (15) percent greater than the weekly prescribed dose; or

(f) A brachytherapy radiation dose if the calculated administered dose differs from the prescribed dose by more than ten (10) percent of the prescribed dose.

(188) [(436)] "Recording" means producing a permanent form of

an image resulting from x-ray photons.

(189) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(190) [(437)] "Registrant" means a person who is registered with the cabinet and is legally obligated to register with the cabinet under 902 KAR 100:110 [pursuant to these administrative regulations].

(191) [(438)] "Registration" means registration with the cabinet under 902 KAR 100:110 [in accordance with these administrative regulations].

(192) [(439)] "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

(193) [(440)] "Rem" means a special unit of quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (one (1) rem = 0.01 sievert). [One (1) millirem (mrem) = 0.001 rem. For the purposes of these administrative regulations, the following are considered to be equal to one (1) rem:

(a) An exposure of one (1) roentgen due to x or gamma radiation;

(b) An absorbed dose of one (1) rad due to x, gamma, or beta radiation;

(c) An absorbed dose of 0.05 rad due to particles heavier than protons and with sufficient energy to reach the lens of the eye; or

(d) An absorbed dose of one-tenth (0.1) rad due to neutrons or high-energy protons. If it is more convenient to measure the neutron flux, or equivalent, than to determine the neutron dose in rads, one (1) rem of neutron radiation may, for purposes of these administrative regulations, be assumed to be equivalent to fourteen (14) million neutrons per square centimeter incident upon the body; or, if there exists sufficient information to estimate with reasonable accuracy the approximate distribution in energy of the neutrons, the incident number of neutrons per square centimeter equivalent to one (1) rem may be estimated from the following table:

Neutron Flux Dose Equivalence

Neutron energy (MeV)	Number of neutrons per square centimeter for a dose equivalent of 1 rem (neutrons/square cm)	Average flux to deliver 100 mrem in 40 hrs. (neutrons/square cm per second)
Thermal	$970 \times 10^6$	670
0.0001	$720 \times 10^6$	500
0.005	$820 \times 10^6$	670
0.02	$400 \times 10^6$	280
0.1	$120 \times 10^6$	80
0.5	$42 \times 10^6$	30
1.0	$26 \times 10^6$	18
2.5	$20 \times 10^6$	20
5.0	$26 \times 10^6$	18
7.5	$24 \times 10^6$	17
10.0	$24 \times 10^6$	17
10 to 30	$14 \times 10^6$	10]

(194) [(441)] "Research and development" means:

(a) Theoretical analysis, exploration, or experimentation; or

(b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(195) "Residential location" means an area where structures in which people lodge or live are located, and the grounds on which

structures are located, such as houses, apartments, condominiums, and garages.

(196) "Respiratory protective device" means an apparatus used to reduce the individual's intake of airborne radioactive materials, such as a respirator.

(197) [(442)] "Restricted area" means an area access to which is limited [controlled] by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to radiation and radioactive materials. A restricted area shall not include areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(198) [(443)] "Roentgen" means the special unit of exposure. One (1) roentgen (R) equals  $2.58 \times 10^{-4}$  coulombs per kilogram of air (see "Exposure").

(199) "Sanitary sewerage" means a system of public sewers for carrying off waste, water, and refuse, but excludes sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(200) [(444)] "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent leakage or escape of the radioactive material.

(201) [(445)] "Secondary dose monitoring system" means a system which terminates irradiation upon [in the event of] failure of the primary system.

(202) [(446)] "Secretary" means the Secretary of the Cabinet for Human Resources.

(203) "Shallow-dose equivalent ( $H_s$ )" means the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven (7) mg/cm<sup>2</sup>) averaged over an area of one (1) square centimeter.

(204) [(447)] "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(205) "Shielded-room radiography" means industrial radiography conducted in a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100.019, Section 10.

(206) [(448)] "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(207) "Sievert" means:

(a) The International System (SI) unit of quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv=100 rems).

(b) As used in this administrative regulation, the quality factors for converting absorbed dose to dose equivalent are shown in the table listed in subsection 164 of this administrative regulation.

(208) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(209) [(449)] "Source" means the focal spot of the x-ray tube.

(210) [(450)] "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

(211) [(451)] "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(212) [(452)] "Source image receptor distance (SID)" means the distance from the source to the center of the input surface of the image receptor.

(213) [(453)] "Source material" means:

(a) Uranium or thorium, or a combination thereof, in a [any] physical or chemical form; or

(b) Ores which contain by weight one-twentieth (1/20) of one (1)

percent (0.05 percent) or more of:

1. Uranium;
2. Thorium; or
3. Combination thereof.

(c) Source material does not include special nuclear material.

(214) [(454)] "Source of radiation" means a radioactive material or device or equipment emitting or capable of producing radiation.

(215) [(455)] "Special form" means radioactive material which satisfies the following conditions:

(a) It is [either] a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission (NRC). A special form encapsulation designed under [in accordance with] the NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation [either] designed or constructed after June 30, 1985 shall meet requirements of this definition applicable if [when] it is designed or constructed.

(216) [(456)] "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or successor thereto, has determined the material to be special nuclear material, but does not include source material; or

(b) Material artificially enriched by one (1) of the foregoing, but does not include source material.

(217) [(457)] "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; U-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or a combination of them as specified by [in accordance with] the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of these ratios for the different kinds of special nuclear material in combination shall not exceed one (1). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175 \text{ (grams contained U-235)}}{350} +$$

$$\frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(218) [(458)] "Special purpose x-ray system" means a radiographic x-ray system which, by design, is limited to radiographic examination of a specific anatomical region.

(219) [(459)] "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(220) [(460)] "Spot check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(221) [(461)] "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(222) [(462)] "Spot-film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(223) [(463)] "SSD" means the distance between the source and

the skin of the patient.

(224) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose with threshold, such as hereditary effects and cancer incidence.

(225) [(+64)] "Storage" (waste storage) means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(226) "Storage area" means a location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, a storage container, or a sealed source if it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

(227) [(+66)] "Storage container" means a device in which sealed sources are transported or stored.

(228) [(+66)] "Stray radiation" means the sum of leakage and scattered radiation.

(229) [(+67)] "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

(230) [(+68)] "Survey" means an evaluation of the radiological conditions and potential hazardous incident to the production, use, transfer, release, disposal, or presence of sources of radiation [under a specific set of conditions to determine actual or potential radiation hazards]. If appropriate, the evaluation shall include a minimum of a physical survey of the location of sources of radiation [but is not limited to, tests, physical examinations,] and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(231) [(+69)] "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(d) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time if the scan time and exposure time are equivalent; and

(e) For other equipment, peak tube potential in kV and tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(232) [(+70)] "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(233) [(+71)] "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study other than the location listed in a specific license or certificate of registration.

(234) [(+72)] "Termination of irradiation" means the stopping of irradiation in a fashion which does not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(235) [(+73)] "Tests" means the process of verifying compliance with an applicable regulation.

(236) [(+74)] "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour if the tube is operated at its maximum rated tube potential;

(b) For x-ray therapy equipment capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for its operating conditions;

(c) Small areas of reduced protection are acceptable providing the average reading over a 100 square centimeter area at one (1) meter distance from the target does not exceed the values given above.

[(+75)] "~~These administrative regulations~~" means ~~radiation administrative regulations adopted by the Cabinet for Human Resources, Kentucky's Administrative Regulations on radiation, 902 KAR Chapter 100.~~

(237) [(+76)] "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(238) "Total effective dose equivalent (TEDE)" means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(239) [(+77)] "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one (1) or more intermediate steps and that comparisons have been documented.

(240) "Transport container" means a package that is designed to provide radiation safety and security if sealed sources are transported and which meets the requirements of the 49 CFR 173, Subpart I.

(241) [(+78)] "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one (1) meter from the external surface of the package.

(242) [(+79)] "Treatment" (waste treatment) means a method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of a waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material, or reduced in volume.

(243) [(+80)] "Tube" means an x-ray tube, unless otherwise specified.

(244) [(+81)] "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements if they are contained within the tube housing.

(245) [(+82)] "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(246) [(+83)] "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed  $A_1$  for special form radioactive material or  $A_2$  for normal form radioactive material, where  $A_1$  and  $A_2$  are given in 902 KAR 100:070, Section 21, or may be determined by procedures described in 902 KAR 100:070, Section 20.

(247) [(+84)] "Type B package" means a Type B packaging together with its radioactive contents. A Type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to U.S. Department of Transportation regulations in 49 CFR Part 173. A Type B package approved prior to September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(248) [(+85)] "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations if subjected to the normal conditions of transport and hypothetical accident test conditions set



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forth in 10 CFR Part 71.

(249) [(486)] "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(250) [(487)] "U.S. Department of Energy" means the Department of Energy established by 42 USC 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof and retransferred to the Secretary of Energy in [pursuant to] 42 USC 7151, effective October 1, 1977.

(251) [(488)] "Unrefined and unprocessed ore" means ore in its natural form prior to processing, such as [i.e.,] grinding, roasting, beneficiating, or refining.

(252) [(489)] "Unrestricted area" means an area access to which is not controlled or limited by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material, and areas used for residential quarters.

(253) [(490)] "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam limiting device if the exposure switch or timer is activated.

(254) "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle shall [dees] not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.

(255) [(491)] "User" means an individual who personally utilizes or manipulates a source of radiation.

(256) [(492)] "Variable-aperture beam limiting device" means a beam limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

(257) [(493)] "Vendor" means for the purposes of 902 KAR 100:110 [these administrative regulations] a person who sells for profit radiation producing machines or accelerators registerable with the cabinet as specified by 902 KAR 100:110 [these administrative regulations].

(258) [(494)] "Vendor registration" means registration of a vendor with the cabinet described by 902 KAR 100:110 [these administrative regulations].

(259) [(495)] "Vendor registrant" means a vendor who is registered with the cabinet.

(260) "Very high radiation area" means an area, accessible to individuals, in which radiation levels may result in an individual receiving an absorbed dose in excess of 500 rads (five (5) grays) in one (1) hour at one (1) meter from a radiation source or from a surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (such as rads and grays) are appropriate, rather than units of dose equivalent (such as rems and sieverts).

(261) [(496)] "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(262) [(497)] "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(263) [(498)] "Waste" (see "low-level radioactive waste").

(264) [(499)] "Wedge filter" means an added filter effecting continuous progressive attenuation on the useful beam or a part thereof.

(265) "Week" means seven (7) consecutive days starting on Sunday.

(266) "Weighing factor ( $W_T$ ), for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of

that organ or tissue to the total risk of stochastic effects if the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of ( $W_T$ ) are:

Organ Dose Weighing Factors	
Organ or tissue	WT
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	<sup>1</sup> 0.30
Whole Body	<sup>2</sup> 1.00

<sup>1</sup>0.30 results from 0.06 for each of five (5) "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

<sup>2</sup>For the purpose of weighing the external whole body dose (for adding it to the internal dose), a single weighing factor,  $W_T=1.0$ , has been specified. The use of other weighing factors for external exposure will be approved on a case-by-case basis until a time as specific guidance is issued.

(267) [(200)] "Well-bore" means a drilled hole in which wire line service operations and subsurface tracer studies are performed.

(268) [(201)] "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(269) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(270) [(202)] "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(271) [(203)] "Wire line service operation" means an evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(272) [(204)] "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(273) "Working level (WL)" means a combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one (1) liter of air that results in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy.

(274) "Working level month (WLM)" means an exposure to one (1) working level for 170 hours (2,000 working hours per year/twelve (12) months per year = approximately 170 hours per month).

(275) "Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this subsection, and containing the following information:

(a) For an administration of quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131: the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

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(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

1. Prior to implementation: the radioisotope, number of sources, and source strengths; and

2. After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

(276) [(206)] "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes timers, phototimers, automatic brightness stabilizers, and similar devices which control the technique factors of an x-ray exposure.

(277) [(206)] "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment may be used as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(278) [(207)] "X-ray field" means that area of the intersection of the useful beam and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth (1/4) of the maximum in the intersection.

(279) [(208)] "X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube, high-voltage switches, electrical protective devices, and other appropriate elements.

(280) [(209)] "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(281) [(210)] "X-ray system" means an assemblage of components for the controlled production of x-rays, such as [including, but not limited to,] an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components which function with the system shall be considered integral parts of the system.

(282) [(211)] "X-ray subsystem" means a combination of two (2) or more components of an x-ray system.

(283) [(212)] "X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

(284) "Year" means the period of time beginning in January used to determine compliance with the provisions of 902 KAR Chapter 100. The licensee may change the starting date of the year used to determine compliance by the licensee provided the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

RICE C. LEACH, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 1, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

## CABINET FOR HUMAN RESOURCES

### Department for Health Services

#### Division of Environmental Health & Community Safety (As Amended)

#### 902 KAR 100:030. Quantities of radioactive material requiring labeling [Posting and disposal requirements].

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: [The Cabinet for Human Resources is authorized by] KRS 211.844 authorizes the Cabinet for Human Resources to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. This administrative regulation provides for quantity requirements for labeling [posting and disposal] of radioactive material. This administrative regulation shall apply to persons licensed as authorized by 902 KAR 100:017, 902 KAR 100:022, 902 KAR 100:040, 902 KAR 100:041, 902 KAR 100:045, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:065, 902 KAR 100:073, 902 KAR 100:090, 902 KAR 100:100, 902 KAR 100:142, 902 KAR 100:165, and 902 KAR 100:170.

[Section 1. Applicability. This administrative regulation shall apply to persons licensed as authorized by the cabinet's radiation administrative regulations.]

Section 1. [2.] Table. The following table provides the quantities of radioactive material requiring labeling [quantity requirements for posting and disposal of radioactive material] as set forth in 902 KAR 100:019 [902 KAR 100:020 and 902 KAR 100:021]:

#### Quantities of Radioactive Material Requiring Labeling [QUANTITY BASES FOR POSTING AND DISPOSAL REQUIREMENTS]

Radionuclide	Quantity ( $\mu$ Ci)*	Radionuclide	Quantity ( $\mu$ Ci)*
Hydrogen-3	1,000	Chromium-48	1,000
Beryllium-7	1,000	Chromium-49	1,000
Beryllium-10	1	Chromium-51	1,000
Carbon-11	1,000	Manganese-51	1,000
Carbon-14	1,000	Manganese-52m	1,000
Fluorine-18	1,000	Manganese-52	100
Sodium-22	10	Manganese-53	1,000
Sodium-24	100	Manganese-54	100
Magnesium-28	100	Manganese-56	1,000
Aluminum-26	10	Iron-52	100
Silicon-31	1,000	Iron-55	100
Silicon-32	1	Iron-59	10
Phosphorus-32	10	Iron-60	1
Phosphorus-33	100	Cobalt-55	100
Sulfur-35	100	Cobalt-56	10
Chlorine-36	10	Cobalt-57	100
Chlorine-38	1,000	Cobalt-58m	1,000
Chlorine-39	1,000	Cobalt-58	100
Argon-39	1,000	Cobalt-60m	1,000
Argon-41	1,000	Cobalt-60	1
Potassium-40	100	Cobalt-61	1,000
Potassium-42	1,000	Cobalt-62m	1,000
Potassium-43	1,000	Nickel-56	100
Potassium-44	1,000	Nickel-57	100
Potassium-45	1,000	Nickel-59	100
Calcium-41	100	Nickel-63	100
Calcium-45	100	Nickel-65	1,000

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Calcium-47	100	Nickel-66	10	Niobium-95	100	Silver-106m	100
Scandium-43	1,000	Copper-60	1,000	Niobium-96	100	Silver-106	1,000
Scandium-44m	100	Copper-61	1,000	Niobium-97	1,000	Silver-108m	1
Scandium-44	100	Copper-64	1,000	Niobium-98	1,000	Silver-110m	10
Scandium-46	10	Copper-67	1,000	Molybdenum-90	100	Silver-111	100
Scandium-47	100	Zinc-62	100	Molybdenum-93m	100	Silver-112	100
Scandium-48	100	Zinc-63	1,000	Molybdenum-93	10	Silver-115	1,000
Scandium-49	1,000	Zinc-65	10	Molybdenum-99	100	Cadmium-104	1,000
Titanium-44	1	Zinc-69m	100	Molybdenum-101	1,000	Cadmium-107	1,000
Titanium-45	1,000	Zinc-69	1,000	Technetium-93m	1,000	Cadmium-109	1
Vanadium-47	1,000	Zinc-71m	1,000	Technetium-93	1,000	Cadmium-113m	0.1
Vanadium-48	100	Zinc-72	100	Technetium-94m	1,000	Cadmium-113	100
Vanadium-49	1,000	Gallium-65	1,000	Technetium-94	1,000	Cadmium-115m	10
Gallium-66	100	Krypton-81	1,000	Technetium-96m	1,000	Cadmium-115	100
Gallium-67	1,000	Krypton-83m	1,000	Technetium-96	100	Cadmium-117m	1,000
Gallium-68	1,000	Krypton-85m	1,000	Technetium-97m	100	Cadmium-117	1,000
Gallium-70	1,000	Krypton-85	1,000	Technetium-97	1,000	Indium-109	1,000
Gallium-72	100	Krypton-87	1,000	Technetium-98	10	Indium-110	
Gallium-73	1,000	Krypton-88	1,000	Technetium-99m	1,000	(69.1m)	1,000
Germanium-66	1,000	Rubidium-79	1,000	Technetium-99	100	Indium-110	
Germanium-67	1,000	Rubidium-81m	1,000	Technetium-101	1,000	(4.9h)	1,000
Germanium-68	10	Rubidium-81	1,000	Technetium-104	1,000	Indium-111	100
Germanium-69	1,000	Rubidium-82m	1,000	Ruthenium-94	1,000	Indium-112	1,000
Germanium-71	1,000	Rubidium-83	100	Ruthenium-97	1,000	Indium-113m	1,000
Germanium-75	1,000	Rubidium-84	100	Ruthenium-103	100	Indium-114m	10
Germanium-77	1,000	Rubidium-86	100	Ruthenium-105	1,000	Indium-115m	1,000
Germanium-78	1,000	Rubidium-87	100	Ruthenium-106	1	Indium-115	100
Arsenic-69	1,000	Rubidium-88	1,000	Rhodium-99m	1,000	Indium-116m	1,000
Arsenic-70	1,000	Rubidium-89	1,000	Rhodium-99	100	Indium-117m	1,000
Arsenic-71	100	Strontium-80	100	Rhodium-100	100	Indium-117	1,000
Arsenic-72	100	Strontium-81	1,000	Rhodium-101m	1,000	Indium-119m	1,000
Arsenic-73	100	Strontium-83	100	Rhodium-101	10	Tin-110	100
Arsenic-74	100	Strontium-85m	1,000	Rhodium-102m	10	Tin-111	1,000
Arsenic-76	100	Strontium-85	100	Rhodium-102	10	Tin-113	100
Arsenic-77	100	Strontium-87m	1,000	Rhodium-103m	1,000	Tin-117m	100
Arsenic-78	1,000	Strontium-89	10	Rhodium-105	100	Tin-119m	100
Selenium-70	1,000	Strontium-90	0.1	Rhodium-106m	1,000	Tin-121m	100
Selenium-73m	1,000	Strontium-91	100	Rhodium-107	1,000	Tin-121	1,000
Selenium-73	100	Strontium-92	100	Palladium-100	100		
Selenium-75	100	Yttrium-86m	1,000	Tin-123m	1,000	Tellurium-133	1,000
Selenium-79	100	Yttrium-86	100	Tin-123	10	Tellurium-134	1,000
Selenium-81m	1,000	Yttrium-87	100	Tin-125	10	Iodine-120m	1,000
Selenium-81	1,000	Yttrium-88	10	Tin-126	10	Iodine-120	100
Selenium-83	1,000	Yttrium-90m	1,000	Tin-127	1,000	Iodine-121	1,000
Bromine-74m	1,000	Yttrium-90	10	Tin-128	1,000	Iodine-123	100
Bromine-74	1,000	Yttrium-91m	1,000	Antimony-115	1,000	Iodine-124	10
Bromine-75	1,000	Yttrium-91	10	Antimony-116m	1,000	Iodine-125	1
Bromine-76	100	Yttrium-92	100	Antimony-116	1,000	Iodine-126	1
Bromine-77	1,000	Yttrium-93	100	Antimony-117	1,000	Iodine-128	1,000
Bromine-80	1,000	Yttrium-94	1,000	Antimony-118m	1,000	Iodine-129	1
Bromine-80	1,000	Yttrium-95	1,000	Antimony-119	1,000	Iodine-130	10
Bromine-82	100	Zirconium-86	100	Antimony-120		Iodine-131	1
Bromine-83	1,000	Zirconium-88	10	(16m)	1,000	Iodine-132m	100
Bromine-84	1,000	Zirconium-89	100	Antimony-120		Iodine-132	100
Krypton-74	1,000	Zirconium-93	1	(5.76d)	100	Iodine-133	10
Krypton-76	1,000	Zirconium-95	10	Antimony-122	100	Iodine-134	1,000
Krypton-77	1,000	Zirconium-97	100	Antimony-124m	1,000	Iodine-135	100
Krypton-79	1,000	Niobium-88	1,000	Antimony-124	10	Xenon-120	1,000
Niobium-89	1,000	Palladium-101	1,000	Antimony-125	100	Xenon-121	1,000
Niobium-89m		Palladium-103	100	Antimony-126m	1,000	Xenon-122	1,000
(66 min)	1,000	Palladium-107	10	Antimony-126	100	Xenon-123	1,000
Niobium-89		Palladium-109	100	Antimony-127	100	Xenon-125	1,000
(122 min)	1,000	Silver-102	1,000	Antimony-128		Xenon-127	1,000
Niobium-90	100	Silver-103	1,000	(10.4m)	1,000	Xenon-129m	1,000
Niobium-93m	10	Silver-104m	1,000	Antimony-128		Xenon-131m	1,000
Niobium-94	1	Silver-104	1,000	(9.01h)	100	Xenon-133m	1,000
Niobium-95m	100	Silver-105	100	Antimony-129	100	Xenon-133	1,000

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Antimony-130	1,000	Xenon-135m	1,000	Terbium-154	100	Ytterbium-177	1,000
Antimony-131	1,000	Xenon-135	1,000	Terbium-155	1,000	Ytterbium-178	1,000
Tellurium-116	1,000	Xenon-138	1,000	Terbium-156m		Lutetium-169	100
Tellurium-121m	10	Cesium-125	1,000	(5.0h)	1,000	Lutetium-170	100
Tellurium-121	100	Cesium-127	1,000	Terbium-156m		Lutetium-171	100
Tellurium-123m	10	Cesium-129	1,000	(24.4h)	1,000	Lutetium-172	100
Tellurium-123	100	Cesium-130	1,000	Terbium-156	100	Lutetium-173	10
Tellurium-125m	10	Cesium-131	1,000	Terbium-157	10	Lutetium-174m	10
Tellurium-127m	10	Cesium-132	100	Terbium-158	1	Lutetium-174	10
Tellurium-127	1,000	Cesium-134m	1,000	Terbium-160	10	Lutetium-176m	1,000
Tellurium-129m	10	Cesium-134	10	Terbium-161	100	Lutetium-176	100
Tellurium-129	1,000	Cesium-135m	1,000	Dysprosium-155	1,000	Lutetium-177m	10
Tellurium-131m	10	Cesium-135	100	Dysprosium-157	1,000	Lutetium-177	100
Tellurium-131	100	Cesium-136	10	Dysprosium-159	100	Lutetium-178m	1,000
Tellurium-132	10	Cesium-137	10	Dysprosium-165	1,000	Lutetium-178	1,000
Tellurium-133m	100	Cesium-138	1,000	Dysprosium-166	100	Lutetium-179	1,000
Barium-126	1,000	Promethium-141	1,000	Holmium-155	1,000	Hafnium-170	100
Barium-128	100	Promethium-143	100	Holmium-157	1,000	Hafnium-172	1
Barium-131m	1,000	Promethium-144	10	Holmium-159	1,000	Hafnium-173	1,000
Barium-131	100	Promethium-145	10	Holmium-161	1,000	Hafnium-175	100
Barium-133m	100	Promethium-146	1	Holmium-162m	1,000	Hafnium-177m	1,000
Barium-133	100	Promethium-147	10	Holmium-162	1,000	Hafnium-178m	0.1
Barium-135m	100	Promethium-148m	10	Holmium-164m	1,000	Hafnium-179m	10
Barium-139	1,000	Promethium-148	10	Holmium-164	1,000	Hafnium-180m	1,000
Barium-140	100	Promethium-149	100	Holmium-166m	1	Hafnium-181	10
Barium-141	1,000	Promethium-150	1,000	Holmium-166	100	Hafnium-182m	1,000
Barium-142	1,000	Promethium-151	100	Holmium-167	1,000	Hafnium-182	0.1
Lanthanum-131	1,000	Samarium-141m	1,000	Erbium-161	1,000	Hafnium-183	1,000
Lanthanum-132	100	Samarium-141	1,000	Erbium-165	1,000	Hafnium-184	100
Lanthanum-135	1,000	Samarium-142	1,000	Erbium-169	100	Tantalum-172	1,000
Lanthanum-137	10	Samarium-145	100	Erbium-171	100	Tantalum-173	1,000
Lanthanum-138	100	Samarium-146	1	Erbium-172	100	Tantalum-174	1,000
Lanthanum-140	100	Samarium-147	100	Thulium-162	1,000	Tantalum-175	1,000
Lanthanum-141	100	Samarium-151	10	Thulium-166	100	Tantalum-176	100
Lanthanum-142	1,000	Samarium-153	100	Thulium-167	100	Tantalum-177	1,000
Lanthanum-143	1,000	Samarium-155	1,000	Thulium-170	10	Tantalum-178	1,000
Cerium-134	100	Samarium-156	1,000	Thulium-171	10	Tantalum-179	100
Cerium-135	100	Europium-145	100	Thulium-172	100	Tantalum-180m	1,000
Cerium-137m	100	Europium-146	100	Thulium-173	100	Tantalum-180	100
Cerium-137	1,000	Europium-147	100	Thulium-175	1,000	Tantalum-182m	1,000
Cerium-139	100	Europium-148	10	Tantalum-182	10	Iridium-188	100
Cerium-141	100	Europium-149	100	Tantalum-183	100	Iridium-189	100
Cerium-143	100	Europium-150		Tantalum-184	100	Iridium-190m	1,000
Cerium-144	1	(12.62h)	100	Tantalum-185	1,000	Iridium-190	100
Praseodymium-136	1,000	Europium-150		Tantalum-186	1,000	Iridium-192m	
Praseodymium-137	1,000	(34.2y)	1	Tungsten-176	1,000	(1.4m)	10
Praseodymium-138m	1,000	Europium-152m	100	Tungsten-177	1,000	Iridium-192	
Praseodymium-139	1,000	Europium-152	1	Tungsten-178	1,000	(73.8d)	1
Praseodymium-142m	1,000	Europium-154	1	Tungsten-179	1,000	Iridium-194m	10
Praseodymium-142	100	Europium-155	10	Tungsten-181	1,000	Iridium-194	100
Praseodymium-143	100	Europium-156	100	Tungsten-185	100	Iridium-195m	1,000
Praseodymium-144	1,000	Europium-157	100	Tungsten-187	100	Iridium-195	1,000
Praseodymium-145	100	Europium-158	1,000	Tungsten-188	10	Platinum-186	1,000
Praseodymium-147	1,000	Gadolinium-145	1,000	Rhenium-177	1,000	Platinum-188	100
Neodymium-136	1,000	Gadolinium-146	10	Rhenium-178	1,000	Platinum-189	1,000
Neodymium-138	100	Gadolinium-147	100	Rhenium-181	1,000	Platinum-191	100
Neodymium-139m	1,000	Gadolinium-148	0.001	Rhenium-182		Platinum-193m	100
Neodymium-139	1,000	Gadolinium-149	100	(12.7h)	1,000	Platinum-193	1,000
Neodymium-141	1,000	Gadolinium-151	10	Rhenium-182		Platinum-195m	100
Neodymium-147	100	Gadolinium-152	100	(64.0h)	100	Platinum-197m	1,000
Neodymium-149	1,000	Gadolinium-153	10	Rhenium-184m	10	Platinum-197	100
Neodymium-151	1,000	Gadolinium-159	100	Rhenium-184	100	Platinum-199	1,000
Terbium-147	1,000	Ytterbium-162	1,000	Rhenium-186m	10	Platinum-200	100
Terbium-149	100	Ytterbium-166	100	Rhenium-186	100	Gold-193	1,000
Terbium-150	1,000	Ytterbium-167	1,000	Rhenium-187	1,000	Gold-194	100
Terbium-151	100	Ytterbium-169	100	Rhenium-188m	1,000	Gold-195	10
Terbium-153	1,000	Ytterbium-175	100	Rhenium-188	100	Gold-198m	100

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Rhenium-189	100	Gold-198	100	Plutonium-234	10	Curium-248	0.001
Osmium-180	1,000	Gold-199	100	Plutonium-235	1,000	Curium-249	1,000
Osmium-181	1,000	Gold-200m	100	Plutonium-236	0.001	Berkelium-245	100
Osmium-182	100	Gold-200	1,000	Plutonium-237	100	Berkelium-246	100
Osmium-185	100	Gold-201	1,000	Plutonium-238	0.001	Berkelium-247	0.001
Osmium-189m	1,000	Mercury-193m	100	Plutonium-239	0.001	Berkelium-249	0.1
Osmium-191m	1,000	Mercury-193	1,000	Plutonium-240	0.001	Berkelium-250	10
Osmium-191	100	Mercury-194	1	Plutonium-241	0.01	Californium-244	100
Osmium-193	100	Mercury-195m	100	Plutonium-242	0.001	Californium-246	1
Osmium-194	1	Mercury-195	1,000	Plutonium-243	1,000	Californium-248	0.01
Iridium-182	1,000	Mercury-197m	100	Plutonium-244	0.001	Californium-249	0.001
Iridium-184	1,000	Mercury-197	1,000	Plutonium-245	100	Californium-250	0.001
Iridium-185	1,000	Mercury-199m	1,000	Americium-237	1,000	Californium-251	0.001
Iridium-186	100	Mercury-203	100	Americium-238	100	Californium-252	0.001
Iridium-187	1,000			Americium-239	1,000	Californium-253	0.1
Thallium-194m	1,000	Francium-223	100	Americium-240	100	Californium-254	0.001
Thallium-194	1,000	Radium-223	0.1	Americium-241	0.001	Einsteinium-250	100
Thallium-195	1,000	Radium-224	0.1	Americium-242m	0.001	Einsteinium-251	100
Thallium-197	1,000	Radium-225	0.1	Americium-242	10	Einsteinium-253	0.1
Thallium-198m	1,000	Radium-226	0.1	Americium-243	0.001	Einsteinium-254m	1
Thallium-198	1,000	Radium-227	1,000	Americium-244m	100	Einsteinium-254	0.01
Thallium-199	1,000	Radium-228	0.1	Americium-244	10	Fermium-252	1
Thallium-200	1,000	Actinium-224	1	Americium-245	1,000	Fermium-253	1
Thallium-201	1,000	Actinium-225	0.01	Americium-246m	1,000	Fermium-254	10
Thallium-202	100	Actinium-226	0.1	Americium-246	1,000	Fermium-255	1
Thallium-204	100	Actinium-227	0.001	Curium-238	100	Fermium-257	0.01
Lead-195m	1,000	Actinium-228	1	Curium-240	0.1	Mendelevium-257	10
Lead-198	1,000	Thorium-226	10	Curium-241	1	Mendelevium-258	0.01
Lead-199	1,000	Thorium-227	0.01				
Lead-200	100	Thorium-228	0.001	Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.001	Any radionuclide other than alpha-emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition	0.01
Lead-201	1,000	Thorium-229	0.001				
Lead-202m	1,000	Thorium-230	0.001				
Lead-202	10	Thorium-231	100				
Lead-203	1,000	Thorium-232	100				
Lead-205	100	Thorium-234	10				
Lead-209	1,000	Thorium-natural	100				
Lead-210	0.01	Protactinium-227	10				
Lead-211	100	Protactinium-228	1				
Lead-212	1	Protactinium-230	0.1				
Lead-214	100	Protactinium-231	0.001				
Bismuth-200	1,000	Protactinium-232	1				
Bismuth-201	1,000	Protactinium-233	100				
Bismuth-202	1,000	Protactinium-234	100				
Bismuth-203	100	Uranium-230	0.01				
Bismuth-205	100	Uranium-231	100				
Bismuth-206	100	Uranium-232	0.001				
Bismuth-207	10	Uranium-233	0.001				
Bismuth-210m	0.1	Uranium-234	0.001				
Bismuth-210	1	Uranium-235	0.001				
Bismuth-212	10	Uranium-236	0.001				
Bismuth-213	10	Uranium-237	100				
Bismuth-214	100	Uranium-238	100				
Polonium-203	1,000	Uranium-239	1,000				
Polonium-205	1,000	Uranium-240	100				
Polonium-207	1,000	Uranium-natural	100				
Polonium-210	0.1	Neptunium-232	100				
Astatine-207	100	Neptunium-233	1,000				
Astatine-211	10	Neptunium-234	100				
Radon-220	1	Neptunium-235	100				
Radon-222	1	Neptunium-236					
Francium-222	100	(1.15E+5y)	0.001				
Neptunium-236 (22.5h)	1	Curium-242	0.01				
Neptunium-237	0.001	Curium-243	0.001				
Neptunium-238	10	Curium-244	0.001				
Neptunium-239	100	Curium-245	0.001				
Neptunium-240	1,000	Curium-246	0.001				
		Curium-247	0.001				
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NOTES: For purposes where there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of the [such] ratios for all radionuclides in the combination shall [may] not exceed "1" - that is, unity.

The quantities listed above were derived by taking 1/10th of the most restrictive ALI listed in Table I, Columns 1 and 2, of 902 KAR 100:019 Section 44, rounding to the nearest factor of 10, and constraining the values listed between 0.001 and 1,000  $\mu\text{Ci}$  (37 Bq and 37 MBq). Values of 100  $\mu\text{Ci}$  (3.7 MBq) have been assigned for radionuclides having a radioactive half-life in excess of 1.0E+09 years, except rhemium, 1,000  $\mu\text{Ci}$  (37 MBq), to take into account their low specific activity.

\*To convert  $\mu\text{Ci}$  to  $\text{kBq}$ , multiply the  $\mu\text{Ci}$  value by 37.

Material	Microcuries	Material	Microcuries
Americium 241	0.01	Osmium 191	100
Antimony 122	100	Osmium 193	100
Antimony 124	10	Palladium 103	100
Antimony 125	10	Palladium 100	100
Arsenic 73	100	Phosphorus 32	10
Arsenic 74	10	Platinum 191	100
Arsenic 76	10	Platinum 193m	100
Arsenic 77	100	Platinum 193	100

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Barium 131	10	Platinum 197m	100
Barium 133	10	Platinum 197	100
Barium 140	10	Plutonium 239	0.01
Bismuth 210	1	Polonium 210	0.1
Bromine 82	10	Potassium 42	10
Cadmium 109	10	Praseodymium 142	100
Cadmium 115m	10	Praseodymium 143	100
Cadmium 116	100	Promethium 147	10
Calcium 46	10	Promethium 149	10
Calcium 47	10	Radium 226	0.01
Carbon 14	100	Rhenium 186	100
Cerium 141	100	Rhenium 188	100
Cerium 143	100	Rhodium 103m	100
Cerium 144	1	Rhodium 105	100
Cesium 131	1,000	Rubidium 86	10
Cesium 134m	100	Rubidium 87	10
Cesium 134	1	Ruthenium 97	100
Cesium 135	10	Ruthenium 103	10
Cesium 136	10	Ruthenium 105	10
Cesium 137	10	Ruthenium 106	1
Chlorine 36	10	Samarium 151	10
Chlorine 38	10	Samarium 153	100
Chromium 51	1,000	Scandium 46	10
Cobalt 60m	10	Scandium 47	100
Cobalt 60	10	Scandium 48	10
Cobalt 60	1	Selenium 75	10
Copper 64	100	Silicon 31	100
Dysprosium 165	10	Silver 105	10
Dysprosium 166	100	Silver 110m	1
Erbium 160	100	Silver 111	100
Erbium 171	100	Sodium 22	1
Europium 152	Sodium 24	10	
(9.2h)	100	Strontium 85	10
Europium 152	Strontium 89	1	
(13-yr.)	1	Strontium 90	0.1
Europium 154	1	Strontium 91	10
Europium 155	10	Strontium 92	10
Fluorine 18	1,000	Sulphur 35	100
Gadolinium 153	10	Tantalum 182	10
Gadolinium 159	100	Technetium 96	10
Gallium 72	10	Technetium 97m	100
Germanium 71	100	Technetium 97	100
Gold 198	100	Technetium 99m	100
Gold 199	100	Technetium 99	10
Hafnium 181	10	Tellurium 125m	10
Holmium 166	100	Tellurium 127m	10
Hydrogen 3	1,000	Tellurium 127	100
Indium 113m	100	Tellurium 129m	10
Indium 114m	10	Tellurium 129	100
Indium 115m	100	Tellurium 131m	10
Indium 116	10	Tellurium 132	10
Iodine 125	1	Terbium 160	10
Iodine 126	1	Thallium 200	100
Iodine 129	0.1	Thallium 201	100
Iodine 131	1	Thallium 202	100
Iodine 132	10	Thallium 204	10
Iodine 133	1	Thorium natural	100
Iodine 134	10	Thulium 170	10
Iodine 135	10	Thulium 171	10
Iridium 192	10	Tin 113	10
Iridium 194	100	Tin 125	10
Iron 55	100	Tungsten 181	10
Iron 59	10	Tungsten 185	10
Krypton 85	100	Tungsten 187	100
Krypton 87	10	Uranium (natural)	100
Lanthanum 140	10	Uranium 233	0.01
Lutetium 177	100	Uranium 234	0.01

Manganese 52	10	Uranium 235	0.01
Manganese 54	10	Vanadium 48	10
Manganese 56	10	Xenon 131m	1,000
Mercury 197m	100	Xenon 133	100
Mercury 197	100	Xenon 135	100
Mercury 203	10	Ytterbium 175	100
Molybdenum 99	100	Ytterbium 90	10
Neodymium 147	100	Yttrium 91	10
Neodymium 149	100	Yttrium 92	100
Nickel 59	100	Yttrium 93	100
Nickel 63	10	Zinc 65	10
Nickel 65	100	Zinc 69m	100
Niobium 93m	10	Zinc 69	1,000
Niobium 95	10	Zirconium 93	10
Niobium 97	10	Zirconium 95	10
Osmium 185	10	Zirconium 97	10
Osmium 191m	100		

An alpha emitting radionuclide not listed above or mixture of alpha emitters of unknown composition 0.01

An radionuclide other than alpha emitting radionuclides, not listed above or mixtures of beta emitters of unknown composition 0.01

RICE C. LEACH, Commissioner  
MASTEN CHILDERS II, Secretary  
APPROVED BY AGENCY: July 1, 1994  
FILED WITH LRC: July 14, 1994 at 4 p.m.

## CABINET FOR HUMAN RESOURCES Department for Social Services Division of Family Services (As Amended)

905 KAR 1:010. 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, 199.510, 199.520, 199.572, 199.590, 199.990, 615.030, 625.040, 625.043, 625.0407, Chapter 635, 1994 Ky. Acts ch. 242

STATUTORY AUTHORITY: KRS 194.050, 199.472

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



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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) [(5)].

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. [10-] 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. [11-] 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. [12-] 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;

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(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 15 [43] (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 may approve [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. [44.] 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 [45. 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 [46. 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) [44] 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. [47.] 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 7, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

**CABINET FOR HUMAN RESOURCES**  
**Department for Social Services**  
**Division of Children's Residential Services**  
**(As Amended)**

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

RELATES TO: KRS 199.011, 199.473, 199.492, 199.493, 199.640, 199.650, 199.660, 199.670, 600.020, 615.010, 615.030, 620.020, 625.040, 625.043 [Chapter 625, 1994 Ky. Acts ch. 242]

STATUTORY AUTHORITY: KRS 194.050, 199.640(3), 615.050

NECESSITY AND FUNCTION: KRS 199.640 requires that the cabinet issue administrative regulations relating to standards of care and service for child-placing agencies. This administrative regulation establishes the new provision of KRS 199.473 relating to private adoptions, by permitting home investigations to be conducted by private adoption agencies, as well as, the Cabinet for Human Resources. [~~This proposed administrative regulation combines provisions of 906 KAR 4:006.~~]

Section 1. Definitions. (1) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(2) "Advisory board" means a group of citizens approved by the board of directors who lends advice, counsel, and support to an agency.

(3) "Aftercare" means services provided to the child after discharge from a child-placing facility.

(4) "Board of directors" means that group which is by law or charter delegated the responsibility for governing the agency.

(5) "Community resources" means services and activities available in the community that supplement those provided by the child-placing agency in the care and treatment of children.

(6) "Division" means the Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(7) "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of an agency.

(8) "Individual treatment plan (ITP)" means a plan of action developed and implemented to address the needs of an individual child.

(9) "Infant" means a child under two (2) years of age.

(10) "Placement services" means services as governed by KRS 199.011.

(11) "Preschool child" means a child under six (6) years of age.

(12) [(+)] "Program director" means the person responsible for supervising the day-to-day operation of the program for children served by the agency or facility.

(13) [(+)] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his environment.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Initial licensure.

1. If applying for an initial license, the agency shall provide the following:

a. A complete application as determined by the cabinet;

b. A licensure fee of \$155;

c. A copy of the articles of incorporation;

d. A mission statement of purposes, objectives, scope of services provided, and intake policy specifying kinds of children to be accepted for care;

e. A copy of the constitution and bylaws;

f. A list of officers, board members, and advisory board members, if any, including addresses and professions;

g. Names and titles of officers and terms of office;

h. A list of all staff including positions or title and qualifications; and

i. Applications for child-placing facility licenses shall be in compliance with the applicable regulations or shall have submitted an acceptable plan for correction of violations relating to the particular child-placing facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-placing facility. Representatives of the division shall have access to the child-placing facility at any time. Regulatory violations identified during inspections shall be transmitted in writing to the child-placing facility by the

division. The child-placing agency shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected. Following a review of the plan, the division shall notify the child-placing facility in writing of the acceptability of the plan. If a portion or all of the plan is unacceptable, the division shall specify the reasons for the unacceptability. In these cases, the child-placing facility shall modify or amend the plan and resubmit it to the division within ten (10) days.

2. A license shall be issued by the cabinet when the agency has been surveyed by the cabinet and it is determined that the agency qualifies for licensure.

(b) Renewal licensure. Agencies shall be relicensed annually from the date of issuance of the original license. To be eligible for relicensure, the agency shall:

1. Submit a renewal application;

2. Submit a relicensure fee of eighty-five (85) dollars; and

3. Comply with the applicable portions of this regulation.

(c) Every child-caring agency shall provide the following information as part of the annual inspection:

1. A list of officers, board members, and advisory board members, if any, including addresses and professions;

2. Names and titles of officers and terms of office; and

3. A list of all staff including positions or title and qualifications.

(d) The agency shall comply with its mission statement, child-caring program narrative, and all applicable federal and state regulations in regard to child-caring program operations.

(e) The agency shall have an annual audit completed by an independent accounting firm or a certified public accountant.

(f) All applications for licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular child-placing facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-placing facility. The inspection procedure for relicensure shall be the same as set forth in paragraph (a)1i of this subsection.

(g) The license shall specify the types of care and service the agency is authorized to provide based upon the application and inspection.

(h) The agency shall provide the types of care and services for which they are licensed.

(i) A license shall be issued for a specific physical location and for operation by a sponsoring organization.

(j) Licenses shall not be transferable.

(k) Notification of changes in the following shall be made to the division in advance to allow for approval before implementation:

1. Ownership or sponsorship;

2. Location;

3. Capacity; or

4. Services.

(l) The agency shall post its license in a place visible to the public.

(2) Board of directors.

(a) The agency shall have a board of directors consisting of a minimum of seven (7) members, the majority of whom shall be residents of Kentucky.

(b) The board of directors shall meet quarterly in every calendar year. Minutes of these meetings shall be taken and kept in written form.

(c) One (1) meeting of the board of directors shall be held at each agency location in every calendar year. If a board of directors has responsibility for multiple agency locations, a board committee may be appointed:

1. To meet at least once a year at each agency location; and

2. Shall submit a written report of this meeting to the full board.

(d) The board of directors shall employ an executive director. The division shall be notified in writing of a change in the facility's

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executive director within seven (7) days.

(e) The board of directors shall be responsible for and have the authority to ensure the continuing compliance with the requirements of all relevant federal, state or local laws or regulations.

(f) The board of directors shall conduct and approve an annual evaluation of the performance of the executive director.

(g) The board of directors shall approve a written annual budget for the agency which ensures funding to meet all operating requirements.

(h) The board of directors shall in consultation with the executive director approve and annually review all written policies of the agency.

(i) The board of directors shall obtain a criminal records check of prior convictions or pleas of guilty of the executive director prior to employment.

(j) The board of directors shall approve a mission statement delineating:

1. The purposes;
2. Objectives;
3. Scope of services to be provided; and
4. Intake policy specifying kinds of children to be accepted for care.

(3) Executive director.

(a) The duties of the executive director shall be determined by the board of directors and shall include the following responsibilities:

1. Select, employ, and terminate staff;
2. Develop and implement agency policies approved by the board of directors;
3. Provide professional help to the board of directors in:
  - a. Carrying out their responsibilities;
  - b. Interpreting the needs of the children and families served; and
  - c. Assisting in periodic evaluation of the agency's services;
4. Supervise the preparation of an annual budget for board consideration;
5. Keep the board informed of financial needs;
6. Provide financial statements to the board of directors on a quarterly basis;
7. Operate within the established budget;
8. Attend board meetings;
9. Ensure that orientation is provided for new employees and continual training for staff; and
10. Delegate appropriate duties to other staff.

(b) If the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operations of the child-caring program.

(4) Staff qualifications. Persons hired after the effective date of this regulation as executive director shall possess the following qualifications:

(a) An executive director shall possess:

1. A master's degree in any of the following human services fields: social work; sociology; psychology; guidance and counseling; education; religion; Christian education; divinity; business administration; pastoral counseling; criminal justice; public administration; child care administration; nursing; other human service field related to working with families and children; and, two (2) years of work experience in management of a human services program; or
2. A bachelor's degree with a major in the areas listed above public administration, or child-care administration and four (4) years work experience in human services programs.

(b) Persons other than the executive director employed in positions responsible for supervising, evaluating, or monitoring social work or other professional staff shall possess:

1. A master's degree in the human services area including the areas of social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, public administration, or child-care administration; and
2. At least two (2) years work experience in the human services

field.

(c) All licensed child-placing agencies shall have one (1) member of the social work staff designated as placement director who shall hold:

1. A master's degree in social work or a related field; or
2. A bachelor's degree in social work or a related field and a minimum of two (2) years professional child-placing experience in working with children and families including foster care or adoptive placements.

(d) A child-placing agency using the service of a social worker not on the staff of the agency shall document that the social worker meets the qualifications as required in paragraph (f) of this subsection. An agreement for this provision of service shall be on file at the agency and shall specify the qualifications of the social worker.

(e) Social workers shall be supervised by the placement director.

(f) Employees responsible for social work, counseling, or planning and coordinating services to children shall have at least a bachelor's degree in the human services field.

(g) Social services staff shall not carry a caseload of more than twenty (20).

(5) Personnel policies.

(a) Employees shall be at least eighteen (18) years of age.

(b) There shall be a written job description which shall be reviewed and revised for each position which:

1. Clearly describes the duties of the position and the skills necessary to fill the position; and
2. Identifies the position's immediate supervisor.

(c) Personnel upon employment shall receive written agency policies and procedures to include the following:

1. Salary plan;
2. Leave provisions;
3. Working conditions;
4. Fringe benefits;
5. Employment and termination;
6. Job descriptions;
7. Staff evaluation;
8. Provisions for staff development;
9. Employee grievance;
10. Disciplinary action; and
11. Child-caring program narrative.

(d) Personnel orientation. Personnel within one (1) month of initial employment shall receive an orientation to agency policies and procedures.

(e) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number, date of employment, and date of birth;
2. Evidence of current registration, certification, or licensure;
3. Records of participation of staff development;
4. Records of performance evaluation;
5. Criminal records check;
6. Records of physical exams related to employment;
7. Personnel actions;
8. Application for employment and resume or contract; and
9. Evidence of personnel orientation.

(f) If a criminal records check reveals a prior criminal conviction or plea of guilty to charges pursuant to KRS Chapter 510 or a Class A felony, the applicant shall not be employed.

(g) The agency shall have an ongoing staff development program for the administrative, professional, volunteer, and support personnel.

1. Records of attendance at workshops, conferences, and academic courses related to work responsibilities shall be kept on employees.

2. The staff development program shall be under the supervision of a designated staff member.

(h) An employee under indictment or legally charged with felonious conduct shall be immediately removed from contact with

children until the person is cleared of the charge.

(i) Volunteers who perform similar functions as paid staff shall meet the same requirements and qualifications.

(6) Agency policies. There shall be written administrative policies which the agency follows covering all aspects of operation including:

- (a) Administration;
- (b) Personnel;
- (c) Fiscal management;
- (d) Case records;
- (e) Child-placing program;
- (f) Internal review and evaluation;
- (g) Transportation of children;
- (h) A description of organization structure, staffing, and allocation of responsibility and accountability; and

(i) A child-placing program narrative describing in detail:

- 1. The services offered;
- 2. Methods and protocols for service delivery;
- 3. Qualifications of personnel involved in the delivery of the services; and

4. Goals of the services.

(7) Internal review and evaluation.

(a) Each agency shall provide for and conduct a self-evaluation of overall agency performance and management of its services at least every three (3) years from the effective date of this regulation.

(b) Specific written criteria and procedures for evaluating the overall agency performance and management shall be established. These shall be approved by the board of directors.

(c) The required evaluation shall examine the following factors:

- 1. Child-placing program content in relation to the stated role and purpose of the agency;
- 2. Child-placing program effectiveness based on stated and measurable goals;
- 3. Roles of the board of directors and management staff;
- 4. Personnel policies;
- 5. Staffing patterns and job responsibilities;
- 6. Staff effectiveness;
- 7. Staff turnover, causes, and effects;
- 8. Staff training program;
- 9. Budgeting and fiscal management;
- 10. Placements, planned and unplanned discharges, and length of stay of children in care;
- 11. Content of the child-placing program as related to the needs of the child and family based upon a random review of casework plans; and
- 12. The service continuum from intake through aftercare.

(d) A copy of each evaluation shall be kept on file at the agency and a copy shall be given to each member of the board of directors.

(e) Accreditation by the Council on Accreditation sponsored by the Child Welfare League of America or the Joint Commission on Accreditation of Health Care Organization shall substitute for the three (3) year evaluation.

(f) The child-placing agency shall ensure that the rights of children and their families, including that of confidentiality, are protected in all phases of evaluation. Services shall not be denied or restricted to any client based upon participation in the evaluation process.

Section 3. Interstate Placements. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-placing agency shall comply with all applicable provisions of KRS 615.030 to 615.040, Interstate Compact on Placement of [and] Children; and KRS 615.010, Interstate Compact on Juveniles.

(2) If a child committed to the cabinet makes a brief visit out of state, not accompanied by agency personnel, the agency shall obtain prior consent from the social worker in the Department for Social Services who has case responsibility.

(3) If an emergency placement of a child into a licensed child-placing agency is made, compliance with KRS 615.030 to 615.040

shall be the responsibility of the placing agency.

Section 4. Orientation and Training of Foster and Adoptive Homes. Each child-placing agency shall provide orientation and training to prospective foster and adoptive parents to include the following:

(1) Agency program description with mission statement, information about the rights and responsibilities of parents, and background information about foster or adopted children.

(2) Examples of actual experiences from parents who have fostered and adopted special needs children to include:

- (a) Examination of the stages of grief;
- (b) Identification of the behaviors linked to each stage; and
- (c) Consideration of the long-term effects of separation and loss on children.

(3) Examination of family functioning, values, and expectations of the adoptive or foster family. Identification of changes which may occur in the family unit with placement of a child and discipline issues.

(4) Examination of how a placement may affect family:

- (a) Functioning;
- (b) Adjustment problems;
- (c) Identity issues; and
- (d) Disruptions.

(5) Specific requirements and responsibilities of foster and adoptive families.

Section 5. Evaluation of Potential Foster Homes. (1) The functions of recruitment and response to inquiries by prospective foster parents shall be performed by the child-placing agency social work staff. An application shall not be given without an interview to determine if the application process may proceed.

(2) The agency shall be responsible for approving the home as acceptable for children based upon a home study and shall be conducted as a series of planned interviews and home visits by the social worker. Children shall be placed only in approved foster homes.

(3) The agency shall keep a written record of the findings of this study and the evidence on which these findings are based.

(4) The foster home study shall record personal interviews both joint and separate with all members of the household.

(5) The foster home study shall include the following information:

- (a) Attitudes of household members toward placement of a foster child into the home;
- (b) Observations of foster family functioning including interpersonal relationships and patterns of interaction;
- (c) The foster parents' ability to accept the child's relationship with the child's natural parents;
- (d) Information regarding nonfamilial relationships;
- (e) Certification by a licensed physician regarding the family's physical ability to provide necessary care for the child;
- (f) Standards of household safety, housekeeping, and cleanliness are acceptable;
- (g) Water supply and sanitation compliance with all state and local health requirements;
- (h) Suitability of in- and out-of-door play space according to the age and needs of the child;
- (i) Accessibility of the home to the community resources;
- (j) A criminal records check and child abuse registry check on any adult residing in the household;
- (k) Verification of all marriages and divorces of the prospective foster parents; and

(l) A minimum of three (3) written references.

(6) An agency shall not have more than two (2) children under two (2) years of age placed in the same foster home at the same time except for:

- (a) Sibling groups who may remain together.

(b) Temporary shelters that are limited to serving children under two (2) years of age.

(c) Homes where three (3) or more adults reside and the maximum number of infants shall not exceed three (3) at one (1) time.

(7) A foster home shall be selected for a particular child based upon the individual needs of the child.

(8) The worker shall explain the terms of each placement and the foster parents shall certify in writing that supervision from the agency will be allowed. This shall be documented in the case record.

(9) The total number of children shall not exceed six (6) in number, including the foster parent's own children, unless the needs of the individual child indicate the necessity of keeping sibling groups together. Justification for exceptions shall be documented in the record.

(10) A child shall not without prior notification to and written authorization from the Kentucky Interstate Compact Administrator:

(a) Be placed with persons who normally reside in another state; or

(b) Be permitted to go with any person to take up residence in another state.

(11) Homes providing care of foster children shall not be used simultaneously for any other social services, including day care centers or homes for the elderly. This shall not preclude foster parents being approved for adoption or adoptive parents being approved as foster parents.

(12) All approved foster homes in use shall be evaluated on an annual basis. The results of evaluations shall be recorded in the case record.

(13) Each agency shall have a written agreement which states the responsibilities of the agency and the foster parents.

(14) The child shall participate in the intake process and in the decision that placement is appropriate to the extent that the child's age, maturity and adjustment; family relationships; and circumstances necessitating placement justify participation.

(15) The agency shall maintain an ongoing orientation and training program for its foster families. Records of all orientation and training shall be maintained.

Section 6. Placement Process. The following shall be the responsibility of the child-placing agency with exception of those children committed or otherwise made the legal responsibility of the Cabinet for Human Resources. In these cases, services shall be coordinated by Cabinet for Human Resources and agency staff; however, final casework responsibility shall be the responsibility of the Cabinet for Human Resources.

(1) The agency social worker shall be responsible for developing an individual treatment plan (ITP) for each child and their biological family. The plan shall include the type and extent of services to be given the biological family to rehabilitate the home.

(2) The biological parents and child shall be included in developing the placement plan unless contraindicated.

(3) The foster placement shall be located as near as possible to the biological [natural] parent's home to facilitate visiting.

(4) There shall be a semiannual review of the child's home of origin [natural] home.

(5) Each child shall have a period of preparation for the placement unless circumstances preclude this preparation. The circumstances shall be documented in the case record.

(6) Preplacement visitation by the child under agency supervision shall be scheduled before final placement in the foster home unless circumstances, which shall be documented in the case record, preclude these visits.

(7) Prior to placement, the social worker shall hold meetings with the child to prepare him for the placement.

(8) Social services to the biological [natural] parents and the child shall be adapted to their individual capacities, needs, and problems. If parents refuse social services, it shall be documented in the record.

(9) Planning for the child regarding matters including but not limited to visitation, health, and education shall be developed with the parents, the social worker, and foster parents.

(10) Requests for a removal of a child from a foster home shall be explored immediately and documented by the social worker.

(11) Preparation for a child's return to the biological or home of origin [natural] family shall be supervised by a social worker. The biological [natural] family shall participate in planning for the child's return. If the child has not had regular contact with his [natural] family, plans for the child's return home shall include prior visits between the child and the family and at least one (1) preliminary visit of the child to his parents' home. If the child is committed to the Cabinet for Human Resources and the parents reside a considerable distance from the agency, attempts shall be made for providing services to the parents. If the agency is unable to provide services directly to the child's [natural] parents, the executive director of the agency shall request the Cabinet for Human Resources to provide services. These efforts shall be documented in the case record. Provisions shall be made for exchange of information at least quarterly and more often if circumstances warrant.

(12) The agency shall provide for the semiannual review of the children in foster care to assure that foster care continues to be the best plan for each child.

Section 7. Supervision of Children in Foster Homes. (1) The agency shall maintain continuing supervision of the child and foster home while the child is in placement. The agency shall assure that the child is receiving care in accordance with his needs. The agency shall provide information to the foster parents regarding the child's behavior and development.

(2) Upon placement of a child in a foster home, the responsible worker shall make at a minimum monthly supervisory visits to the home. The individual needs of the child shall dictate if more frequent visitation is necessary. The number of contacts and the rationale shall be specified in the plan.

(3) The agency shall document every effort to see that the legal rights of parents and the child are protected and that the family ties are maintained between the child and his parents.

(4) Each child shall have clothing for his exclusive use comparable in quality and variety to that worn by other children with whom he will associate.

(5) The agency shall be responsible for seeing that children comply with state school attendance laws.

(6) The agency shall secure psychological and psychiatric services, vocational counseling, and other services if indicated by the child's needs.

(7) If the plan for long-term foster care for a child has been determined and justified, the plan shall be reassessed annually.

Section 8. Maintenance of Foster Care Records. (1) The agency shall maintain records on each child, his family, and on the foster families. These records shall show the reasons for placement changes and steps taken to insure success.

(2) Social work staff shall document in case records the results of regular social service and progress toward goals which have been established for the child and family.

(3) Copies of all correspondence relating to the child shall be maintained.

(4) The date of discharge and the name and address of the persons or organization to whom the child is discharged shall be recorded.

(5) The discharge recording shall reflect the reason for the discharge.

(6) All case records shall be maintained in conformity with existing laws and regulations pertaining to confidentiality, KRS 61.878, 199.430(3), 199.640, and 200 KAR 1:020.



Section 9. Evaluation of Potential Adoptive Homes. (1) The agency shall select as adoptive parents applicants:

(a) Who are capable of providing for the child's care, support, education, and character development; and

(b) Who have the ability to understand and accept the child's characteristics, potential, and limitations.

(2) Adoptive placement of a child shall not be made prior to the approval of a home as an adoptive home.

(3) The agency shall complete a written study of the adoptive home which shall include the following:

(a) A minimum of one (1) home visit by the adoption worker;

(b) Face-to-face [Personal] interviews, both joint and separate, shall be conducted with each member of the household.

(c) ~~[(b)]~~ Worker's evaluation of the home situation.

(d) ~~[(e)]~~ The functioning of the total household shall be considered in determining the suitability of the home.

(e) ~~[(d)]~~ Three (3) written references indicating the suitability of the home and of the potential adoptive parents.

(4) The written study of the home of the applicant documents:

(a) Attitudes of household members toward placement of an adoptive child into the home.

(b) Observations of the functioning of the potential adoptive family including interpersonal relationships and patterns of interaction.

(c) The nonfamilial relationships.

(d) Certification by a licensed physician regarding the physical and mental ability of the family to provide necessary care for the child.

(e) Standards of household safety, housekeeping, and cleanliness are acceptable.

(f) Water supply and sanitation compliance with all state and local health requirements.

(g) Suitability of in- and out-of-door play space according to the age and needs of the child.

(h) Accessibility of the home to community resources.

(i) A criminal records check on each adult residing in the household.

(j) Verification of all marriages and divorces of the potential adoptive parents.

(k) The economic circumstances of the potential adoptive parents are sufficient to meet the needs of the child.

(5) Agencies shall clearly define the qualifications they require of potential adoptive applicant.

Section 10. Adoption Placement Process. (1) A child shall not be placed for adoption until the parental rights of biological parents and alleged parents are terminated by a circuit court order in accordance with Kentucky Revised Statutes and the child's custody is placed with the agency for the purposes of adoption placing.

(2) Parents shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3) The authority granted to agencies licensed by the cabinet authorizing them to place a child for adoption shall not be used to facilitate adoptive placements planned by doctors, lawyers, clergymen, and others outside the agency. The agency shall comply with provisions of 905 KAR 1:010, Application for permission to place or receive a child.

(4) A developmental history of the adoptive child and social history of the biological parents shall be obtained. Information shall be obtained from direct study and observation of the child by the social worker, pediatrician, foster parents, and if indicated, by the nurse, psychologist and other consultants. To comply with KRS 199.520 and 199.572, child-placing agencies shall assist the biological parents in completing forms prescribed by Cabinet for Human Resources policy and procedure.

(a) The child's developmental history shall include as much of the following as is available:

1. Birth and health history;

2. Early development;

3. Characteristic ways of the child of responding to people and situations;

4. Deviations from the range of normal development;

5. The experiences of the child prior to the decision to place him for adoption;

6. Maternal attitudes during pregnancy and early infancy;

7. Continuity of parental care and affection;

8. Foster care placements; and

9. Separation experiences.

(b) Information that may affect the child's normal development shall be obtained from biological mother and father about their family background may include:

1. Name;

2. Age;

3. Nationality;

4. Education;

5. Religion;

6. Occupation; and

7. Information to determine whether there are any significant hereditary factors or pathology, including illnesses of the biological mother or father.

(c) Information shall be obtained from the mother, if possible:

1. To the identity of the biological father or legal father, if different from the biological father, for purposes of determination of the father's parental rights; and

2. Establishment of the possible hereditary endowments. If either biological parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the agency shall document information to the extent possible from existing case records.

(5) A medical examination shall be made by a licensed physician to determine:

(a) The state of the child's health;

(b) Significant factors that may interfere with normal development; and

(c) The implications of any medical problems.

(6) Before placement of the child, conditions under which adoptive parents accept the child shall be agreed upon. This written agreement shall embody the following provisions:

(a) The adoptive parents shall comply with KRS 199.470 and agree to file an adoptive petition at a time agreeable to them and the agency.

(b) The adoptive parents agree to:

1. Permit supervision by the agency during the period of time after placement; and

2. Preceding the final judgment by the circuit court.

(c) The agency is responsible for providing the adoptive parents with:

1. Written information regarding the child's background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520.

(d) The adoptive parents and the agency shall agree that the child may be removed from the family at the request of either party before the filing of the adoptive petition.

(7) Preplacement meetings shall be arranged for the adoptive parents and any child one (1) month of age or older.

(8) If preparing the child for placement with the selected adoptive parents, the agency shall discuss with the child his readiness to accept this placement in accordance with the child's age and ability to understand.

(9) Siblings who have had a relationship with one another shall be placed together unless it is determined to be more beneficial for them to be placed in separate homes. Continued contact between siblings in separate homes shall be maintained if possible. If siblings have been separated in placements:

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- (a) The case record shall reflect a valid basis for the separation;
- (b) The decision to separate siblings shall be made by the executive director of the agency.

Section 11. Supervision of Adoptive Homes. (1) The agency placing a child shall remain responsible for him until the adoption has been granted. This responsibility involves the following:

- (a) Two (2) meetings by the worker with the child and the family including both adoptive parents if not a single parent adoption, one (1) of which shall be in the home before filing of the adoption petition.
- (b) Awareness of changes in the adoptive family including health, education, and behavior.

(2) Upon request of the Cabinet for Human Resources, the agency shall provide information as required in KRS 199.510 which is necessary to report to the court to proceed with the adoption. Upon the request of the cabinet for filing with the appropriate circuit court, the agency placing the child shall:

- (a) Prepare a confidential report to the court; and
- (b) Forward the original and one (1) copy of this report and a copy of information required by KRS 199.520 and 199.572 to the Cabinet for Human Resources.
- (3) If the court finds the adoptive parents to be unsuitable and refuses to grant a judgment, the agency shall remove the child from the home.

Section 12. Maintenance of Adoptive Case Record. (1) The agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of agency service on:

- (a) Each child accepted for care;
- (b) His family; and
- (c) Each adoptive applicant.
- (2) The case record shall contain material on which the agency decision may be based and shall:
  - (a) Include information and documents needed by the courts;
  - (b) Preserve information about the child and his family;
  - (c) Include a narrative or summary of the services provided with copies of all legal and other pertinent documents; and
  - (d) Include all information gathered during the intake study including the following:
    - 1. A description of facts about the child's family situation which necessitated placement of the child away from his family or termination of parental rights;
    - 2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the agency for the purpose of adoption;
    - 3. Verification of the child's birth record and the registration number;
    - 4. A copy of the child's medical record up to the time of placement;
    - 5. A copy of the required study of the adoptive home;
    - 6. Date of placement in the adoptive home;
    - 7. A statement of the basis of the selection of this home for the child;
    - 8. A record of after-placement services with dates of contacts and observations;
    - 9. Dates of filing of petition and granting of judgments and other significant court proceedings relative to the adoption; and
    - 10. Child's adoptive name.

(3) If there is need to share background information with one of the parties to a completed adoption or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the agency shall comply with KRS 199.570.

(4) Records on adoption which contain pertinent information shall be maintained indefinitely following final placement of a child. Each individual record shall be sealed and secured from unauthorized

scrutiny.

MASTEN CHILDERS II, Secretary  
PEGGY WALLACE, Commissioner  
APPROVED BY AGENCY: July 12, 1994  
FILED WITH LRC: July 14, 1994 at 4 p.m.

### CABINET FOR HUMAN RESOURCES Department for Social Services (As Amended)

#### 905 KAR 1:330. Child protective services.

RELATES TO: KRS ~~431.600~~, 600.10, 605.130, 620.010 to 620.050, 620.990 ~~[1994 Ky. Acts ch. 207, 217]~~

STATUTORY AUTHORITY: KRS 194.050, 605.150, 620.180

NECESSITY AND FUNCTION: KRS 194.050 requires the Secretary for the Cabinet for Human Resources to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources. This administrative regulation sets forth the procedures for child protection investigations of abuse, neglect, or dependency by the Department for Social Services in compliance with KRS 605.150 and 620.180.

Section 1. Definitions. (1) "Child protective services" means preventive and corrective services directed toward:

- (a) Strengthening family life;
- (b) Improving the abilities of parents to carry out parental responsibilities;
- (c) Assuring for each child a safe and nurturing home;
- (d) Safeguarding the rights and welfare of abused, neglected or dependent children;
- (e) Assisting parents or other persons responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of a child; and
- (f) Identifying and correcting conditions in society which contribute to the neglect, abuse or dependency of a child.

(2) "Failure to locate" means the identifying information about the family is insufficient for locating them or the family has moved and their new location is not known.

(3) "Found and substantiated" means a type of physical abuse, sexual abuse, neglect or dependency not originally reported by the referral source was found and substantiated during the investigation;

(4) "Prior involvement" means:

(a) Either the child or caretaker are currently registered DSS clients or have been registered clients within one (1) year of the reported fatality; or

(b) A protective service investigation was completed in regard to the child or caretaker, regardless of the status of the investigation, within one (1) calendar year preceding the reported fatality.

(5) "Some indication" means some indicators that abuse, neglect or dependency may exist or some circumstances or conditions are sufficient to arouse suspicion;

(6) "Substantiated" means an admission of abuse, neglect or dependency by the persons responsible or a judicial determination of abuse, neglect or dependency or strong circumstantial or other supportive indicators that abuse, neglect, or dependency by the persons responsible exist;

(7) "Unsubstantiated" means there is no evidence, indicators or justification for suspicion of abuse, neglect or dependency.

Section 2. Receiving a Report. (1) The Department for Social Services shall accept reports of child abuse, neglect or dependency as governed by KRS 620.030.

(a) The home telephone numbers of family services workers, family services office supervisors, and the child abuse hotline shall be

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made available to agencies in the community who may encounter child abuse, neglect or dependency for emergency reports after normal office hours unless a formalized on call system exists.

(b) The intake worker shall attempt to elicit from the person reporting the suspected abuse, neglect or dependency as much information about the child's circumstances, as possible, including:

1. Specific information as to the nature and extent of abuse or neglect;
2. The causes of the abuse;
3. The location of the child and family;
4. Determine if there have been previous incidents;
5. Witnesses to the incident which caused the child's conditions;
6. Whether the reporting person or others have taken any action;
7. Present danger to child or staff; and
8. The reporting persons identity and relationship to the child assuring him that his identity shall not be revealed unless the court orders his name divulged.

(c) Anonymous reports which give sufficient information and report abuse, neglect or dependency by a caretaker shall be investigated.

(2) Acceptance criteria.

(a) The department shall receive and investigate reports of physical abuse if there are reported to be or have been observable marks on a child which were allegedly inflicted nonaccidentally by a caretaker. The department may accept a report of physical abuse or risk of physical injury if no observable marks are seen and if:

1. There are reports of a child being hit in critical areas of the body, including but not limited to, the head, face, neck, genitals, abdomen, and kidney areas;
2. There are reports of threats of physical injury; or
3. There are allegations of injuries to a child which are the result of altercations between the child and the custodian. The worker shall explore the precipitating factors, the degree of appropriateness of force used by the caretaker and the need for further services to assist in eliminating the violent behavior in the home.

(b) The department shall receive and investigate reports which allege neglect of a child by a caretaker which may result in harm to the physical health and safety of the child in the following areas:

1. Hygiene neglect exists if:
  - a. A child has physical symptoms that require treatment due to poor care; or
  - b. The child's physical health and safety is negatively affected due to an act or omission by the caretaker;
2. Supervision neglect exists if the caller has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;
3. Food neglect exists if a child shows symptoms of:
  - a. Malnutrition;
  - b. Dehydration;
  - c. Food poisoning; or
  - d. Not having been provided adequate food for a period of time that interferes with the health needs of the child based on age and other conditions;
4. Clothing neglect exists if a child suffers:
  - a. Illness;
  - b. Exposure; or
  - c. Frostbite due to inadequate clothing or the clothing is insufficient to protect the child from the elements.
5. Environmental neglect exists if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;
6. Educational neglect exists if the school system has exhausted their resources to correct the problem and the caretaker's negligence prevents the child from attending school or receiving appropriate education; and
7. Medical neglect exists if a child is not receiving medical assessment or treatment for an injury or illness or disability which if

left untreated may:

- a. Be life-threatening;
  - b. Result in permanent impairment;
  - c. Interfere with normal functioning and worsen without treatment;
- or
- d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease.

(c) The department shall receive and investigate reports which allege sexual abuse of a child committed or allowed to be committed by a caretaker or the risk that an act of sexual abuse, sexual exploitation, or prostitution shall be committed on a child. Reports of sexual abuse shall include contacts and interactions in which a child is used to sexually stimulate or gratify another person. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease and the child exhibits physical or behavioral indicators of abuse.

(d) The department may receive and investigate reports which allege risk of sexual harm to a child, if there are factors which cause a person to believe that an act of sexual abuse may be committed on a child.

(e) The department shall receive and investigate reports which allege emotional injury or risk of emotional injury of a child by a caretaker as governed by KRS 600.020(20).

(f) The department shall receive and investigate reports which allege a child is dependent as governed by KRS 600.020(15).

Section 3. The cabinet shall not investigate reports of abuse or neglect by a noncaretaker but shall comply with KRS 620.030(1).

(1) Staff shall keep a log of these referrals specifying the date received and date referred to the Commonwealth's or county attorney and local law enforcement.

(2) Staff may at the request of local law enforcement provide assistance in interviewing alleged child abuse victims.

(3) Staff may refer to other agencies referrals not requiring mandatory child protection services investigations.

(4) The following criteria shall be used in identifying referrals not requiring investigation:

- (a) The victim of the report is age eighteen (18) or over;
- (b) There is insufficient information to locate the child or explore leads to locate;
- (c) The problem described does not meet the statutory definitions of abuse, neglect or dependency;
- (d) Reporter notifies the department that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
- (e) If the report concerns custody changes or custody related issues or lifestyles issues without allegations of abuse, neglect or dependency;
- (f) Corporal punishment appropriate to the age of the child without injuries, marks or bruises or substantiated risk of harm. This type of corporal punishment by foster parents shall be reported;
- (g) Allegations of abuse or neglect of a fetus;
- (h) Allegations of spouse abuse to a married youth, under age eighteen (18). These reports shall be forwarded to the adult services worker.
- (i) If the report concerns a specific incident previously investigated and no new information or change in the child's circumstances is communicated.

Section 4. Report of Suspected Child Abuse, Neglect, Dependency. Following the receipt of the report, the DSS-115, Report of Suspected Child Abuse, Neglect, Dependency, herein incorporated by reference, shall be completed and the report investigated. Investigations shall be conducted according to the following time frames as governed by KRS 620.040(1):

(1) If the report indicates the child is in imminent danger, the investigation shall be initiated within the hour.

(2) If the report indicates nonimminent danger of physical or

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sexual contact, effort shall be made to have personal contact with the child and family within twenty-four (24) hours, but contact shall be made within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.

(3) If the report indicates nonimminent danger, not involving physical or sexual contact, the investigation shall be initiated within twenty-four (24) hours. Efforts shall be made to have personal contact with the child and family within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.

(4) Reports of dependency if a child is not in imminent danger shall be investigated within forty-eight (48) hours.

Section 5. Reports of Abuse, Neglect, and Dependency. (1) If a report of alleged child abuse, neglect or dependency in an approved foster home or adoptive home is received, the supervisor shall immediately contact the family services district manager who shall designate a worker to conduct the investigation. If abuse or neglect or dependency is substantiated or there is some indication, a review of the home shall be completed. The decision to close or continue using the home shall be made by the family services district manager based on pertinent available information.

(2) If a report of alleged child abuse or neglect in a licensed child care facility, private child care or a day care center is received the worker shall notify the Division of Licensing and Regulation. This notification shall be documented in the case and may be done by phone and followed up in writing. If possible, the investigation shall be coordinated and conducted jointly; however, if not possible within the designated time frame, the worker shall proceed with the investigation. In joint investigations the DSS worker shall with the Division of Licensing and Regulation staff:

(a) Conduct an entrance interview with the facility administrator or designee outlining the nature of the report without disclosing the name of the reporter; and

(b) Discuss their findings privately prior to conducting an exit interview.

(3) If a report of alleged child abuse or neglect in a Cabinet for Human Resources operated treatment facility is received the worker shall immediately telephone the Office of Inspector General who shall investigate the report. The phone contact shall be followed by completing a DSS-115 and further action shall not be taken unless specifically requested by the Office of Inspector General.

(4) Reports of abuse or neglect involving school personnel.

(a) If allegations of child abuse or neglect have been made about a school employee, with the incident occurring during school time or other school related activities, the worker shall:

1. Complete the DSS-115 and forward copies to appropriate law enforcement and county or commonwealth attorney;

2. Interview child and natural parents or legal guardians. Conduct the interview away from school grounds, if possible;

3. Interview the alleged perpetrator away from the school grounds if possible.

(b) If the referral is unsubstantiated, further action shall not be taken. Information regarding the finding of the report may be shared with the alleged perpetrator and the custodial parent. Other information shall be requested through open records procedures.

(c) If the referral is substantiated or shows some indication of abuse or neglect: the worker shall notify the appropriate supervisor of the alleged perpetrator that an investigation has been conducted and of the results of the investigation.

(5) If a report of alleged child abuse or neglect in a certified family child care home is received the worker shall notify the Department's Child Care Services Branch.

Section 6. Prior Reports. Before investigating the referral regarding a child unknown to the local office, the district data center shall be contacted to determine the existence of prior reports or if there exists a closed case or case opened elsewhere in the state.

This information shall be documented in the case record but failure to secure this information shall not delay the investigation within the stated time frames.

Section 7. Initial Investigation. Information necessary for determining the validity of the report, and if valid, the existence of imminent danger and risk to the child shall be obtained during the investigation. Investigations shall entail face-to-face contact with the alleged victim. Victims, if of appropriate age, and if possible, parents or caretakers, appropriate household and family members, and alleged perpetrators shall be interviewed.

(1) If determining whether to interview the child, or parent or caretaker first, consideration shall be given to the:

(a) Nature of the referral;

(b) Current location of the child;

(c) Indicated risk to the child; and

(d) Known violence on the part of the parent.

(2) A child shall not be interviewed in the presence of alleged perpetrators or others who may put pressure on the child.

(3) If the worker is unable to contact the parents or caretaker, he shall notify the supervisor and document the case record.

(4) Collateral contacts shall be interviewed if the validity or severity of the report cannot be determined from the interviews. Collateral sources may include:

(a) Officers of the court;

(b) School personnel;

(c) Neighbors;

(d) Medical personnel;

(e) Law enforcement officers; and

(f) Personnel of other agencies.

(5) Medical and psychological examinations may be required if the report alleges that the child has suffered sufficient physical harm of a serious nature, emotional harm or emotional injury. The worker, if possible, shall obtain a copy of the report.

(6) The worker shall cooperate with law enforcement.

(a) Child sexual abuse investigations shall be investigated jointly with law enforcement. The investigation shall be initiated within time frames established in Section 4 of this administrative regulation.

(b) Attempts shall be made to ensure that the worker shall not impede the criminal investigation; however, the worker's primary responsibility shall be the protection of the child.

(7) To prevent a child from experiencing multiple interviews a videotaped interview may be appropriate.

Section 8. Alleged Perpetrators Age Twelve (12) or Older. Reports involving perpetrators in a caretaking role under the age of twelve (12), shall be investigated. However, the child shall not be identified as the alleged perpetrator on the DSS-150, Initial Results of Child Abuse, Neglect, Dependency Investigation, herein incorporated by reference.

Section 9. Interviewing Children in Schools. Worker's shall have the authority to investigate child abuse, neglect or dependency reports at school without parental consent. The worker shall inform appropriate school personnel of the need to interview a child regarding a referral. Details of the allegation and investigation shall only be given to school personnel with a legitimate interest in the case.

Section 10. Notice of Results of Investigation. The worker shall complete the notification section of the DSS-115, and forwarded to law enforcement and the county or commonwealth attorney within seventy-two (72) [forty-eight (48)] hours of receipt of the report, exclusive of weekends and holidays as governed by KRS 620.040(1).

Section 11. Medical Neglect of Disabled Infants. (1) The department shall be notified of known or suspected instances of the

withholding of medically indicated treatment of disabled infants with life threatening conditions in hospitals or health care facilities. Federally funded hospitals and health care facilities shall be given the department's toll-free child abuse hotline number.

(2) If a report is received, hotline staff shall notify a child protective services specialist in central office if received during working hours or a designated person at home if received outside working hours.

(3) Central office staff shall contact one (1) of the department's medical consultants who shall investigate the report.

Section 12. Denied Entry to a Home for a Protective Service Investigation. (1) The worker shall not enter a home during the investigation of a report if an adult is not present in the home. If there is reason to believe the child is in imminent danger, law enforcement shall be contacted for assistance.

(2) If the parents or caretakers of a child refuse the worker entry to the child's home or refuse to allow the child to be interviewed, the worker with approval of the supervisor may request an order from the court.

(a) If the court issues a search warrant the worker may accompany law enforcement officers if the warrant is served.

(b) With the exception of removal of a committed child, the worker shall not remove a child from the home without a court order to remove;

(c) If the court refuses to issue a search warrant, the family service worker shall document the attempts to secure one in the narrative.

Section 13. Risk Assessment. During an investigation of alleged child abuse and neglect, the worker shall assess the strengths of the family and risk to the child by completing the DSS-897, Child Protective Services Risk Assessment Guidelines, herein incorporated by reference. The worker shall not be required to complete the DSS-897 if the:

(1) Child is found dependent;

(2) Alleged perpetrator is not the child's primary caretaker;

(3) Investigation determines the referral to be unsubstantiated or unable to locate;

(4) Investigation of a child fatality determines there are no surviving children in the home; or

(5) The supervisor deems the use of the DSS 897 to be unnecessary, based on the training and experience of the worker, or inappropriate; and the reasons are documented in the case record.

Section 14. Child Fatality Investigations. (1) Reports that a child fatality has occurred due to abuse or neglect by a parent, guardian or other person exercising custodial control or supervision of the child shall be investigated by the department.

(2) If the alleged perpetrator was not a parent or in a caretaker role, the reports shall be forwarded as governed by KRS 620.030.

(3) If it is determined that the department has prior involvement, the commissioner, the Office of Communications and the general counsel of the cabinet shall be notified of the situation immediately through the established channels of communication. The notification shall include:

(a) Name and age of victim;

(b) Known circumstances around the death;

(c) Description of physical injuries or medical condition of the child;

(d) Names, ages and location of other children in the family;

(e) Brief description of the department's history with the family caretaker;

(f) Actions taken by the department to date and future actions to be taken; and

(g) Involvement of other professionals in the case.

(4) It may be advisable that staff who have had prior direct

involvement with the case not be assigned to conduct the investigation.

(a) The assigned investigator, if feasible, shall consult with social workers who have direct involvement with the case prior to investigating.

(b) A joint investigation with law enforcement shall be conducted if possible. The designated investigator shall be cooperative, but not usurp the roles of law enforcement or the coroner or interfere with their respective investigations. The investigator shall contact appropriate law enforcement and coroner to clarify roles and establish a common channel of communication, particularly if the intake information indicates other children are present in the household.

(c) Worker safety in a potentially dangerous setting shall be considered during the course of the investigation. Collateral contacts with medical personnel, the coroner and other appropriate persons may be made to assess potential danger to staff.

(5) The worker shall determine the safety of any surviving children through immediate assessment to assure their safety. The risk assessment guidelines shall be completed if there are surviving children in the home, unless the family services office supervisor deems the use of the risk assessment guidelines inappropriate and the reason is documented in the case record. This assessment includes:

(a) Arranging for physical examinations to check for injuries to the surviving children, if indicated;

(b) Determining whether there has been any history of prior abuse, neglect to the children or other family members by the alleged perpetrator;

(c) Interviewing the children to assess present emotional condition and to determine to what extent they may have witnessed family violence;

(d) Interviewing the parent or caretaker to observe interaction with children and to discuss parent or family history of the caretaker;

(e) Making collateral contacts with neighbors, schools and extended family;

(f) Determining whether the surviving children were present during the time the deceased child received injuries and witnessed what occurred; and

(g) Initiating mental health counseling immediately, if appropriate, for the emotional stability of the children;

(6) If parental rights have been terminated and there has been ongoing contact or other special circumstances, the decision to notify biological parents shall be made by the manager or designee. The Department of Public Advocacy, Protection and Advocacy Division, shall be notified if a child, identified as a protection and advocacy client, dies as a result of abuse or neglect and the perpetrator is in a caretaker role.

(7) In the case of the death of a youthful offender, the sentencing circuit court and the Parole Board shall be notified.

(8) If a fatality occurs in either a foster home, Cabinet for Human Resources facility, psychiatric unit or hospital or private child care facility, and parental rights are intact, efforts shall be made to immediately notify the parents. The judge of the committing court and the guardian ad litem for the deceased child shall be informed of the fatality in writing within three (3) working days after receipt of the report.

(9) The following procedures apply to staff in a Cabinet for Human Resources facility if a death occurs:

(a) Emergency medical services and police shall be contacted immediately. Location and phone number shall be posted by the telephone in each program;

(b) The program director, branch manager, and division director through normal chain of command shall [are to] be notified immediately. The division director shall notify the Commissioner for Social Services;

(c) Staff on duty shall not disturb the body or the immediate area beyond any action necessary to provide emergency resuscitation

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techniques, or to check for vital signs;

(d) Notification shall be given to the local office of the coroner in compliance with KRS 72.020;

(e) Notification to the family and community worker shall be delivered, after direction by the program director, who shall select the individual to present the information in a therapeutic manner to the person;

(f) Detailed documentation shall be entered in the case record by staff describing the event, including:

1. The time the coroner was notified;
2. The time pronouncement of death was given;
3. Names of staff involved; and
4. Notification of parents and guardians. Pertinent notifications and significant facts related to the death shall be fully documented.

(g) A final report shall be prepared by the program director to be submitted to the Commissioner for Social Services through established channels.

(h) The record of the juvenile shall be maintained at the facility until a final report of the coroner is entered into the record. A copy of this report shall be sent to the Commissioner for Social Services through established channels.

(10) Funeral arrangements shall remain the responsibility of the natural parents unless parental rights have been terminated.

(a) Staff shall explore with the natural parents their ability to accept financial responsibility for the funeral. Personal and family resources, including trust fund and insurance in the name of the child, shall be exhausted prior to approval of department funds for funeral and burial expenses. Costs shall have prior approval by the appropriate level of supervision.

(b) The selection of a funeral home, mortician, casket, and burial lot shall be based on estimates of cost which are reasonable and on consideration of the choice of the natural parents.

(c) Clothing for burial may be provided by the natural family, foster family, or may be purchased by the department staff.

(d) Flowers may be selected by the department staff and billed to the department.

(e) Arrangements for religious services may be made with a clergyman of the faith of the natural parents. If the faith of the natural parents is unknown, a clergyman of the faith of the foster parents may conduct services.

Section 15. Determining the Validity of the Report. After the interviews and the necessary information is gathered, the social worker shall determine the validity of the report and submit the DSS-150, within thirty (30) working days of the receipt of the report from the reporting person, unless there are extenuating circumstances which are documented in the narrative. The family services office supervisor or designee shall review, sign and date the original DSS-150.

Section 16. Central Registry. (1) Reports of alleged abuse, neglect, or dependency are computerized for the purposes of compiling statistical information, aiding in diagnostic treatment, and providing management with a means for program evaluation.

(2) Reports that are found to be unsubstantiated or unable to locate shall include:

- (a) Child demographics;
- (b) The type of report alleged;
- (c) Source of report; and
- (d) Status of case.

(3) Reports that are found to be substantiated, and some indication shall include:

- (a) Both child and alleged perpetrator demographics;
  - (b) Specific characteristics relating to the report;
  - (c) Type of report; and
  - (d) Status and relationship of alleged perpetrator to child involved.
- (4) The only information that shall be released from the child

abuse, neglect, or dependency central registry is statistical information. Social agencies demonstrating a legitimate interest may be told if a case exists in the registry, but all requests for details related to that case shall go through open records process.

Section 17. Photographs. Photographs may be taken of a child during a protective service investigation without parental consent. If it appears that photographs of abused or neglected children are necessary for proof of abuse or neglect, it is advised that law enforcement take the photographs. If a family services worker takes the photographs, there shall be a witness and documentation made of the subject, date, and witnesses to the photograph.

Section 18. Case Planning. (1) If a case is to be opened, a maximum of fifteen (15) working days shall be allowed to open the case and complete the case plan.

(a) Priority for opening cases shall be given to cases in which the child is at greatest risk for harm.

(b) Within ten (10) working days of the decision to open a case, the family services office supervisor shall assign or transfer the case for treatment.

(2) The case plan shall be based on assessment and goal formation. It shall include a limited number of attainable, specific objectives agreed upon between the social worker and the family. The case plan shall take into account the following:

(a) The assets and strengths of the family unit and its members;

(b) The options, priorities and needs of the family unit and its members;

(c) The clarification and definition in behavior-specific terms of what needs to change and what new skills need to be learned;

(d) The identification and impact of community forces over which the family may have little or no control;

(e) The opinions of expert consultants regarding medical, mental health, legal and other factors;

(f) The input from referring agencies; and

(g) The resources available within the agency and the community and delineation of roles and functions to bring about the specified changes.

(3) The social worker shall develop a treatment plan designed to provide a safe environment for the child and engage the commitment and cooperation of the family. Family members and children of appropriate age shall be encouraged to participate in the development and updating of case plans.

(4) A copy of the case plan shall be given to the parent or caretaker. The case plan shall be reviewed by the family, worker and supervisor, to include case closure assessment no less frequently than every six (6) months.

(5) A DSS-154, Request for Hearing, shall be given to the family advising them of the right to a fair hearing in compliance with 905 KAR 1:320.

(6) If termination of parental rights becomes the goal, case planning and service delivery shall continue until the judgment order is received.

Section 19. Service Delivery. Service delivery shall be provided as outlined and stated in the case plan. Service delivery shall encompass identified expectations of the family, staff and the implementation of resources in the community. Service recordings shall be completed within thirty (30) days of the contact and shall reflect progress toward treatment goals. Recordings shall be signed and dated by the worker.

Section 20. Case Closure. (1) The decision to close a case which has received services shall be based on evidence that the original factors resulting in the abuse, neglect or dependency have been resolved to the extent that the family can protect the child and can, at least minimally, meet the needs of the child. A child protective



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services case shall not be closed if withdrawal of services places the child in danger. Consideration for closure of a child protective service case may occur if the following conditions are met:

- (a) The child is no longer in need of protection;
- (b) The goals have been achieved; or
- (c) The client is not making progress toward treatment goals and there are no legal grounds for intervention.

(2) The closing summary of the child protective services case shall be included in the case record. A brief narrative regarding the case and the reasons for closure shall be entered. The summary may include:

- (a) Number of months of child protective services;
- (b) Agencies still involved in the case;
- (c) Assessment of family functioning and of conditions that have changed to make closure possible;
- (d) Reason and date of closure.

(3) The form shall be signed and dated by the worker. Notification to client of closure with a 154-A shall be documented in the case as required by 905 KAR 1:320.

Section 21. Material Incorporated by Reference. (1) The DSS-115, Suspected Abuse, Neglect, Dependency or Exploitation Reporting Form, revised July, 1994 [~~May, 1993, the DSS-116, Notification of Initial Results of Child Abuse Investigations, became obsolete May, 1993, the DSS-150, Initial Child Abuse, Neglect or Dependency Investigation, revised December, 1991, and the DSS-897, Child Protective Services Risk Assessment Guidelines, revised January, 1993~~] shall be herein 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 13, 1994  
FILED WITH LRC: July 14, 1994 at 4 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR WRITTEN COMMENTS RECEIVED

GENERAL GOVERNMENT CABINET  
Board of Ophthalmic Dispensers  
(Amended After Hearing)

201 KAR 13:040. Licensing; application, examination;  
temporary permit; inactive status.

RELATES TO: KRS 326.020

STATUTORY AUTHORITY: KRS 326.020(3)

NECESSITY AND FUNCTION: To provide for the licensure of ophthalmic dispensers, apprentice ophthalmic dispensers, and temporary permits; specification of requirements for licensure and applications for licenses.

Section 1. Application for License. (1) Any person wishing to obtain the right to practice the vocation of ophthalmic dispenser [dispensing optician], under KRS Chapter 326, shall make application to the Kentucky Board of Ophthalmic Dispensers upon Form O.D. No. 3-1, adopted by the board May 17, 1966, herein filed by reference; and shall obtain a license from the board permitting him to do so. [Unless such person shall have obtained a license as above stated, it shall be unlawful for him to engage in the vocation of dispensing optician within the state of Kentucky, and he shall be subject to the penalties prescribed under the statute.]

(2) The board shall admit to the practical examination any candidate who pays the required nonrefundable fee of twenty-five (25) dollars and who submits satisfactory evidence to the board, under oath, that he qualifies under the administrative [rules and] regulations adopted by the board.

(3) [(2)] The applicant shall:

(a) [must] Be eighteen (18) years of age;

(b) Be of good moral character;

(c) [a citizen of the United States, must] Have passed all examinations required by the board prior to admission to the practical examination; and

(d) [must] Have completed at least two (2) years of satisfactory training and experience in ophthalmic dispensing under the supervision of a licensed ophthalmic dispenser, licensed physician, osteopath or optometrist, or be a graduate of an accepted school of ophthalmic dispensing. The [Such two (2) years of] training and experience shall [must] be as a licensed apprentice as hereinafter mentioned unless it is clearly shown to the satisfaction of the board, in its sole discretion, that the training and experience of the applicant is otherwise satisfactory, provided, however, that any time spent in a recognized school for ophthalmic dispensing or in an optical laboratory as an ophthalmic technician may, at the discretion of the board, be considered as a part of the two (2) years of satisfactory training and experience.

(4) [(3)] Applicants for the practical examination may be examined by the board upon matters pertaining to:

(a) Mathematics and physics;

(b) Ophthalmic materials and laboratory techniques;

(c) Ophthalmic optics;

(d) Ophthalmic dispensing; and

(e) Practical subjects.

(5) When any applicant passes the necessary examination and meets the qualifications as set forth, and upon payment of an original license fee of twenty-five (25) dollars, the board shall issue a license to such person to engage in the vocation of dispensing optician within the state of Kentucky.

(6) Each [Such] license shall be subject to renewal on December 31 of each year, upon renewal application Form No. 2, herein filed by reference, and upon the payment of the required fee of fifty (50) [ten

(40)] dollars, wherein a renewal certificate will be issued. The renewal form and the required fee shall [of ten (40) dollars must] be received by January 2 of each year. There shall [will] be a penalty fee of ten (10) [five (5)] dollars for any renewal form or fee received after January 2.

(7)(a) An applicant training as an apprentice shall be required to apply to the board to take the examination to be licensed as an ophthalmic dispenser [at the earliest date] after the expiration of two (2) years of apprenticeship training.

(b) He shall be required to pass the examination within five (5) years of the date of his original licensure.

(c) If an applicant fails to pass the examination within that period of time, he may apply for, and the board may grant, at its discretion, permission to have his license reinstated under a different sponsor.

(d) If the board approves the reinstatement of the applicant's licensure, the applicant shall be subject to the same requirements that are contained in paragraphs (a) and (b) of this subsection.

(e) An applicant shall only be allowed to apply for this reinstatement one (1) time.

[(4) An applicant training as an apprentice must pass the examination within five (5) years of expiration of his apprenticeship term. Those having fully served an apprenticeship prior to August 3, 1983 shall be deemed to begin the five (5) year period as of that date.]

Section 2. Apprentice License Application. (1) For the encouragement and protection of those desiring to enter the vocation of ophthalmic dispensing as defined by KRS Chapter 326, the board has provided an apprentice training program.

(2) Applicants for apprentice licenses shall use the same form provided for other applicants in Section 1 of this administrative regulation, and shall answer all questions except Sections (3) and (7)a, b, c, and d.

(3) All other questions shall [must] be filled out and the applicant shall [must] show:

(a) Good faith of his intention to learn the vocation of ophthalmic dispensing;

(b) That he intends to apply himself to the subject; and

(c) That at the earliest date after the expiration of two (2) years apprenticeship training, he intends to apply to the board for examination to be licensed as an ophthalmic dispenser. [Since this program is designed to encourage apprenticeship training and the development of highly skilled and well-qualified ophthalmic dispensers, the board will limit the number of apprentices to not more than one (1) apprentice to each active registered ophthalmic dispenser in each establishment.]

Section 3. Temporary Permit Application. (1) The board may issue a temporary permit to qualified ophthalmic dispensers, who otherwise would qualify for a license but are in the state on a temporary basis or who have not yet had an opportunity to take an examination to procure a license and whose immediate employment depends upon being licensed by the board.

(2) Applicants for temporary permits shall use the same form provided for other applicants in Section 1 of this administrative regulation, and shall answer only Sections (7) and (8).

(3) The permit shall be valid only until the next regular examination date and in no case shall exceed six (6) months following date of issuance.

(4) The fee for a temporary permit shall be twenty-five (25) [ten (40)] dollars, which amount shall accompany the application.

Section 4. Board Action, Notification. (1) The board shall [will] act

only upon those applications which are completely and properly filled out by the applicant.

(2) Each applicant shall [must] enclose the prescribed license fee in the form of a check or money order made payable to the Commonwealth of Kentucky State Treasurer.

(3) [(2)] Applicants shall [will] be notified of the action of the board; and, if favorable, when and where the examination will be held.

Section 5. Inactive Status. (1) Upon application, the board may grant inactive status to a licensee. While on inactive status, the licensee shall not engage in the practice of ophthalmic dispensing.

(2) The fee for licensure on inactive status shall be ten (10) dollars per year.

(3) Continuing education requirements shall be waived for licensees on inactive status during the time they remain inactive. If at any time the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he has completed six (6) hours of continuing education for ophthalmic dispenser licensees and four (4) hours of continuing education for apprentice ophthalmic dispenser licensees within the last twelve (12) month period immediately preceding the date on which the application is submitted. The licensee may request that he be allowed to return to active status immediately, with the provision that he shall receive the appropriate number of continuing education hours within six (6) months of the date on which he returns to active status. Additionally, the licensee shall be responsible for meeting the requirements set forth in 201 KAR 13:055 in order to qualify for renewal.

(4) The reactivation fee for changing from inactive status to active status shall be forty (40) dollars for an ophthalmic dispenser licensee and fifteen (15) dollars for an apprentice ophthalmic dispenser licensee.

JON DURKIN, Board Chairman

APPROVED BY AGENCY: September 5, 1994

FILED WITH LRC: September 6, 1994 at 10 a.m.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Ophthalmic Dispensers  
(Amended After Hearing)**

**201 KAR 13:055. Continuing education requirements.**

RELATES TO: KRS 326.020, 326.080

STATUTORY AUTHORITY: KRS 326.020(3)

NECESSITY AND FUNCTION: To establish a continuing education program for ophthalmic dispenser licensees and apprentice ophthalmic dispenser licensees; to set forth the basic requirements, methods of accreditation, and manner of reporting.

Section 1. "Continuing education hour" means fifty (50) contact minutes of participating in continuing education experiences.

Section 2. Each ophthalmic dispenser licensee shall be required to complete a minimum of six (6) continuing education hours in order to renew his license each year. Each apprentice ophthalmic dispenser licensee shall be required to complete a minimum of four (4) continuing education hours in order to renew his license each year. Continuing education hours in excess of the number required at the time of renewal of license may not be applied to future requirements.

Section 3. A minimum of three (3) of the required six (6) continuing education hours for renewal of ophthalmic dispenser licensure and a minimum of two (2) of the required four (4) continuing education hours for renewal of apprentice ophthalmic dispenser licensure shall be obtained through programs sponsored by entities listed in Section 4(1) of this administrative regulation. The remaining continuing

education hours may be obtained through any of the sources listed in Section 4 of this administrative regulation.

Section 4. Continuing education hours applicable to renewal of licensure shall be directly related to the professional growth and development of ophthalmic dispensers. They may be earned by completing any of the following educational activities:

(1) Relevant offerings provided by the following organizations or institutions that have been reviewed and approved by the board:

(a) The Society of Dispensing Opticians of Kentucky;

(b) The Opticians Association of America, or any of its affiliated state chapters;

(c) The Contact Lens Society of America, or any of its affiliated state chapters;

(d) The National Academy of Opticianary, or any of its affiliated state chapters;

(e) The American Optometric Association, or any of its affiliated state chapters;

(f) The American Academy of Ophthalmology, or any of its affiliated state chapters; [or]

(g) The Southeastern Society of Dispensing Opticians; or

(h) The National Association of Optometrists and Opticians.

(2) Relevant offerings of the following types that have been reviewed and approved by the board:

(a) Accredited schools' continuing education programs; or

(b) Any other provider's continuing education programs.

(3) Related areas not specifically a part of the field of ophthalmic dispensing may be approved for up to two (2) continuing education hours, if the board believes that said related areas may serve to enhance the licensee's ability to practice.

Section 5. Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.

(1) Programs shall be submitted to the board for review and approval at least sixty (60) days prior to planned participation so the participants can know the value of such an experience prior to actual participation.

(2) Requests for program changes shall be made to and accredited by the board or the evaluation and accreditation of the program becomes null and void.

(3) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.

(4) Sponsors shall maintain for three (3) years records of the names of those participants who complete a program.

Section 6. Sponsors and licensees requesting approval of continuing education for ophthalmic dispensers shall submit an application containing such information as the board may require on forms provided by the board.

Section 7. Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to revocation or suspension of his license as provided in KRS Chapter 326.

Section 8. Each licensee shall submit, with the annual renewal application, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year.

Section 9. (1) Each person registered with the board shall retain proof of attendance and completion of all continuing education requirements. These documents must be retained for a period of three (3) years from the end of the calendar year in which the continuing education was acquired. This documentation shall be produced for inspection and verification, if requested in writing by the

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board during its verification process. The board shall not maintain continuing education files.

(2) The board shall conduct a randomly selected audit of individual records to assure that the continuing education requirements have been met. An individual's record may be audited during consecutive renewal periods.

(3) If audited, the individual shall, within fifteen (15) working days of a request from the board, provide evidence of continuing education activities. Such evidence shall be submission of one (1) or more of the following:

(a) Certificates verifying the individual's attendance at the continuing education programs described above. An individual submitting a certificate as evidence of attendance at a continuing education program shall also be required to submit two (2) or more of the following for each program certified:

1. Registration receipt;
2. Signed program;
3. Canceled check;
4. Hotel bill;
5. Name badge; or

6. An original letter on official stationery signed by a professional associate who attended.

(b) An original letter on official institution stationery from the instructor of the college level course verifying that the course was completed and listing the number of credit hours of attendance completed by the individual; or

(c) An official transcript verifying credit hours earned. One (1) semester credit hour is equivalent to six (6) continuing education hours for the purpose of licensure renewal. Credit for auditing will be for the actual clock hours in attendance, not to exceed the academic credit.

Section 10. Upon proper application to the board, a licensee may be granted a deferral on a year-to-year basis at the discretion of the board for reasons of illness, incapacity, or other similar extenuating circumstances. A licensee shall be exempt from the continuing education provisions for the calendar year during which his license is first issued by the board.

Section 11. Each licensee shall keep the board informed of his correct address.

JON DURKIN, Board Chairman

APPROVED BY AGENCY: September 5, 1994

FILED WITH LRC: September 6, 1994 at 10 a.m.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department of Law (Amended After Hearing)

**400 KAR 1:030. Administrative ~~[rules of procedure]~~ service of process, computation of time and filing of documents.**

RELATES TO: KRS 146.200 to 146.360, 146.990, 151.182, 151.184, 151.297, 151.990, Chapter 223, 224, [224.10, 224.30, 224.46, 224.99,] 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS 151.125, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 350.028, 350.255, 350.465, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 146, 151, 223, 224, and 350 authorize [require] the cabinet to conduct administrative

hearings and investigations concerning a wide variety of matters. This administrative regulation establishes procedures for [initiation of an administrative action and for] service of process, computation of time and filing of documents.

Section 1. Service of [Commencement of Action. An administrative action is commenced upon the filing of an initiating document with the cabinet. An initiating document is a complaint, petition, or notice of investigation under KRS 151.182 (1) and (2), 151.297, 224.10-100(11), 224.10-270(2), 224.10-410, 224.10-420(1) and (2), 224.30-140, 224.43-310(4), 350.028(2), 350.070, 350.085(6), 350.093(6)(b), 350.130(1) and 350.465(3)(i). These rules shall apply to formal hearings initiated pursuant to 405 KAR 7:090, Section 5, but shall not apply to preliminary hearings pursuant to 405 KAR 7:090, Sections 3 and 4.

Section 2.] Process. (1) Summons issuance, by whom served.

[(a)] Upon the filing of the initiating document the Office of Administrative Hearings [docket coordinator] shall issue an administrative summons and shall employ the methods for service of process identified in 405 KAR 7:091, 405 KAR 5:095 or 401 KAR 100:010. [either:

1. Place a copy of the administrative summons and initiating document to be served in an envelope, address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The docket coordinator shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The docket coordinator shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the docket coordinator shall enter that fact in the record. The docket coordinator shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by paragraph (b) of this subsection. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the officer; or

2. Cause the administrative summons and initiating document, with necessary copies, to be transferred for service to any person authorized by the Secretary or by any statute or rule, other than by subparagraph 1 of this paragraph, to deliver them, who shall serve the administrative summons and initiating documents, and the return endorsed thereon shall be proof of the time and manner of service.

(b) As an alternative to other methods of service specified by statute, regulation, or these rules, service of process upon a person issued a permit by the cabinet may be made by placing in the United States mail as certified mail, return receipt requested, a copy of the administrative summons and initiating document directed to the named permittee as specified on the face of the permit at the permanent address specified in the permit application or by the permittee. Service is effective upon acceptance of the administrative summons and initiating document by any person at the permanent address, or upon refusal to accept the administrative summons and initiating document by any person at the permanent address, or upon failure to claim the administrative summons and initiating document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, or failure to claim the administrative summons and initiating document.

(c) The methods of service of process specified by these rules shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable statutes, rules or regulations.

(2) Administrative summons. The administrative summons shall

~~be issued in the name of the cabinet, be dated and signed by the docket coordinator or other authorized individual, contain the name of the presiding hearing officer and the style and number of the action, and be directed to each party, giving notice that a legal action has been filed and that failure to appear in person or by counsel as directed may result in a decision adverse to the party's position. The administrative summons shall be served with the initiating document and may include notices of hearing.]~~

~~(2) [(3)]~~ Personal service.

(a) Service shall be made upon an individual within this Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the administrative summons and initiating document to such person or, if acceptance is refused, by offering personal delivery to such person, or by delivering a copy of the administrative summons and initiating document to an agent authorized by appointment or by law to receive service of process for such individuals.

(b) Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one known to the initiating party or, if none, by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of such individual. If there are no such persons enumerated above, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served. If any of the persons directed by this section to be served is an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving a partner or managing agent of the partnership or an officer or managing agent of the association, or an agent authorized by appointment or by law to receive service on its behalf.

(d) Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Service shall be made upon the Commonwealth or any agency other than the cabinet by serving the attorney general or any assistant attorney general. Service of a request for hearing shall be made upon the cabinet by serving the Commissioner of the Department of Law ~~[general counsel or any cabinet representative designated in any notice]~~.

(f) Service shall be made upon a county by serving the county judge or, if the ~~[said]~~ judge is absent from the county, the county attorney. Service shall be made upon a city by serving the chief executive officer thereof or an official attorney thereof. Service on any public board or other administrative ~~[such]~~ body, except state agencies, shall be made by serving a member thereof.

(g) Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by certified mail ~~[in the manner prescribed in subsection (1) of this section]~~, by personal delivery of a copy of the administrative summons and initiating document by a person over eighteen (18) years of age, or by other methods allowed by law. Proof of service may be made either by the return receipt ~~[mentioned in subsection (1) of this section]~~ or by affidavit of the person making such service, upon or appended to a copy of the initiating document, stating the time and place of service and the fact that the individual served was personally known to the person making service.

(h) Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of such office or agency, by serving the person in charge thereof.

~~(i) [(4) Unknown party.]~~ In an action against a person whose name is unknown to the initiating party, the person shall be described in the initiating document and administrative summons as unknown

party. If the person's name or place of residence be discovered pending the action, then the initiating document shall be amended accordingly.

Section 2 [3-] Service and Filing of Pleadings and Other Papers.

(1) Service; when required. Every order required by its terms to be served, every pleading subsequent to the original initiating document unless the hearing officer otherwise orders because of numerous responding parties, every paper relating to discovery required to be served upon a party unless the hearing officer otherwise orders, every written motion other than one (1) which may be heard ex parte, and every written notice, appearance, demand, and similar papers shall be served upon each party except those in default for failure to appear. Parties so in default shall be given notice of pleadings asserting new or additional claims for relief against them by an initiating document issued thereon ~~[as provided in Section 2 of this regulation]~~.

(2) Service; how made. Whenever ~~[under these rules]~~ service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the hearing officer. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney's or party's last known address. Delivery of a copy ~~[within this rule]~~ means handing it to the attorney or to the party; or leaving it at the attorney's or party's office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(3) Service; proof of. Whenever any pleading or other paper is served ~~[under subsection (1) or (2) of this section]~~, proof of the time and manner of such service shall be filed before action is to be taken thereon by the hearing officer or the parties. Proof may be by certificate of a member of the bar or by affidavit of the person who served the papers, or by any other proof satisfactory to the hearing officer. The ~~[Such]~~ certificate or affidavit shall identify by name the persons so served.

(4) Service; numerous responding parties. If the initiating or responding parties are numerous, the hearing officer upon motion or of the hearing officer's own initiative, may designate one (1) initiating or responding party for the service of the pleadings. The filing of any such pleading with the cabinet and service thereof upon the party constitutes due notice of it to the parties. The hearing officer upon motion or of the hearing officer's own initiative may order that any party not appearing at a prehearing ~~[pretrial]~~ conference ~~[or preliminary hearing]~~ not be served with further pleadings. A copy of every such order shall be served upon the parties in such manner and form as the hearing officer directs.

(5) Filing.

(a) All papers after the initiating document required to be served upon a party shall be filed with the cabinet either before service or within a reasonable time thereafter.

(b) The filing of pleadings and other papers with the cabinet ~~[as required by these rules]~~ shall be made by filing them with the Office of Administrative Hearings ~~[docket coordinator]~~.

(c) The Office of Administrative Hearings ~~[docket coordinator]~~ shall endorse upon every pleading and other paper filed ~~[in an action]~~ the date of its filing. The ~~[Such]~~ endorsement shall constitute the filing of the pleading or other paper and no order of the hearing officer shall be required.

(d) Filing of discovery material.

1. Except as provided by subparagraph 2 of this paragraph, the following documents shall not be filed with the Office of Administrative Hearings unless the hearing officer orders otherwise:

a. Interrogatories;

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- b. Requests for production or inspection; and
- c. Requests for admission[; and
- d. Subpoenas].

Section 3. [4-] Time. (1) Computation. In computing any period of time prescribed or allowed by ~~[these rules, by]~~ order of the hearing officer[;] or by any applicable administrative [statute or] regulation, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Unless otherwise directed by the hearing officer, when the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

(2) Enlargement. When by administrative [statute,] regulation[; these rules] or by order of the hearing officer an act is required or allowed to be done at or within a specified time, the hearing officer for cause shown may, at any time in the hearing officer's discretion, order the period enlarged with or without motion or notice if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or, upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect. The hearing officer may not enlarge a time frame established by statute.

(3) ~~[For motions; affidavits.~~

~~(a) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not less than five (5) days before the time specified for the hearing, unless a specific period is fixed by statute, regulation, these rules or by order of the hearing officer. Such an order may for cause shown be made on ex parte application. All written motions shall be accompanied by a brief statement of the grounds and reasons for the motion.~~

~~(b) When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one (1) day before the hearing, unless the hearing officer permits them to be served at some other time.~~

~~(4) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceeding within a [prescribed] period prescribed by order of the hearing officer or by administrative regulation after the service of a notice or other paper upon the party and the notice or paper is served by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons and initiating documents by mail [under Section 2(1) of this regulation].~~

PHILLIP J. SHEPHERD, Secretary

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## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department of Law (Amended After Hearing)

400 KAR 1:040. Administrative ~~[rules of procedure,]~~ discovery.

RELATES TO: 146.200 to 146.360, 146.990, 151.182, 151.184, 151.297, 151.990, Chapter 223, 224, [224.10, 224.30, 224.46, 224.99] 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS 151.125, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 350.028,

350.255, 350.465, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapters 146, 151, 223, 224 and 350 authorize [require] the cabinet to conduct administrative hearings and investigations concerning a wide variety of matters. This administrative regulation establishes procedures for discovery.

Section 1. General Provisions Governing Discovery. (1) Discovery methods. Parties to administrative hearings [In all proceedings under these rules except preliminary hearings pursuant to 405 KAR 7:000, Sections 3 and 4, parties] may obtain discovery by one (1) or more of the following methods:

(a) Depositions upon oral examination or written questions; (b) Written interrogatories;

(c) Production of documents or things or, for parties other than the cabinet, permission to enter upon land or other property, for inspection and other purposes; and

(d) Requests for admission. Unless the hearing officer orders otherwise under subsection (3) of this section, the frequency of use of these methods is not limited.

(2) Scope of discovery.

(a) In general. Parties may obtain discovery regarding any matter, not privileged or confidential under KRS 224.10-210, 224.10-212 or under any other privilege recognized by statute or at common law, whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the administrative hearing [proceeding], including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the administrative hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) Hearing preparation: materials.

1. Subject to the provisions of paragraph (d) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (1) of this section and prepared in anticipation of the administrative hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

2. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order of the hearing officer. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Hearing preparations: experts. Discovery of facts known and



opinions held by experts, otherwise discoverable under this administrative regulation and acquired or developed in anticipation of or preparation for the administrative hearing, may be obtained only as follows:

1. A [The parties shall exchange all information directed by the hearing officer, which may include facts known and opinions held by experts and acquired or developed in anticipation of a hearing. In addition, a] party may[, through interrogatories[, require any other party to identify each person whom the other party expects to call as an expert witness at the administrative hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the hearing officer may order further discovery by other means, subject to those [such] restrictions as to scope as the hearing officer may deem appropriate.

2. A party may discover facts known or opinions held by an expert who has been retained or employed by another party in anticipation of or preparation for an administrative hearing and who is not expected to be called as a witness at the administrative hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(3) Protective orders.

(a) Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without administrative action, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

1. That the discovery not be had;

2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

3. That the discovery may be had only by a method of discovery other than selected by the party seeking discovery;

4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

5. That discovery be conducted with no one present except persons designated by the hearing officer;

6. That a deposition after being sealed be opened only by order of the cabinet; or

7. That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the hearing officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Sequence and timing of discovery. Unless the hearing officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(5) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement that response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that the response was incorrect when made, or the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the hearing officer, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

Section 2. Persons Before Whom Depositions May Be Taken. [(+) Within the state.] Depositions [taken in this state] shall be taken before an examiner; a judge, clerk, commissioner or official reporter of a court; a notary public; or before such other persons and under such other circumstances as shall be authorized by law. [The term "officer" in Sections 4(3), (5), (6), 5(1), (2), and 6(4) of this regulation means any person before whom a deposition may be taken under this section.]

(2) Without the state. Depositions may be taken out of this state before a commissioner appointed by the Governor of the state where taken or before any person empowered by a commission directed to the person by consent of the parties or by order of the hearing officer; or before a judge of a court, a justice of the peace, mayor of a city, or notary public; or before such other persons and under such circumstances as shall be authorized by the law of this state or the place where the deposition is taken.]

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by agreement [written stipulation], provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by this administrative regulation [these rules] for other methods of discovery[, except that stipulations extending the time for responses to discovery may be made only with the approval of the hearing officer].

Section 4. Depositions Upon Oral Examination. (1) When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of a court having appropriate jurisdiction and on such terms as the court prescribes.

(2) General requirements.

(a) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the administrative hearing [action]. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, the matter upon which each person will be examined, and the name or descriptive title and address of the person before whom the deposition is to be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) The hearing officer may for cause shown enlarge or shorten the time for taking the deposition.

(c) The hearing officer may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(d) The notice to a party deponent may be accompanied by a request made in compliance with Section 8 of this administrative regulation for the production of documents and tangible things at the taking of the deposition. The procedure of Section 8(2) of this administrative regulation shall apply to the request.

(e) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this administrative regulation [these rules].

(3) Examination and cross-examination.

(a) Examination and cross-examination of witnesses may proceed as permitted at the administrative hearing. The person [officer] before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's [officer's] direction and in the person's [officer's] presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (2)(c) of this section. If requested by one (1) of the parties, the testimony shall be transcribed at that party's expense.

(b) All objections made at the time of the examination to the qualifications of the person [officer] taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the person taking the deposition [officer] upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim. [In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.]

(4) Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 1(3) of this administrative regulation. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(5) Submission to witness. Any party to an action may make a written request before the person [officer] taking a deposition therein that it be submitted to the witness. In such an event, when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person taking the deposition [officer] with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the witness is ill or cannot be found or refuses to sign. If the

deposition is not signed by the witness, the person [officer] before whom the deposition is taken shall sign it and state on the record the fact of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress the hearing officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(6) Certification and filing by person taking deposition [officer].

(a) The person [officer] before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by that person [the officer] and that the deposition is a true record of the testimony given by the witness. ~~[The officer before whom the deposition is taken shall promptly deliver the deposition to the docket coordinator or send it by certified mail to the docket coordinator for filing.]~~

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if a fair opportunity is afforded all parties to verify the copies by comparison with the originals, and if the person producing the materials requests their return, the person [officer] before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition ~~[to the hearing officer]~~, pending final disposition of the case.

(c) Upon payment of reasonable charges therefor, not to exceed those fixed by statute, the person taking the deposition [officer] shall furnish a copy of the deposition to any party or to the deponent.

(7) Failure to attend or to serve subpoena; expenses.

(a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

Section 5. Depositions Upon Written Questions. (1) Serving questions; notice.

(a) After service of the summons ~~[commencement of the action]~~, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoenas. The deposition of a person confined in prison may be taken only by leave of court of appropriate jurisdiction on such terms as that court prescribes.

(b) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name or description title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with

the provisions of Section 4(2)(e) of this administrative regulation.

(c) The hearing officer may establish an expeditious schedule for the service of cross, redirect, and recross questions.

(2) The officer before whom the deposition is to be taken to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Section 4(3), (5) and (6) of this administrative regulation, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions which were received. Neither party agent, or attorney shall be present at the examination of the witness.

Section 6. Use of Depositions in Administrative Hearings [Proceedings]. (1) Use of depositions. At the administrative hearing any part or all of a deposition so far as admissible may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing officer finds that:

1. The witness is dead; [e]

2. The party offering the deposition has been unable to procure the attendance of the witness by subpoena; [e]

3. The witness is at a greater distance than 100 miles from the place of the administrative hearing or out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; [e]

4. The witness is the Governor, Secretary, Auditor or Treasurer of the state; or the witness is a judge or clerk of a court; or the witness is a postmaster; or the witness is a president, cashier, teller or clerk of a bank; or the witness is a practicing physician, dentist or lawyer; or the witness is a keeper, officer or guard of a penitentiary; [e]

5. The witness is of unsound mind, having been of sound mind when his deposition was taken; [e]

6. The witness is prevented from attending the trial by illness, infirmity, or imprisonment; [e]

7. The witness is in the military service of the United States or of this state; or

8. [if] The hearing officer finds that such circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the administrative hearing, to allow the deposition to be used.

(d) If only a part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(e) Substitution of parties does not affect the right to use depositions previously taken.

(2) Objections to admissibility. Objection may be made at the administrative hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) Effect of taking or using depositions. The taking of a deposition or the questioning of a deponent shall not make evidence admissible which is otherwise incompetent or constitute a waiver of

objections to its admissibility.

(4) Effect of errors and irregularities.

(a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to disqualification of person before whom deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to taking of deposition.

1. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one (1) which might have been obviated or removed if presented at that time.

2. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

3. Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within three (3) days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person [officer] before whom the deposition was taken under this section and Section 5 of this administrative regulation are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7. Interrogatories to Parties. (1) Availability; procedures for use.

(a) Any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at any time after the commencement of the action. A copy of the interrogatories, answers and all related pleadings shall be served [filed with the docket coordinator and, unless otherwise ordered,] upon all parties.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days of service or within such other time as specified by the hearing officer or agreed upon. The party submitting the interrogatories may move for an order under Section 10(1) of this administrative regulation with respect to any objection to or other failure to answer an interrogatory.

(c) Each party may propound a maximum of thirty (30) interrogatories and thirty (30) requests for admission to each other party; for purposes of this section, each subpart of an interrogatory or request shall be counted as a separate interrogatory or request. The following interrogatories shall not be included in the maximum allowed:

1. A request for the names and addresses of persons answering the interrogatories;

2. A request for the names and addresses of the witnesses; and

3. A request as to whether the persons answering are willing to supplement their answers if information subsequently becomes available. Any party may move the hearing officer for permission to propound either interrogatories or requests for admission in excess of the limit of thirty (30).

(2) Scope; use at administrative hearing [trial].

(a) Interrogatories may relate to any matters which may be inquired into under Section 1(2) of this administrative regulation, and the answers may be used to the extent permitted by the rules of evidence.

(b) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(3) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Section 8. Production of Documents and Things. (1) Scope. Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on the party's behalf, to:

(a) Inspect and copy any designated documents, [t] including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form; [r]; or

(b) [te] Inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 1(2) of this administrative regulation and which are in the possession, custody or control of the party upon whom the request is served. However, this subsection [r; provided, however, that nothing herein] shall not be construed so as to limit or impose additional requirements on the cabinet with respect to its authority to enter property or to conduct inspections authorized by law.

(2) Procedure. The request may be served on any party without leave of the hearing officer at any time after service of the summons [commencement of the action]. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is made shall serve written response within thirty (30) days or within such other time as specified by the hearing officer or agreed upon by the parties. The party submitting the request may move for an order under Section 10 of this administrative regulation with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Section 9. Requests for Admission. (1) A party may serve upon any other party a written request for admission, for purposes of the pending administrative hearing [action] only, of the truth of any matters within the scope of Section 1(2) of this administrative regulation set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request may be

served at any time after the commencement of the action. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the hearing officer may allow or the parties may agree, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for the hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference [or at a designated time prior to the hearing]. The provisions of Section 10(3) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Effect of admission. Any matter admitted under this section is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission. The hearing officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the hearing officer that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. An admission made by a party under this section is for the purpose of the pending administrative hearing [action] only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Section 10. Failure to Make Discovery: Sanctions. (1) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a) Motion.

1. If a deponent fails to answer a question propounded or submitted under Section 4 or 5 of this administrative regulation or a corporation or other entity fails to make a designation under Sections 4(2)(e) or 5(1)(b) of this administrative regulation, or a party fails to answer an interrogatory submitted under Section 7 of this administrative regulation, or a party fails to allow examination under Section 8 of this administrative regulation, the discovering party may move for an order compelling an answer or a designation or an order compelling examination in accordance with the request. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without administrative action. When taking a deposition on oral examination,

the proponent of the question may complete or adjourn the examination before he applies for an order.

2. If the motion is denied in whole or in part, the hearing officer may make such protective order as the hearing officer would have been empowered to make on a motion made pursuant to Section 1(3) of this administrative regulation.

(b) Evasive or incomplete answer. For the purposes of this section [rule] an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of expenses of motion.

1. If the motion is granted the hearing officer shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the hearing officer finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

2. If the motion is denied, the hearing officer shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the hearing officer finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

3. If the motion is granted in part and denied in part, the hearing officer may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (1) of this section, the hearing officer may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(b) Expenses on failure to obey order. In lieu of any of the foregoing orders or in addition thereto, the hearing officer shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 9 of this administrative regulation, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the hearing officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The hearing officer shall make the order unless it finds that the request was held objectionable pursuant to Section 9(1) of this administrative regulation, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or there was other good reason for the failure to admit.

(4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

(a) If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or to serve answers or objections to interrogatories submitted under Section 7 of this administrative regulation, after proper service of the interrogatories, or to serve a written response to a request for examination submitted under Section 8 of this administrative regulation, after proper service of the request, the hearing officer on motion may make such orders in regard to the failure as are just, and among others, the hearing officer may take any action authorized under subparagraphs 1, 2, and 3 of subsection (2)(a) of this section. In lieu of any order or in addition thereto, the hearing officer shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) The failure to act described in this section [rule] may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Section 1(3) of this administrative regulation.

(5) Expenses against the Commonwealth. Expenses and attorney's fees are not to be imposed upon the Commonwealth under this section, except as otherwise provided in 405 KAR 7:092, Section 14.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 8, 1994

FILED WITH LRC: September 9, 1994 at 9 a.m.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET (Amended After Hearing)

#### 400 KAR 1:090. Administrative hearings practice provisions.

RELATES TO: KRS 146.450, 146.530, 146.990, 151.125, 151.182, 151.184, 223.200, 223.420, 223.991, 224.10-270, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.20-755(7), 224.60-130, 224.60-140, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 30 CFR Parts 724, 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 146.450, 146.990, 151.125, 223.200, 223.991, 224.10-100, 224.10-420, 224.10-430, 224.60-120, 350.020, 350.028, 350.0301, 350.465, 350.610, 30 CFR Parts 724, 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth practice provisions for the permanent regulatory program in addition to those found in 405 KAR 7:091 and 405 KAR 7:092. KRS Chapters 224 and portions of KRS Chapters 146 and 223 in pertinent part authorize the cabinet to promulgate administrative regulations pertaining to the conduct of administrative hearings concerning matters covered by KRS Chapters 146, 223, and 224. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapters 146, 223 and 224. KRS Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearing, rules and administrative regulations with respect to procedural aspects of administrative hearings. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapter 151.



## ADMINISTRATIVE REGISTER - 1096

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapters 151, 224, and 350, and pertinent portions of KRS Chapters 146 and 223, including those pending at the time this administrative regulation becomes effective.

Section 2. Construction. This administrative regulation shall be construed liberally and in conformity with reasonable administrative practice to achieve just, timely and inexpensive determinations of matters before the office. This administrative regulation is not intended to be comprehensive, and nothing contained herein shall be construed to limit the authority of a hearing officer to govern the conduct of his docket or the procedural course of a particular administrative hearing as authorized by statute and administrative regulation and in accordance with reasonable administrative practice.

Section 3. Assignment of Case Numbers and Captions. (1) Assignment of case numbers. The office shall stamp each initiating document filed on the date received by the office and shall assign a file number to that document.

(2) Captions generally. All initiating documents, pleadings, motions, orders and all other papers, filed in any case before the office shall be uniformly marked in the caption to indicate the file number(s) and, where applicable, shall show the permit number(s), the noncompliance number(s), the cessation order number(s), the notice of violation number(s), the petitioner's or plaintiff's name(s), the respondent's or defendant's name(s), and any intervenors' names.

(3) Consolidated case captions. All documents filed in consolidated proceedings shall list all case file numbers as set forth in subsection (2) of this section. If a document filed in a consolidated proceeding pertains to some, but not all, of the cases consolidated, the party filing such a document shall indicate in the text thereof the case(s) to which the document applies.

Section 4. Facsimile Filings. (1) Time and manner of filing. Persons filing documents with the office may file such documents by telefacsimile machine at the telefacsimile number listed for the office. The telefacsimile document shall be stamped filed according to the time and date stamp placed on the telefacsimile copy by the telefacsimile machine and shall be promptly filed in the record upon retrieval from the telefacsimile machine. If the telefacsimile machine malfunctions, the telefacsimile document shall be stamped as of the date actually received in the office.

(2) Originals filed. Parties filing by telefacsimile machine shall **promptly** [immediately] after telefaxing a document file the original of the document with the office. The original shall be file stamped on the date actually received by the office. The effective date of filing shall be the date of the receipt in the office of the telefacsimile document or the original document, whichever is earlier.

Section 5. Initiating Documents, Answers and Responsive Pleadings. (1) Initiating documents. In addition to other administrative regulations governing the contents of an initiating document, an initiating document ~~[shall contain a statement of facts entitling the filing party to administrative relief, shall contain a specific request for the relief to which the filing party deems himself entitled,]~~ shall identify by name and file number all related actions pending before the office known to the filing party, shall identify by name and address all interested persons known to the filing party unless such persons have expressed a desire to have their identity kept confidential, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the filing party and, if he is represented, his counsel.

(2) Answers and responsive pleadings. In addition to other administrative regulations governing the contents of an answer or responsive pleading, an answer or responsive pleading, if required or permitted, ~~[shall specifically admit or deny each allegation contained~~

~~in the initiating document,]~~ shall set forth other matters to be considered in the action, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the responding party and, if he is represented, his counsel. If a responding party is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state and this shall have the effect of a denial.

(3) Effect of failure to deny. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Allegations in a pleading to which a responsive pleading is required may be deemed admitted when not denied in the responsive pleading. Failure to plead any available administrative affirmative defense in a required responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

Section 6. Prehearing Conferences. (1) General provisions. To the extent practicable, a prehearing conference shall be held in all cases filed with the office.

(2) Telephonic prehearing conferences. Prehearing conferences may be held in person or by telephone. Any party who requests a telephonic prehearing conference shall initiate the conference call, unless the hearing officer orders otherwise.

Section 7. Mediation. (1) General provisions.

(a) Referral to mediation. At any time prior to the conclusion of the final prehearing conference, a hearing officer may, by appropriate order, refer all or any part of any case to nonbinding mediation. A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require deviation from statutory or regulatory requirements. Cases may be referred to any mediator employed by the office or approved by the chief hearing officer.

(b) Disqualification of mediator. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause, except that employment by the cabinet shall not constitute good cause for such disqualification. If the hearing officer rules that a mediator is disqualified from mediating the case, he shall enter an order referring the matter to another mediator. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment. Unless the hearing officer orders otherwise, the time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(c) Statements not admissible. No statements or admissions made for the purpose of mediation are subject to disclosure through discovery, nor may they be admitted in evidence at an administrative hearing or used by the hearing officer in making any report and recommendation to the secretary.

(d) Proceedings not stayed. Referral of a case to mediation shall not operate as a stay of discovery or other prehearing proceedings, unless otherwise ordered by the hearing officer or agreed to in writing by the parties. While a case is in mediation, the hearing officer may schedule periodic prehearing conferences to ascertain the status of mediation.

(2) Mediation conferences.

(a) Time and purpose of conference. Within ten (10) days from the entry of a mediation referral order, the mediator shall schedule a mediation conference, which shall be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties. The conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of the issues and any other matters which the mediator and the parties determine may aid in the handling or the disposition of the proceedings.

(b) Duration. The mediator may schedule such sessions as are necessary to complete the process of mediation, and mediation shall



continue until the parties have reached a settlement, until any party is unwilling to proceed further, until the mediator determines that further efforts would be of no avail, or until the hearing officer orders the matter remanded from mediation. After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.

(c) Appearance at conference. The parties shall attend the mediation conference(s). Counsel may also be present. If a party to mediation is the cabinet or any other public entity, that party shall be deemed to appear at a mediation conference by the presence of a representative with full authority to negotiate on behalf of the cabinet or other entity and to recommend settlement to the secretary or to the appropriate decision-making body of the entity. In all other cases, a party is deemed to appear at a mediation conference if that party or a representative having full authority to negotiate on behalf of that party [settle without further consultation] is present.

(d) Production of documents and witnesses. The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the mediation sessions, but has no authority to order such production.

(3) Reporting to the hearing officer.

(a) Refusal to accept. The mediator shall notify the hearing officer promptly in writing when a case is not accepted for mediation.

(b) Remand prior to settlement. At any time after the case has been referred for mediation, the mediator may for good cause in writing return the case to the hearing officer. The hearing officer shall promptly thereafter schedule a prehearing conference or an administrative hearing.

(c) Full settlement. If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 16 of this administrative regulation.

(d) Partial settlement. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement enumerating the issues that have been resolved and the issues that remain for an administrative hearing. The hearing officer shall then return the matter to his active docket and promptly schedule a prehearing conference or an administrative hearing.

(e) Mediator's report. Within ten (10) days of the conclusion of cases accepted for mediation, the mediator shall state in writing to the hearing officer that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall state in writing the lack of an agreement to the hearing officer and shall make no other comment or recommendation.

Section 8. Entry of Appearance and Notice of Withdrawal. (1) Filing of notice of entry of appearance. All attorneys representing parties before the office must file a written notice of entry of appearance in each case before they may practice in that case before the office. The notice of entry of appearance must set forth the current, complete and correct name, address, telephone number and telefax number, if any, of the attorney and his client. An attorney is not required to file a separate notice of entry of appearance if he files the initial pleading on behalf of his client in conformity with Section 5 of this administrative regulation.

(2) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.

(3) Filing of notice of change of address. Each party or, if he is represented, his counsel shall promptly notify the office of any change

of address, telephone number, or telefax number required to be filed pursuant to this administrative regulation by filing a notice of entry of change of address in the record.

Section 9. Motion Practice. (1) General provisions. All requests for relief which are not required to be made in a pleading shall be in the form of a motion. All motions filed with the office shall state precisely the relief requested, with citations to the record, the administrative regulations or the law as appropriate. All written motions shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.

(2) Motions. All motions filed with the office going to the merits of a case, including motions to dismiss, motions for summary disposition, motions to strike, and motions on the pleadings shall be accompanied by a brief memorandum setting forth the grounds for the motion and shall contain citation of authorities relied upon.

(a) No memorandum in support of a motion longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.

(b) A motion shall indicate in its caption the nature of the motion.

(3) Responses. Any party [properly] served with a motion may file a response memorandum opposing the motion, with citation of supporting authorities.

(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion unless a different response time is ordered by the hearing officer. The time for filing a response memorandum may be extended once without leave of the hearing officer for no more than thirty (30) additional days by written agreement of all parties filed in the office prior to the deadline for filing that is being extended. [~~within fifteen (15) days of service of the motion.~~]

(b) No response memorandum longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.

(c) A response memorandum shall indicate in its caption that it is a response memorandum.

(4) Replies. Any party [properly] served with a response memorandum may file a reply memorandum addressing only matters initially raised in the response.

(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer. The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days by written agreement of all parties filed in the office prior to the deadline for filing that is being extended. [~~within five (5) days of service of the response memorandum.~~]

(b) No reply memorandum longer than ten (10) pages in length shall be filed in the office without prior leave of a hearing officer.

(c) A reply memorandum shall indicate in its caption that it is a reply memorandum.

(5) Failure to file supporting memorandum. Failure to file a memorandum in support of a motion or in support of a response or reply may be grounds for ruling against the party failing to file the supporting memorandum.

(6) Format of memoranda. All motions, memoranda, pleadings and briefs filed with the office shall conform to the following requirements:

(a) Paper size and binding. All motions, memoranda, pleadings and briefs shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock. Filings shall not be side-bound or top-bound with bindings that interfere with the inclusion of the papers or pleadings in the office files unless permitted by the hearing officer.

(b) Type size and style. All motions, memoranda, pleadings and briefs shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch.

(c) Signature. All motions, memoranda, pleadings and briefs shall

be signed by the party or counsel submitting same and shall include the name, address, telephone number and telefax number, if any, of the attorney of record or party filing such document.

(d) Certificate of service. All documents served under these administrative regulations shall have proof of service by a written certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.

(7) Originals only filed. Unless otherwise ordered by the hearing officer, only the original motion, memorandum, pleading or brief, together with any telefacsimile thereof, shall be filed with the office.

(8) Submission of authority. If a person filing a motion, brief or memorandum has relied upon a pertinent case decision or other legal authority in the motion, brief or memorandum, that person may file [submit] with such motion, brief or memorandum a copy of the case decision or other legal authority. If the person files [submits] a copy of authority, he shall serve upon all other parties to the case a copy of the case decision or other legal authority with the memorandum or motion. [Such copies of authority shall not be filed in the record but may be relied upon by the hearing officer.]

(9) Proposed orders. No motion, response or memorandum supporting or opposing a motion shall be accepted for filing by the office unless accompanied by a tendered separate proposed order granting the requested relief or denying the motion. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the office is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

(10) Good cause exception. The hearing officer may exempt a party from compliance with subsections (6) and (9) of this section upon a showing of good cause or undue hardship.

Section 10. Hearings on Motions. (1) Requests for hearing on motion. Any party making a motion may request that such motion be heard before the hearing officer assigned to the case in which the motion is made. A request for a hearing on a motion shall give notice that the motion will be heard on any [the first] regularly scheduled motion day for the hearing officer that follows the expiration of the time for filing a reply memorandum unless otherwise ordered by the hearing officer.

(2) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion. The party requesting the court reporter shall bear all appearance costs and expenses associated with having the court reporter at the motion hearing.

(3) Motion days. Motion days shall be conducted on a regular basis according to a schedule established by the office. The office shall post a current schedule which sets forth the time, place and date of upcoming motion days.

(4) Failure to appear at hearing. A hearing officer before whom a motion is made may deny any motion for which a movant schedules or notices a hearing and fails to appear. A hearing officer before whom a motion is made may grant any motion for which a movant schedules or notices a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.

Section 11. Motion for Continuance. No motion for a continuance shall be granted if made within two (2) days of a prehearing conference or fifteen (15) days of an administrative hearing, unless compelling cause is shown therefor. All motions for a continuance shall be in writing, shall be filed with the office, and shall be served upon all other parties to the case. Continuances shall not be granted upon oral motion absent good cause shown.

Section 12. Directed Recommendation. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a

directed recommendation to the secretary. The moving party shall state the specific grounds therefor. In ruling on the motion for directed recommendation, the hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines that the nonmoving party has failed to meet his burden of proof [there is not substantial evidence appearing in the record upon which the secretary could grant the nonmoving party relief], the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.

(2) Motion for directed recommendation not a waiver. A motion for a directed recommendation is not a waiver of an administrative hearing. A party who moves for a directed recommendation at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.

Section 13. Dismissal for Failure to Prosecute. Cases which have been on the docket of the office for a period of one year without any activity shall be dismissed, with prejudice, for failure to prosecute unless there is good cause shown why they should not be dismissed. Once per year the office shall determine all cases in which no activity has been taken for one year or more. Thereafter, the hearing officer to whom such cases are assigned shall issue an order directing the petitioner or plaintiff of the case to show cause why the case should not be dismissed. If the petitioner or plaintiff does not show good cause why the matter should not be dismissed, the hearing officer shall recommend dismissal of the matter.

Section 14. Filing Exceptions. (1) Filing with the office. Any party filing exceptions to a hearing officer's report and recommendation or a response to such exceptions as provided for by statute or administrative regulation shall file the exceptions or response in the record of the case in the office. All such exceptions and responses shall conform to the format for motion memoranda specified in Section 9(6) of this administrative regulation.

(2) Draft order of the secretary. All parties filing exceptions to a hearing officer's report and recommendation shall tender with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the cabinet is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

(3) Good cause exception. The secretary may exempt a party from compliance with the formatting requirements of subsection [e] (1) of this section and the requirements of subsection (2) of this section upon a showing of good cause or undue hardship.

Section 15. Filing Transcripts. (1) Transcript to be filed on use. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any document filed with the office shall file a complete copy of the transcript in the record in the office, unless a copy of the transcript has been previously filed in the record.

(2) Time for filing. Any party filing a transcript under this section shall file the transcript no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any document filed with the office.

(3) Failure to file transcript. Failure to file any transcript cited, quoted or otherwise relied upon in a document filed with the office shall be grounds for striking all or part of such motion, memorandum, pleading or other document.

Section 16. Agreed Orders. All agreed orders entered into which resolve any claim or part of a claim in a case pending before a hearing officer shall be tendered to the office for acknowledgement by the hearing officer before being presented to the secretary, and shall contain thereon a signature line for the hearing officer. The filing of an agreed order in accordance with this section shall not relieve the parties from compliance with the provisions of Section 11 of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary  
APPROVED BY AGENCY: September 8, 1994  
FILED WITH LRC: September 9, 1994 at 9 a.m.

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

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

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.50, 224.99, 40 CFR Part 258

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-110, 224.40-305, 224.43-340, 224.50-824, 224.50-832

NECESSITY AND FUNCTION: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to promulgate administrative regulations for the management of solid, special, and hazardous wastes. This chapter establishes technical requirements applicable to the management of solid waste. This administrative regulation defines terms used in the administrative regulations of this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or other administrative regulations of 401 KAR Chapter 48, or otherwise specifically indicated by context, terms in KRS Chapter 224 and 401 KAR Chapter 48 shall have the meanings given in this administrative regulation.

(1) "Active life" means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(2) "Administrator" means the administrator of the United States Environmental Protection Agency, or his designee.

(3) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(4) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 47 or 48.

(5) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(6) "Bird hazard" means an increase in the likelihood of bird or aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(7) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(8) "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(9) "Certification" means a statement of professional opinion based upon knowledge and belief.

(10) "Closure care" or "postclosure" means the routine care, maintenance, monitoring, and any required corrective action of a special waste or solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(11) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, Section 8 of 401 KAR 34:060; or

(c) For substances that do not have an established maximum contamination level, a significant increase above established background levels.

(12) [(44)] "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities. The term includes substances that contaminate water, air, or soil.

(13) [(42)] "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(14) [(43)] "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(15) [(44)] "Director" means the director of the cabinet's Division of Waste Management.

(16) [(45)] "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(17) [(46)] "Explosive gas" means methane (CH<sub>4</sub>).

(18) [(47)] "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units, such as one (1) or more landfills, surface impoundments, or combination of them.

(19) [(48)] "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(20) [(49)] "Final closure" means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030, and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200.

(21) [(20)] "Floodplain" means areas adjoining inland waters that are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes:

(a) "100-year flood plain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(b) "100-year flood" means a flood that has a one (1) percent chance of being equalled or exceeded in any given year.

(c) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(22) [(24)] "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(23) [(22)] "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the

waste contained therein.

(24) [(23)] "Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

(25) [(24)] "Groundwater" means water that is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water".

(26) [(25)] "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(27) [(26)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the Pleistocene to the present.

(28) [(27)] "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(29) [(28)] "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing or solid waste landfill unit.

(30) [(29)] "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from waste.

(31) [(30)] "Liner" means a continuous layer of natural or man-made material, beneath or on the sides of a waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(32) [(31)] "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(33) [(32)] "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(34) [(33)] "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(35) [(34)] "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(36) [(35)] "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, and disposal of waste.

(37) [(36)] "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(38) [(37)] "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(39) [(38)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream".

(40) [(39)] "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term "permit" includes "permit-by-rule", "registered permit-by-rule", "research, development, and demonstration permit", and "emergency permit". However, the term "permit" does not include "draft permit" or

"proposed permit".

(a) "Emergency permit" means a permit issued by the cabinet to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150.

(b) "Permit-by-rule" means authorization allowing certain classes of sites or facilities, as specified in 401 KAR 47:150, to manage waste consistent with 401 KAR Chapters 30, 47, and 48, without submission of a registration or permit application to the cabinet.

(c) "Registered permit-by-rule" means that certain classes of solid waste sites or facilities, as specified in 401 KAR 47:080, have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200.

(d) "Research, development, and demonstration permit" means a solid waste treatment or disposal facility using innovative and experimental technology as specified in 401 KAR 47:150.

(41) [(40)] "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(42) [(41)] "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(43) [(42)] "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(44) [(43)] "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(45) [(44)] "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(46) [(45)] "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(47) [(46)] "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(48) [(47)] "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(49) [(48)] "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes the following:

(a) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of solid waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup. The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(b) "Collection box" shall have the meaning specified in KRS 224.01-010.

(c) "Contained landfill" means a solid waste site or facility that accepts for disposal solid waste. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(d) "Convenience center", as defined at KRS 224.01-010.

(e) "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(f) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(g) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

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(h) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(i) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(j) "Miscellaneous unit" means a solid waste management unit where waste is disposed of and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 3 of 401 KAR 47:150.

(k) "Municipal solid waste disposal facility", as defined at KRS 224.01-010.

(l) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(m) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(n) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(o) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(p) "Residual landfill" means a facility for the disposal of specific solid wastes, including special waste, which is located, designed, constructed, operated, maintained, and closed in conformance with 401 KAR 30:031 and 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.

(q) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

(r) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(s) "Tank" means a stationary device designed to contain an accumulation of leachate or liquid solid waste which is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support.

1. "Aboveground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

2. "Component" means either the tank or ancillary equipment of a tank system.

3. "Inground tank" means a device meeting the definition of "tank" in this subsection whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

4. "Onground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the

bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

5. "Tank system" means a solid waste tank and its associated piping, ancillary equipment, and containment system.

6. "Underground tank" means a device meeting the definition of "tank" in this subsection whose entire surface area is totally below the surface of and covered by the ground.

7. "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(t) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(u) "Unit" or "solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(v) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the CWA of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(w) 1. "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, woodchips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

2. "Residential landfill" means a facility for the proper disposal of solid waste including residential wastes, commercial wastes, institutional wastes, and those sludges, industrial or special wastes with specific approval from the cabinet.

(50) [(48)] "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(51) [(49)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(52) [(50)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(53) [(54)] "Washout" means the carrying away of waste by waters as a result of flooding.

(54) [(52)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

Section 2. References. (1) The following documents are hereby incorporated by reference:

(a) 40 CFR 260.11 as of February 21, 1991; and

(b) Appendix X of 40 CFR 261 as of January 14, 1985.

(2) The documents referenced in subsection (1) of this section may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, KY 40601, (502)564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 8, 1994

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FILED WITH LRC: September 9, 1994 at 9 a.m.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amended After Hearing)

#### 401 KAR 48:090. Operating requirements for contained landfills.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to promulgate administrative [adept rules and] regulations for the management, processing, or disposal of solid wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of solid waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This administrative regulation sets forth the requirements for contained landfills.

Section 1. General. The owner or operator of a contained landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and the administrative regulations promulgated pursuant thereto, the conditions of the solid waste permit issued by the cabinet, and the approved application filed with the cabinet.

Section 2. Procedures for Excluding the Receipt of Hazardous Waste. (1) The owner or operator of a solid waste contained landfill shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in 401 KAR Chapter 31 and polychlorinated biphenyls (PCB) wastes as defined in 40 CFR Part 761. This program shall include, at a minimum:

- (a) Random inspections of incoming loads;
- (b) Inspection of suspicious loads;
- (c) Records of any inspections;
- (d) Training of facility personnel to recognize regulated hazardous waste; and
- (e) Procedures for notifying the proper authorities if a regulated hazardous waste is discovered at the facility; and
- (f) Employee safety, health, training and equipment to be used in inspection.

(2) The owner or operator shall implement the following additional inspection standards to meet the requirements of subsection (1) of this section:

(a) The owner or operator shall have a program, approved by the cabinet, to inspect all waste entering a contained landfill. The program to exclude hazardous wastes shall include:

1. Random inspections in time, but uniformly distributed to all waste sources based on volume; and

2. Identification data concerning the hauler on the operating inspection record including name of the driver, name of the hauler, address, source, volume, and waste characteristics. The owner or operator shall maintain a record of the inspections in accordance with the approved recordkeeping requirements.

(b) Upon discovery of hazardous waste, the owner or operator of a contained landfill shall isolate the load and notify the cabinet immediately.

Section 3. Cover Material and Disease Vector Control Requirements. (1) Daily cover.

(a) The owner or operator shall place a minimum of six (6) inches of cover over all exposed solid waste at the end of each working day or, for continuously operating landfills, once every twenty-four (24) hours. The purpose of this cover shall be to control disease, fires,

blowing litter and disease vectors. The owner or operator shall only use soil or properly weathered or crushed shales, siltstones or other materials as approved by the cabinet. Soils and other weathered, earthened material that have been contaminated with petroleum may be used as daily cover if the maximum benzene concentration of the material is less than or equal to one (1.0) ppm and if the material is not placed as daily cover during a precipitation event [nor when the ambient air temperature is below fifty (50) degrees Fahrenheit];

(b) The daily cover shall not have any protruding waste, except for the occasional litter embedded into the surface, which shall not exceed ten (10) percent of the cover area;

(c) Daily cover shall be compacted upon application and provide positive drainage. The owner or operator shall place daily cover to allow for proper drainage and shall immediately compact and grade the soil;

(d) The owner or operator may remove daily cover to facilitate the vertical passage of methane gas and leachate and shall recover the exposed areas within eight (8) hours of exposure; and

(e) The owner or operator shall dispose of any daily cover removed under subsection (1)(d) of this section as solid waste.

(2) Interim cover period. The owner or operator shall:

(a) Place an additional six (6) inches of interim cover over any area that shall not receive additional solid waste within thirty (30) calendar days of the last waste placement. With the daily cover applied in accordance with subsection (1) of the section, the additional interim cover shall increase the total cover depth to twelve (12) inches;

(b) On the day waste is to be placed over an area that is covered with daily and interim cover, an owner or operator may remove a maximum depth of six (6) inches of interim cover over the area of the cell for that day's operation;

(c) Place, compact and grade the interim cover to effect proper drainage; and

(d) Apply temporary erosion controls at the time of placing interim cover.

(3) Long term cover. The owner or operator:

(a) Shall apply an additional eighteen (18) inches of long-term cover over all areas that shall not receive additional waste within four (4) months by September 15 of each year. With the daily and interim cover, the total thickness of the cover in these areas shall be thirty (30) inches;

(b) May remove a maximum of eighteen (18) inches of the thirty (30) inches of cover in this subsection within the seven (7) calendar days prior to additional waste placement. The owner or operator may remove remaining soil leaving no less than six (6) inches of daily cover from the daily cell area on the day additional waste is to be placed;

(c) Shall place, compact and grade the long term cover to effect proper drainage; and

(d) Shall complete erosion controls and proper seeding of interim and long-term cover during the fall seeding season.

(4) Final cover. The owner shall initiate the application of final cover:

(a) Within thirty (30) days of filling a completed phase of the landfill to final design grade; and

(b) Annually such that the final cap is in place by September 15 in all areas of the landfill that have reached final grade by August 15 of each year.

(c) An alternate schedule may be approved by the cabinet when construction techniques shall preclude construction by the above referenced dates.

(5) Cover report. The owner or operator shall record, on a form approved by the cabinet, the daily cell locations, and dates of cover applications at the landfill including: daily usage area, daily, interim, long term and final cap installation dates and certification reports.

Section 4. Explosive Gases Control. (1) The owner or operator of



a contained solid waste landfill shall ensure that:

(a) The concentration of methane gas generated by the facility does not exceed twenty-five (25) percent of the lower explosive limits (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(b) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(2) The owner or operator of a contained landfill shall quarterly monitor for explosive gas at the following locations:

(a) Underneath or in the low area of each on-site building;

(b) At locations along the boundary as shown in the permit;

(c) At each gas passive vent installed under the final closure cap;

(d) At any potential gas problem areas, as revealed by dead vegetation or other indicators; and

(e) At any other points required by the permit.

(3) The owner or operator shall record the date, time, location, percent lower explosive limit and other pertinent information on the recordkeeping form approved by the cabinet.

(4) The owner or operator shall install, operate and maintain a gas detector with an alarm set at twenty-five (25) percent of the lower explosive limit in each on-site building.

(5) If methane gas levels exceeding the limits specified in subsection (1) of this section are detected, the owner or operator shall:

(a) Take all necessary steps to ensure immediate protection of human health;

(b) Immediately notify the cabinet of the methane gas levels detected and the immediate steps taken to protect human health; and

(c) Within fourteen (14) days, submit to the cabinet for approval a remediation plan for the methane gas releases. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall be implemented upon approval by the cabinet.

Section 5. Air Criteria. (1) The owner or operators of contained landfills shall not permit or engage in open burning of waste. Any open burning shall be immediately extinguished. Wastes that are burning or smoldering shall not be deposited in the fill. Such materials shall be deposited in a hot load area designated in the permit. The cabinet may grant emergency permission to burn in accordance with 401 KAR 47:150. The owner or operator shall follow the plan approved for such purposes.

(2) The owner or operator shall properly control dust on haul roads and other areas to prevent a nuisance to surrounding areas.

Section 6. Access Requirements. (1) The owner or operator of a contained solid waste landfill shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes to protect human health and the environment. The owner or operator shall use artificial barriers, natural barriers, or both, as appropriate. Each access point shall be controlled by lockable entrance ways.

(2) The owner or operator shall construct and maintain:

(a) Lockable entrance ways at all access points;

(b) The major access road from a publicly maintained highway to the landfill;

(c) The perimeter road; and

(d) An all-weather road to within 200 feet of the working face.

(3) The owner or operator of a contained landfill shall remove debris, mud, and waste from vehicles before leaving the site. The owner or operator shall be responsible for removing landfill debris, mud, and waste from off-site roadways.

Section 7. Water Controls. The owner or operator of a contained solid waste landfill shall:

(1) Maintain the site as necessary to prevent erosion or washing of the fill, and grade as necessary to drain rainwater from the fill area and to prevent standing water.

(2) Maintain all run-on and run-off control systems as necessary

to maintain original design capacity as required by Section 2 of 401 KAR 48:070. This includes, but shall not be limited to:

(a) Removal of sediment from run-off control structures. The site design shall specify the method to be used to determine when clean-out shall occur;

(b) Removal of debris, wastes and soil from diversion and run-off ditches to maintain the design capacity;

(c) Construction and maintenance of temporary diversion ditches around the current working face. The owner or operator shall specify the location of the temporary ditches in the operational plan required by 401 KAR 47:190 and the ditches shall be approved by a professional engineer registered in the Commonwealth of Kentucky.

Section 8. Waste Restrictions. (1) The owner or operator of a contained landfill shall only dispose of wastes that:

(a) Are not hazardous wastes regulated pursuant to 401 KAR Chapters 30 through 40, except for limited quantity hazardous wastes and exempt spill residues;

(b) Do not contain free liquids as determined by the cabinet; and

(c) Are specified in the approved permit application.

(2) The owner or operator shall comply with the recordkeeping and reporting requirement of Section 11 of this administrative regulation pertaining to the location of disposed limited quantity hazardous waste and exempt spill residues.

Section 9. Working Face Requirements. (1) Within two (2) hours of receipt, the owner or operator shall spread wastes in loose layers not exceeding twenty-four (24) inches in depth and compact it to the maximum practicable density. The owner or operator shall use the equipment specified in the permit for compaction. The operator shall pass the equipment over 100 percent of the waste surface at least four (4) times. Each loose layer shall be fully compacted before any additional waste is placed.

(2) The owner or operator shall not exceed the lift height specified in the permit.

(3) The owner or operator shall not place an initial lift containing any object that may damage the bottom liner. The owner or operator shall protect the liner system with a layer of dirt, waste or similar blanket placed between operating equipment and the liner.

(4) The daily working face shall be restricted to the smallest area practical for working face operation.

(5) The completed cell shall consist of the solid waste compacted during one (1) working day.

(6) The owner or operator shall prohibit scavenging within 100 feet of the working face. All salvage and recycling shall occur at areas so designated in the permit.

(7) The owner or operator shall only allow access to the landfill when operating personnel are on the site.

(8) The owner or operator shall not accept solid waste at a rate that exceeds the rated capability of the operational compaction and cover equipment available on site.

(9) The owner or operator shall not accept solid waste without landfill personnel present to supervise the unloading.

(10) The grounds in and about a landfill shall not be allowed to become a nuisance. When necessary, interior fences may be required to prevent litter from blowing from the landfill. The permitted area shall be policed on a routine basis to collect all scattered material.

(11) All litter attributable to the site's operation shall be picked up within forty-eight (48) hours.

(12) Unless excluded from the site, large bulky items and other nonresidential wastes shall be deposited in a manner approved by the cabinet.

(13) The owner or operator shall conform to the posted operating hours for receiving waste and shall notify the cabinet of the operating hours before changing them. The entrance sign shall meet the requirements of Section 14(2) of this regulation.

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Section 10. Employee Facilities. The owner or operator of a contained landfill shall provide buildings meeting Section 9 of 401 KAR 48:070, for site personnel. The buildings shall be maintained in a safe and sanitary manner. One (1) building shall have a safe drinking water supply.

Section 11. Reports and Recordkeeping. Records and reports shall be maintained and submitted in accordance with Section 8 of 401 KAR 47:190.

Section 12. Groundwater Monitoring. The owner or operator of a contained solid waste landfill shall implement the groundwater monitoring program in the approved application.

Section 13. Closure and Closure Care Requirements. (1) The owner or operator shall comply with the following closure requirements:

(a) The owner/operator of a contained landfill shall prepare a written closure plan that describes the closure activities for each unit including the following:

1. The methods to be employed to maintain the integrity and effectiveness of any final cap, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cap. The layer addressed in Section 8(4) of 401 KAR 48:080 shall have a maximum permeability less than or equal to the permeability of any bottom liner system or natural subsoils present;

2. Maintenance and operation of the leachate collection system in accordance with the requirements, if applicable, until leachate no longer is generated;

3. Groundwater monitoring in accordance with the requirements of 401 KAR 48:300 and maintaining the groundwater monitoring system; and

4. Maintenance and operation of the explosive gas monitoring system in accordance with the requirements of Section 4 of this administrative regulation.

(b) The closure period shall be at least two (2) years following the cabinet's acceptance of the owners certification of closure.

(2) The owner or operator of a contained landfill shall prepare and implement a written closure care plan that describes monitoring and routine maintenance activities that shall be carried out during the closure care period of at least thirty (30) years. The closure care plan shall include, at a minimum, the following information:

(a) A description of the monitoring and maintenance activities for each unit and the frequency at which these activities shall be performed;

(b) Name, address and telephone number of the person or office to contact about the facility during the closure care period; and

(c) A description of the planned uses of the property during the closure care period. Closure care use of the property shall not be allowed to disturb the integrity of the final cap, liner(s), or any other components of the containment system, or the function of the monitoring systems, unless upon demonstration by the owner or operator, the cabinet determines that the activities shall not increase the potential threat to human health or the environment or the disturbance is necessary to reduce a threat to human health or the environment. The owner or operator shall obtain approval from the cabinet in order to remove any wastes or waste residues, the liner, or contaminated soils from the land.

(3) The closure care plan shall be submitted with the permit application and shall be approved by the cabinet. Any subsequent modification to the closure care plan also shall be proved by the cabinet. A copy of the most recently approved closure care plan shall be kept at the facility until completion of the closure care period has been certified in accordance with subsection (5) of this section.

(4) The owner or operator shall record a notice in the deed that

shall in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, the nature of the waste placed in the site and a caution against future disturbance of the area. Such notice shall be recorded in accordance with KRS Chapter 382 and proof of recording shall be submitted to the cabinet prior to the cabinet's acceptance of certification of closure.

(5) Following completion of all closure and closure care periods for each unit, the owner or operator of a contained landfill shall submit to the cabinet certification by a professional engineer, verifying that all phases of closure and closure care have been completed in accordance with the approved plans and the requirements of KRS Chapter 224.

Section 14. Signs. (1) Warning signs shall be visible at all landfill access points. The warning signs shall be readable at a distance of 100 feet. The signs shall give warnings of all site hazards, including but not limited to: explosive gases, heavy equipment movement and heavy truck movements.

(2) Entrance signs shall be visible, located at the public entrances and all entrances used by waste hauling vehicles. The signs shall be readable from 100 feet. They shall indicate landfill name, name of the owner, name of the operator, the hours of receiving wastes, the permit number and an emergency telephone number.

Section 15. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that they shall result in performance, with regard to safety, stability and environmental protection, equal to or better than that resulting from designs complying with the specifications of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 8, 1994

FILED WITH LRC: September 9, 1994 at 9 a.m.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amended After Hearing)

**401 KAR 48:300. Surface and groundwater monitoring and corrective action.**

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.70, 40 CFR Parts 257, 258, 302.4 Appendix A

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.43-340

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to promulgate administrative [adept rules and] regulations for the treatment, management, processing or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing or disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This administrative regulation sets forth the standards for groundwater monitoring and corrective action.

Section 1. Applicability. The requirements of this administrative regulation apply to owners and operators of contained, construction/demolition, and residual landfills, Class II and Class III landfarming facilities, other solid waste sites or facilities at which the cabinet determines groundwater monitoring shall be required and solid waste sites or facilities required to accomplish corrective action as a result of documented groundwater contamination. Sections 1 through 7 of this administrative regulation do not apply to landfarming facilities permitted pursuant to 401 KAR 48:200. Landfarming facilities required

to accomplish corrective action shall comply with Section 8 of this administrative regulation. The owner or operator shall satisfy the requirements of this administrative regulation for all wastes (or constituents thereof) contained in waste management units at the facility regardless of the time at which waste was placed in such unit. Designs, reports, and plans constituting the public practice of geology, as defined at KRS 322A.010, shall be developed by a person registered pursuant to KRS Chapter 322A, except as provided for by KRS 322A.080.

Section 2. Surface Water Monitoring Plan. A surface water monitoring plan as required in Section 5 of 401 KAR 47:190 shall include:

(1) Documentation that the applicant currently holds or has applied for a KPDES permit for all structures that shall be used to control storm water run-off and all point source discharges.

(2) The location of surface water monitoring points identified on the engineering plans. The surface water monitoring points shall be located such that the sampling shall characterize the quality of water unaffected by the landfills and shall be located such that the sampling shall determine if water leaving the landfill in surface drainage is contaminated with leachate. Sampling protocol shall measure surface water under base flow conditions that continues to drain after storm-induced surface run-off has ceased.

(3) A schedule and list of analytical parameters for the quarterly surface water sampling program. The parameters to be analyzed for the water samples shall include at a minimum: chlorides, sulfate, iron, sodium, total organic carbon or biochemical oxygen demand, chemical oxygen demand, specific conductance, total suspended solids, total dissolved solids, total solids and pH.

(4) A form to record the results of the surface water sample analyses.

(5) Prior to the disturbance of any areas proposed for development in a landfill permit application, the owner shall analyze samples of the surface water points and submit the results to the cabinet. The sampling shall include a minimum of two (2) samples collected at no less than thirty (30) day intervals and shall be sufficient to characterize the existing surface water quality.

Section 3. Groundwater Quality Characterization. A groundwater characterization as required in 401 KAR 47:180 shall contain the chemical characteristics of the upper most aquifer down to and including the lowest aquifer that may be affected by the site or facility. This description shall include results of analysis of at least two (2) samples of groundwater from the site before waste placement for the parameters listed in Section 10 of this administrative regulation. The number of samples collected for the groundwater quality characterization shall be consistent with the statistical method for groundwater analysis to be performed in Section 9 of this administrative regulation.

(1) For facilities permitted before the effective date of this administrative regulation, the data required by this section shall be taken beginning with the first anniversary date of the issuance of the permit after the effective date of this administrative regulation and shall be for the parameters listed in Section 11 of this administrative regulation.

(2) Monitoring wells under this section shall be designed, constructed and maintained according to Section 6 of this administrative regulation. Sampling and analysis shall be conducted in accordance with a plan approved by the cabinet in accordance with the requirements of Section 7 of this administrative regulation.

Section 4. Groundwater Monitoring Plan. A groundwater monitoring plan as required in 401 KAR 47:190 or 401 KAR 48:200 shall include:

(1) The number, location and depth of proposed monitoring points;

(2) Preoperational data showing existing groundwater quality, as

required in the groundwater quality characterization in Section 3 of this administrative regulation;

(3) A groundwater sampling and analysis plan. The procedures, methods and techniques shall be approved by the cabinet. The plan shall include:

(a) Procedures and techniques designed to accurately measure groundwater quality upgradient, and downgradient of the proposed waste disposal area;

(b) Cabinet approved sampling methods including procedures and techniques for sample collection, sample preservation and sample shipment;

(c) Cabinet approved analytical procedures; and

(d) Chain of custody control, field and laboratory quality assurance and quality control. The procedures and methods shall be approved by the cabinet.

(4) For solid waste sites or facilities located in karst regions the following additional hydrogeologic information shall be required:

(a) The nature and extent of karst drainage beneath the solid waste site or facility; and

(b) A description of a proposed groundwater monitoring system capable of completely and accurately monitoring groundwater contamination.

Section 5. Design Requirements for Groundwater Monitoring Systems. The groundwater quality monitoring system to be utilized in the groundwater monitoring plan shall accurately analyze groundwater quality and characterize local groundwater flow and flow systems. The system shall consist, at a minimum, of the following:

(1) At least one (1) reference or background well at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing data representative of groundwater not affected by the solid waste site or facility. When the solid waste site or facility occupies the most upgradient position in the flow system, sufficient downgradient or side gradient monitoring wells shall be placed to accurately characterize the groundwater quality and regional and local groundwater flow and flow systems. Reference wells shall be located so that they shall not be affected by groundwater contamination from the disposal area; and

(2) At least three (3) monitoring wells at points hydraulically connected in the direction of decreasing static head from the area in which solid waste has been or shall be disposed. In addition to three (3) downgradient wells, the cabinet may allow one (1) or more springs for monitoring points if the springs are hydraulically downgradient from the area in which solid waste has been or shall be disposed, if the springs are sampled in a manner approved by the cabinet, and if the springs otherwise meet the requirements of the cabinet. Down-gradient monitoring wells shall be located so that they shall provide early detection of groundwater contamination and progressive monitoring of the phases and units of the site or facility.

Section 6. Requirements for Monitoring Well Construction. (1) Precautions shall be taken during drilling and construction of monitoring wells to avoid introducing contaminants into a borehole. Only potable water shall be used in drilling monitoring wells unless otherwise approved by the cabinet. Drilling muds shall not be used except with prior approval of the cabinet. Air systems and drilling lubricants shall not introduce contaminants into the boreholes.

(2) Decontamination of all equipment to be placed into the boring shall be performed before use at the site and between boreholes. Where possible, upgradient wells shall be drilled first.

(3) Monitoring wells shall be cased as follows:

(a) To maintain the integrity of the monitoring well borehole by isolating water bearing units which are sampled by each well;

(b) With a minimum casing diameter of four (4) inches unless otherwise approved by the cabinet in writing;

(c) With screens and appropriate gravel or sand packing where necessary, to enable collection of samples at depths where appropriate

aquifer flow zones exist;

(d) To allow the casing to protrude at least one (1) foot above ground;

(e) To provide a drill hole diameter that is a minimum of four (4) inches larger than the outside diameter of the well casing;

(f) To produce an annular space above the sampling depth that is sealed to prevent contamination of samples and the groundwater; and

(g) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the cabinet in the permit.

(4) Monitoring well casings shall be enclosed in a protective cover that shall:

(a) Be sufficient to reliably protect the well from damage. This shall include a protective barrier around the well;

(b) Be installed into firm rock unless otherwise approved by the cabinet in writing;

(c) Be grouted and placed with a cement collar below the frost line to hold it firmly in position unless otherwise approved by the cabinet;

(d) Be numbered and painted in a highly visible color;

(e) Protrude at least one (1) inch higher above grade than the monitoring well casing;

(f) Have a locked cap; and

(g) Be made of steel or any other material of equivalent strength.

(5) Each monitoring well shall have a concrete pad extending two (2) feet around the well and sloped away from the well.

Section 7. Sampling and Analysis. (1) Parameters Listing. Owners or operators of solid waste sites or facilities that require groundwater monitoring shall conduct sampling and analysis from each monitoring well for the parameters listed in Section 11 of this administrative regulation.

(2) Reporting of analysis results. Analyses of data required by this section shall be submitted to the cabinet on a form provided by the cabinet within sixty (60) days of sampling or fifteen (15) days after completing the statistical analysis required by Section 9 of this administrative regulation [receipt of analyses], whichever is sooner, unless the cabinet approves another time period in the permit. Frequency of sampling shall be as indicated in Section 11 of this administrative regulation.

(3) If analysis of the sample results indicates contamination as specified in Section 8(1) of this administrative regulation, the owner or operator shall notify the cabinet within forty-eight (48) hours of receiving the statistical analysis results required by Section 9 of this administrative regulation and shall arrange for the cabinet to split a sample no later than ten (10) days from the receipt of the results.

Section 8. Groundwater Contamination Assessment and Corrective Action. (1) The operator of a solid waste site or facility shall be required to prepare and submit a groundwater assessment plan if laboratory analyses of one (1) or more monitoring wells at the site or facility shows the presence of one (1) or more parameters listed in 40 CFR 302.4, Appendix A as of October 1988, above the maximum containment level (MCL) as specified in 401 KAR 47:030 or significant increase over naturally occurring background levels for parameters that have no MCL. For parameters that have no maximum contaminant levels a significant increase over background shall be determined using a statistical test as specified in Section 9 of this administrative regulation.

(2) Confirmation sampling. The owner or operator of a solid waste site or facility shall not be required to submit an assessment plan if the following conditions are met:

(a) Within ten (10) days after receipt of sample results showing groundwater contamination the owner or operator resamples the affected wells; and

(b) Analysis from resampling shows to the cabinet's satisfaction that groundwater contamination has not occurred.

(3) The owner or operator of a solid waste site or facility shall be required to provide alternate water supplies to affected parties within twenty-four (24) hours of notification of the cabinet that sample results indicate contamination of a drinking water supply if it has been determined that the landfill is the probable source of contamination.

(4) The assessment plan shall be submitted to the cabinet within thirty (30) days of the occurrence of the conditions described in subsection (1) of this section.

(a) The assessment plan shall specify the manner in which the owner or operator shall determine the existence, quality, quantity, areal extent and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. The assessment plan shall be prepared by a qualified professional and shall be implemented upon approval by the cabinet in accordance with the approved implementation schedule. The assessment plan shall be implemented within sixty (60) days after approval by the cabinet. The plan shall contain, at a minimum all of the following information:

1. The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers and other assessment structures or devices to be used;

2. Sampling and analytical methods for the parameters to be evaluated;

3. Analyses of all parameters listed in Section 10(3) of this administrative regulation and any other parameter determined by the cabinet; and

4. Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate and extent of groundwater degradation or pollution from the facility.

(5) For public or private water supplies which may be adversely affected by the facility, the owner or operator shall submit a detailed hydrogeologic study addressing the potential effect of the site or facility on said water supply.

(6) If the cabinet determines that the assessment plan is inadequate, it may modify the plan and approve the plan as modified.

(7) Within ninety (90) days after the implementation of the groundwater assessment plan, the operator shall submit a groundwater assessment report containing the new data collected, analysis of the data and recommendations on the necessity for abatement.

(8) The cabinet may require abatement measures prior to approval of the groundwater assessment plan in the event that a determination has been made that there is an immediate threat to human health or the environment.

(9) Within 120 [ninety (90)] days of the cabinet approval of the groundwater assessment report, but in no event later than one (1) year from the event specified in subsection (1) of this section, the owner or operator shall submit a remedial action plan to include the following:

(a) The specific methods or techniques to be used to abate groundwater contamination from the facility;

(b) The specific methods or techniques to be used to prevent further groundwater contamination from the facility; and

(c) A description of the means used to restore or replace public or private water supplies affected by contamination from the solid waste facility.

(10) Within fifteen (15) days of approval of the groundwater assessment report, the cabinet shall prepare and the owner or operator shall publish a public notice in accordance with 401 KAR 47:140, Section 7(1)(a) through (f), (3), and (4). The public notice shall contain a brief statement summarizing the contents of the groundwater assessment report, shall provide for a thirty (30) day public comment period, and shall set forth a proposed public hearing date. If no request for a public hearing is received during the thirty (30) day comment period, the public hearing may be cancelled.

(11) The owner or operator shall, within 120 days of approval of

the groundwater corrective action plan under subsection (9) of this section, post the financial assurance required under 401 KAR 48:310.

(12) ~~(10)~~ The owner or operator of a solid waste site or facility shall take any other steps deemed necessary by the cabinet to ensure protection of human health and the environment.

(13) ~~(11)~~ Corrective action measures under this administrative regulation shall be initiated and completed within a period of time as specified by the cabinet considering the extent of contamination.

(14) ~~(12)~~ Corrective action measures under this administrative regulation may be terminated upon approval of the cabinet when the owner or operator demonstrates that concentrations have been reduced to levels below the maximum contaminant level or naturally occurring background.

Section 9. Statistical Methods for Groundwater Analysis. (1) The owner or operator shall specify in the permit application one (1) of the following statistical methods to be used in evaluating groundwater monitoring data for each parameter in Section 11 of this administrative regulation. The statistical test chosen shall be conducted separately for each parameter in Section 11 of this administrative regulation in each well for each monitoring event, and the results shall be maintained as part of the facility record throughout the operating and postclosure life of the facility.

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

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

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

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

(e) Another statistical method approved by the cabinet based on justification included in the permit application that the method meets the requirements of subsection (2) of this section.

(2) Any statistical method chosen under subsection (1) of this section shall comply with the following performance standards, as appropriate:

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

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

(c) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering

the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.

(d) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.

(e) The statistical method shall account for data below the limit of detection with one (1) or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

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

(3) The owner or operator shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the solid waste site or facility.

(a) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the groundwater quality of each parameter or constituent at each monitoring well to the background value of that constituent, according to the statistical procedures and performance standards specified under subsections (1) and (2) of this section.

(b) Within thirty (30) days after receiving [completing] sampling results [and analysis], the owner or operator shall determine whether there has been a statistically significant increase over background at each monitoring well.

~~(1) The owner or operator of a solid waste site or facility shall use statistical procedures approved by the cabinet in determining whether background values have been significantly exceeded.~~

~~(2) The owner or operator shall demonstrate that the procedure is appropriate for conditions at that facility and shall demonstrate that the procedure:~~

- ~~(a) is protective of human health and the environment;~~
- ~~(b) includes statistical distributions of each parameter or constituent listed;~~
- ~~(c) has a low probability of indicating contamination when it is not present and of failing to detect contamination that is actually there;~~
- ~~(d) is appropriate for the hydrogeologic setting and the physical layout of the monitoring system;~~
- ~~(e) describes how observations below the quantifiable limit shall be handled; and~~
- ~~(f) considers or controls for seasonal and spatial variability and temporal correlation.]~~

Section 10. Groundwater Quality Characterization Parameters. For solid waste sites or facilities that require groundwater monitoring, the following parameters are to be analyzed for groundwater quality characterization as required in Section 2 of this administrative regulation:

(1) For all Class II and III landfarming facilities required to monitor groundwater, the characterization shall be based on the following parameters:

(a) Specific conductance, chemical oxygen demand, total organic carbon, chloride, iron, manganese, sodium, total nitrogen, nitrate nitrogen, chromium, cadmium, coliform bacteria, pH, calcium, magnesium, potassium, sulfate, bicarbonate, carbonate.

(b) Groundwater elevation in monitoring wells recorded as a distance from the elevation at the wellhead referenced to mean sea

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level based on a United States Geological Survey (USGS) datum.

(2) For residual and construction/demolition debris landfills, the characterization shall be based on the following parameters:

(a) Chloride, chemical oxygen demand, total dissolved solids, specific conductance, pH, iron, sodium, arsenic, barium, cadmium, lead, mercury, nitrate, selenium, silver, pH, calcium, magnesium, potassium, sulfate, bicarbonate, carbonate.

(b) Groundwater elevations recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(3) For contained landfills, the characterization shall be based on the following parameters:

(a) Indicators: Specific conductance, chemical oxygen demand, total dissolved solids, total organic carbon, pH, chloride, iron, manganese, sodium, bicarbonate, calcium, sulfate, magnesium, potassium, carbonate.

(b) Hazardous Constituents.

Systematic Name	CAS RN	Common Name			
Acenaphthylene	<del>208-96-8</del> [206-96-8]	Acenaphthylene Acenaphthalene			
Acenaphthylene, 1,2-dihydro-	83-32-9	Acenaphthene			
Acetamide, N-(4-ethoxyphenyl)-H	62-44-2	Phenacetin			
Acetamide, N-9H-fluoren-2-yl	53-96-3	2-Acetyl-amino-fluorene; 2-AAF			
Acetic acid ethenyl ester	<del>108-05-4</del> [106-05-4]	Vinyl acetate			
Acetic acid (2,4-5-trichlorophenoxy)-	93-76-5	2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid			
Acetic acid (2,4-dichlorophenoxy)-	94-75-7	2,4-Dichlorophenoxy-acetic acid			
Acetonitrile	75-05-8	Acetonitrile; Methyl cyanide			
Aluminum	7429-90-5	Aluminum (total)			
Anthracene	120-12-7	Anthracene			
Antimony	7440-36-0	Antimony (total)			
Aroclor 1016	12674-11-2	Aroclor 1016			
Aroclor 1221	11104-28-2	Aroclor 1221			
Aroclor 1232	11141-16-5	Aroclor 1232			
Aroclor 1242	53469-21-9	Aroclor 1242			
Aroclor 1248	12672-29-6	Aroclor 1248			
Aroclor 1254	11097-69-1	Aroclor 1254			
Aroclor 1260	11096-82-5	Aroclor 1260			
Arsenic	7440-38-2	Arsenic (total)			
Barium	7440-39-3	Barium (total)			
Benz(a)anthracene, 7,12-dimethyl	57-97-6	7,12-Dimethylbenz(a)-anthracene			
Benz(j)aceanthrylene, 1,2-dihydro-3-methyl	3-56-49-5	3-Methylcholanthrene			
Benz(e)acephenanthrylene	205-99-2	Benzo(b)fluoranthene			
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5	Pronamide			
Benz(a)anthracene	56-55-3	Benzo(a)anthracene; Benzanthracene			
[Benzenamine	<del>62-53-3</del>	Aniline]			
Benzenamine, 2-methyl-	95-53-4	o-Toluidine			
Benzenamine, 2-methyl-5-nitro	99-55-8	5-Nitro-o-toluidine			
Benzenamine, 2-nitro	88-74-4	2-Nitroaniline; o-Nitroaniline			
Benzenamine, 3-nitro	99-09-2	3-Nitroaniline; m-Nitroaniline			
Benzenamine, 4-chloro	106-47-8				p-Chloroaniline
Benzenamine, 4-nitro-	100-01-6				4-Nitroaniline; p-nitroaniline
[Benzenamine, 4,4'-methylenbis-(2-chloro	<del>101-14-4</del>	4,4'-Methylenebis-(2-chloroaniline)]			
Benzenamine, N-nitroso-N-phenyl	86-30-6	N-Nitrosodiphenylamine			
Benzenamine, N-phenyl-	122-39-4	Diphenylamine			
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7	p-Dimethylaminoazobenzene			
Benzene	71-43-2	Benzene			
Benzene, 1-bromo-4-phenoxy-	101-55-3	4-Bromophenyl phenyl ether			
Benzene, 1-chloro-4-phenoxy-	7005-72-3	4-Chlorophenyl phenyl ether			
Benzene, 1-methyl-2, 4-dinitro	121-14-2	2,4-Dinitrotoluene			
Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-	50-29-3	DDT; 4,4'-DDT			
Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-methoxy-	72-43-5	Methoxychlor			
Benzene, 1,1'-(2,2-dichloroethylidene)bis(4-chloro-	72-54-8	DDD; 4,4'-DDD			
Benzene, 1,1'-(2,2-dichloroethenylidene)bis(4-chloro-	72-55-9	DDE; 4,4'-DDE			
Benzene, 1,2-dichloro	95-50-1	o-Dichlorobenzene			
Benzene, 1,2,4-trichloro	120-82-1	1,2,4-trichlorobenzene			
Benzene, 1,2,4,5-tetrachloro	95-94-3	1,2,4,5-Tetrachlorobenzene			
Benzene, 1,3-dichloro-	541-73-1	M-Dichlorobenzene			
Benzene, 1, 3-dinitro	99-65-0	m-Dinitrobenzene			
Benzene, 1,3,5-trinitro-	99-35-4	sym-Trinitrobenzene			
Benzene, 1,4-dichloro-	106-46-7	p-Dichlorobenzene			
[Benzene, 1,4-dinitro	<del>100-25-4</del>	meta-Dinitrobenzene]			
Benzene, 2-methyl-1,3-dinitro	606-20-2	2,6-Dinitrotoluene			
Benzene, chloro-	108-90-7	Chlorobenzene			
Benzene, dimethyl-	<del>[1330-20-7]</del>	Xylene (total)			
Benzene, ethenyl-	100-42-5	Styrene			
Benzene, ethyl-	100-41-4	Ethyl benzene			
Benzene, hexachloro	118-74-1	Hexachlorobenzene			
Benzene, methyl	<del>108-88-3</del> [106-88-3]	Toluene			
Benzene, nitro	<del>98-95-3</del> [96-95-3]	Nitrobenzene			
Benzene, pentachloro-	606-93-5	Pentachlorobenzene			
Benzene, pentachloronitro-	<del>[608-93-5]</del> 82-68-8	Pentachloronitrobenzene			
Benzenoacetic acid, 4-chloro-a-(4-chlorophenyl)-a-hydroxy-, ethyl ester	510-15-6	Chlorobenzilate			
1,4-Benzenediamine	106-50-3	p-Phenylenediamine			
1,2-Benzenedicarboxylic acid, bis-(2-ethylhexyl)ester	117-81-7	Bis(2-ethylhexyl) phthalate			
1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7	Butyl benzyl phthalate; Benzyl butyl phthalate			
1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	Di-n-butyl phthalate			
1,2-Benzenedicarboxylic acid,	84-66-2	Diethyl			



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diethyl ester		phthalate		thracene	
1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	Dimethyl phthalate		[Dibenzo(b,e)(1,4)dioxin, 2,3,7,8-tetrachloro-]	2,3,7,8-Tetrachlorodibenzo-p-dioxin;
1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	Di-n-octyl phthalate			Hexachlorodibenzo-p-dioxin;
1,3-Benzenediol	106-46-3	Resorcinol			e-p-dioxin;
Benzenecethanamine, alpha-dimethyl	122-09-8	alpha, alpha-dimethylphenethylamine]			Pentachlorodibenzo-p-dioxine;
Benzenemethanol	100-51-6	Benzyl alcohol			Tetra-chlorodibenzo-p-dioxins
[Benzenethiol	106-08-5	Benzenethiol]		Dibenzo(b,def)chrysene	180-64-0 Dibenzo(a,h)pyrene]
1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1	Isosafrole			
1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7	Safrole		Dibenzofuran	132-64-9 Dibenzofuran,
Benzo(k)fluoranthene	207-08-9	Benzo(k)fluoranthene			Hexachlorodibenzofurans;
[Benzoic acid	65-85-0	Benzoic acid			Penta-chlorodibenzofurans;
Benzo(rst)pentaphene	180-55-9	Dibenzo(a,i)pyrene]			Tetrachlorodibenzofurans.
Benzo(ghi)perylene	191-24-2	Benzo(ghi)perylene		2,7:3,6-Dimethanon-aphth	60-57-1 Dieldrin
Benzo(a)pyrene	50-32-8	Benzo(a)pyrene		(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro, 1aa,2B,2aa,3B,6B,6aa,7B,7aa)-	
Beryllium	7440-41-7	Beryllium (total)		2,7:3,6-Dimethanon-aphth	72-20-8 Endrin
1,1'-Biphenyl-[(4,4')-diamine, 3,3'-dichloro-	91-94-1	3,3'-Dichloro-enzidine		(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro, 1aa,2B,2aB,3a,6a,6aB,7B,7aa)-	
[1,1'-Biphenyl-[(4,4')-diamine, 3,3'-dimethoxy-	119-00-4	3,3'-Dimethoxy-enzidine]		1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexa-hydro-, 1aa,4a,4aB,5a,8a,8aB)-	309-00-2 Aldrin
1,1'-Biphenyl-[(4,4')-diamine, 3,3'-dimethyl-	119-93-7	3,3'-Dimethylbenzidine		1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexa-hydro-, 1aa,4a,4aB,5B,8B,8aB)-	465-73-6 Isodrin
(1,1'-Biphenyl)-4-amine	92-67-1	4-Aminobiphenyl		1,4-Dioxane	123-91-1 1,4-Dioxane
[1,1'-Biphenyl-[(4,4')-amine	92-87-5	Benzidine]		Ethanamine, N-ethyl-N-nitroso	55-18-5 N-Nitrosodiethylamine
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	Hexachlorobutadiene		Ethanamine, N-methyl-N-nitroso	10595-95-6 N-Nitrosomethyl-ethyl amine
1,3-Butadiene, 2-chloro-	126-99-8	2-Chloro-1,3-butadiene; Chloropene		Ethane, 1,1-dichloro-	75-34-3 1,1-Dichloroethane; Ethyldidene chloride
1-Butanamine, N-butyl-N-nitroso-	924-16-3	N-Nitrosodi-n-butylamine		Ethane, 1,1'-(methylenebis(oxy)) bis(2-chloro-	111-91-1 Bis(2-chloroethoxy) methane
2-Butanone	78-93-3	Methyl ethyl ketone; MEK; 2-Butanone		Ethane, 1,1'-oxybis (2-chloro-	111-44-4 Bis(2-chloroethyl) ether
2-Butene, 1,4-di-chloro-, (E)-	110-57-6	trans-1,4-Dichloro-2-butene		Ethane, 1,1,1,1'-[']trichloro-	71-55-6 1,1,1-Trichloroethane; Methyl chloroform
Cadmium (total)	7440-43-9	Cadmium		Ethane, 1,1,1,2-tetrachloro-	630-20-6 1,1,1,2-Tetrachloroethane
[Calcium	7440-70-2	Calcium (total)]		Ethane, 1,1,2-trichloro-	79-00-5 1,1,2-Trichloroethane
Carbamothioic acid, bis (1-methylethyl)-, S-(2,3-dichloro-2-propenyl ester	2303-16-4	Diallate		Ethane, 1,1,2,2-tetrachloro-	79-34-5 1,1,2,2-Tetrachloro ethane
Carbon disulfide	75-15-0	Carbon disulfide		Ethane, 1,2-dibromo	106-93-4 1,2-Dibromoethane; Ethylene dibromide; EDB
Chromium	7440-47-3	Chromium (total)		Ethane, 1,2-dichloro	107-06-2 1,2-Dichloroethane; Ethylene dichloride
Chrysene	218-01-9	Chrysene		Ethane, chloro-	75-00-3 Chloroethane; Ethyl chloride
Cobalt	7440-48-4	Cobalt (total)			
Copper	7440-50-8	Copper (total)			
Cyanide	57-12-5	Cyanide			
[2,5-Cyclohexadiene 1,4-diene	106-51-4	p-Benzoquinone]			
Cyclohexane, 1,2,3,4, 5,6-hexachloro- (1a,2a,3B,4a,5B,6B)-	319-84-6	alpha-BHC			
Cyclohexane, 1,2,3,4, 5,6-hexachloro-2B,3a,4B,5a,6B)-	319-85-7	beta-BHC			
Cyclohexane, 1,2,3,4,5,6-hexachloro- (1a,2a,3a,4B,5a,6B)-	319-86-8	delta-BHC			
Cyclohexane, 1,2,3,4,5,6-hexachloro- (1a,2a,3B,4a,5a,6B)-	58-89-9	gamma-BHC; Lindane			
2-Cyclohexene-1-one, 3,5,5-trimethyl	78-59-1	Isophorone			
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	Hexachlorocyclopentadiene			
Dibenz(a,h)anthracene	53-70-3	Dibenz(a,h)an-			

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Ethane, hexachloro-	67-72-1	Hexachloroethane	Methane, tribromo-	75-25-2	Tribromomethane; <u>Bromoform</u>
Ethane, pentachloro-	76-01-7	Pentachloroethane	Methane, trichloro-	67-66-3	<u>Chloroform</u>
1,2-Ethanediamine,N,N-dimethyl-N'-2-pyridinyl-n'-(2-thienylmethyl)-	91-80-5	Methapyrilene	Methane, trichlorofluoro-	75-69-4	Trichloromono-fluoro methane; <u>CFC-11</u>
Ethanone, 1-phenyl-	98-86-2	Acetophenone	<u>Methanesulfonic acid, ethyl ester</u>	62-50-0	<u>Ethyl methanesulfonate</u>
<del>[Ethane, (2-chloro-ethoxy)]</del>	<del>110-75-8</del>	<del>2-Chloroethyl vinyl ether</del>	Methanesulfonic acid, methyl ester	66-27-3	Methyl methane-sulfonate
Ethene, 1,1-dichloro-	75-35-4	1,1-Dichloro-ethylene; Vinylidene chloride; 1,1-Dichloroethene	<del>[Methanethiol, trichloro]</del>	<del>75-70-7</del>	<del>Trichloromethanethiol]</del>
Ethene, 1,2-dichloro-(e)-	156-60-5	trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	4,7-Methano-1H-indene-1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro	**[67-74-9]	Chlordane
<u>Ethene, 1,2-dichloro(z)-</u>	<u>156-59-2</u>	<u>cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene</u>	4,7-Methano-1H-indene-1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	Heptachlor
Ethene, chloro-	75-01-4	Vinyl chloride; <u>Chloroethene</u>	2,5-Methano-2H-indeno(1,2-b)oxirene,2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aa,1bB,2a,5a,5aB,6B,6aa)	1024-57-3	Heptachlor epoxide
Ethene, tetrachloro-	127-18-4	Tetrachloroethene; Tetrachloroethylene; Perchloroethylene	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9,10,10-hexachloro-1,5,5a,6,9a-hexahydro-,3-oxide, (3a,5aB,6a,9a,9aB)	959-96-8	Endosulfan I
Ethene, trichloro-	79-01-6	Trichloroethene; Trichloroethylene	6,9-Methano-2,4,3-6,7,8,9,10,10-hexachloro-1,5,5a,6,9a-hexahydro-,3-oxide, (3a,5aa,6B,9B,9aa)	33213-65-9	Endosulfan II
Fluoranthene	206-44-0	Fluoranthene	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9,10,10-hexachloro-1,5,5a,6,9a-hexahydro-3,3-dioxide	1031-07-8	Endosulfan sulfate
<del>[Fluoride]</del>	<del>12984-48-8</del>	<del>Fluoride]</del>	1,3,4-Methano-2H-cyclobutal(cd)pentalen-2-one,1,1a,3,3a,4,5,5,5a,5b,6-decachloro-octahydro-	143-50-0	Kepone
9H-Fluorene	86-73-7	Fluorene	1,2,4-Methanocyclopenta(cd)pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1a,2B,2aB,4B,4aB,5B,6aB,6aB,7R*)	7421-93-4	Endrin aldehyde
2-Hexanone	591-78-6	2-Hexanone; Methyl butyl ketone	<del>[Merphenline, 4-nitroso]</del>	<del>59-89-2</del>	<del>N-Nitrosomerpholine]</del>
<del>[Hydrazine, 1,2-diphenyl]</del>	<del>122-66-7</del>	<del>1,2-Diphenylhydrazine]</del>	1-Naphthalenamine	134-31-7	1-Naphthylamine
Indeno(1,2,3-cd) pyrene	193-39-5	Indeno(1,2,3-cd) pyrene	<del>[134-32-7]</del>	<del>91-59-8</del>	<del>2-Naphthylamine</del>
<del>[Iron]</del>	<del>7439-89-6</del>	<del>Iron (total)]</del>	2-Naphthalenamine	91-59-8	2-Naphthylamine
Lead	7439-92-1	Lead (total)	Naphthalene	91-20-3	Naphthalene
Magnesium	7439-94-4	Magnesium (total)	Naphthalene, 2-chloro-	91-58-7	2-chloronaphthalene
Manganese	7439-96-5	Manganese (total)	Naphthalene, 2-methyl-	91-57-6	2-Methylnaphthalene
Mercury	7439-97-6	Mercury (total)	1,4-Naphthalenedione	130-15-4	1,4-Naphthoquinone
Methanamine, N-methyl-N-nitroso	62-75-9	N-Nitrosodimethylamine	<del>[Naphthe(1,2,3,4-def)chrysene]</del>	<del>192-65-4</del>	<del>Dibenzo(a,e)pyrene]</del>
Methane, bromo-	74-83-9	Bromomethane	Nickel	7440-02-0	Nickel (total)
<u>Methane, bromochloro-</u>	<u>74-97-5</u>	<u>Bromochloromethane; Chlorobromomethane</u>	<del>[Osmium]</del>	<del>7440-04-2</del>	<del>Osmium (total)</del>
Methane, bromodichloro-	75-27-4	Bromodichloromethane; <u>Dibromochloromethane</u>	Oxirane	75-21-8	Ethylene oxide]
Methane, chloro	74-87-3	Chloromethane; <u>Methyl chloride</u>	2-Pentanone, 4-methyl-	108-10-1	4-Methyl-2-pentanone; <u>Methyl isobutyl ketone</u>
Methane, dibromo-	<u>75-09-2</u> <del>[74-95-3]</del>	<u>Dibromomethane; Methylene bromide</u>	Phenanthrene	85-01-8	Phenanthrene
Methane, dibromo-chloro-	124-48-1	Chlorodibromomethane			
Methane, dichloro-	<u>75-09-2</u> <del>[74-09-2]</del>	<u>Dichloromethane; Methylene Chloride</u>			
Methane, Dichlorodifluoro-	75-71-8	Dichlorodifluoromethane; <u>CFC-12</u>			
Methane, iodo	74-88-4	Iodomethane; <u>Methyl iodide</u>			
Methane, tetrachloro-	56-23-5	Carbon Tetrachloride			

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Phenol	108-95-2	Phenol		nitroso-N-dipropylamine	
Phenol, 2-(1-methyl-propyl)-4,6-dinitro	88-85-7	2-sec-Butyl-4,6-dinitro-phenol; <u>Dinoseb</u> ; <u>DNBP</u>	Propane, 1,2-dibromo-3-chloro	96-12-8	1,2-Dibromo-3-chloropropane; <u>DBCP</u>
Phenol, 2-chloro-	95-57-8	2-Chlorophenol	Propane, 1,2-dichloro-	78-87-5	1,2-Dichloropropane; <u>Propylene dichloride</u>
Phenol, 2-methyl-	95-48-7	ortho-Cresol; <u>2-methylphenol</u>	Propane, 1,3-dichloro-	142-28-9	1,3-Dichloropropane; <u>Trimethylene dichloride</u>
Phenol, 2-methyl-4,6-dinitro-	34-52-1	4,6-Dinitro- <u>o</u> -cresol; 4,6-Dinitro-2-methylphenol	Propane, 1,2,3-trichloro-	96-18-4	1,2,3-Trichloropropane
Phenol, 2-nitro	88-75-5	2-Nitrophenol; <u>o</u> -Nitrophenol	Propane, 2,2-dichloro-	594-20-7	2,2-Dichloropropane; <u>Isopropylidene chloride</u>
[Phenol, 2,2'-methylenebis (3,4,6-trichloro)-]	70-30-4	Hexachlorophene	Propane, 2,2'-oxybis (1-chloro-	108-60-1	Bis(2-chloroisopropyl) ether; Bis-(2-chloro-1-methyl-ethyl) ether; 2,2'-Dichlorodi-isopropyl ether; <u>DCIP</u>
Phenol, 2,3,4,6-tetrachloro-	58-90-2	2,3,4,6-Tetrachlorophenol	[Propanedinitrile	109-77-3	Malonenitrile]
Phenol, 2,4-dichloro	120-83-2	2,4-Dichlorophenol	Propanenitrile	107-12-0	Ethyl cyanide; <u>Propionitrile</u>
Phenol, 2,4-dimethyl-	105-67-9	2,4-Dimethylphenol; <u>m-Xylenol</u>	[Propanenitrile, 3-chloro	542-76-7	3-Chloropropionitrile]
Phenol, 2,4-dinitro-	51-28-5	2,4-Dinitrophenol	Propanoic acid, 2-(2,4,5-trichloro-phenoxy)-	93-72-1	Silvex; 2,4,5-TP
Phenol, 2,4,5-trichloro	95-95-4	2,4,5-Trichlorophenol	[1-Propanol, 2,3-dibromophosphate (3:1)	126-72-7	Tris(2,3-dibromopropyl) phosphate]
Phenol, 2,4,6-trichloro-	88-06-2	2,4,6-Trichlorophenol	1-Propanol, 2-methyl-	78-83-1	Isobutyl alcohol
Phenol, 2,6-dichloro-	87-65-0	2,6-Dichlorophenol	2-Propanone	67-64-1	Acetone
Phenol, 3-methyl-	108-39-4	m-Cresol; 3-methylphenol	2-Propenal	107-02-8	Acrolein
Phenol, 4-chloro-3-methyl-	59-50-7	p-Chloro-m-cresol; 4-Chloro-3-methylphenol	1-Propene, 1,1-dichloro-	563-58-6	1,1-Dichloropropene
Phenol, 4-methyl-	106-44-5	para-Cresol; 4-methylphenol	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7	Hexachloropropene
Phenol, 4-nitro	100-02-7	4-Nitrophenol; <u>p</u> -Nitrophenol	1-Propene, 1,3-dichloro-, (E)-	10061-02-6	trans-1,3-Dichloropropene
Phenol, pentachloro-	87-86-5	Pentachlorophenol	1-Propene, 1,3-dichloro-, (Z)-	10061-01-5	cis-1,3-Dichloropropene
Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	298-02-2	Phorate	1-Propene, [4,]3-chloro-	107-05-1	3-Chloropropene; <u>Allyl chloride</u>
Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	298-04-4	Disulfoton	2-Propenenitrile, 2-methyl	126-98-7	Methacrylonitrile
Phosphorothioic acid, 0-(4-((dimethyl-amino)sulfonyl)phenyl)0,0-dimethyl ester	52-85-7	Famphur	2-Propenenitrile	107-13-1	Acrylonitrile
Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	56-38-2	Parathion	[2-Propenoic acid, 2-methyl, methyl ester	97-63-2	Ethyl methacrylate]
Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	297-97-2	0,0-Diethyl 0,2-pyrazinyl phosphorothioate; <u>thionazin</u>	2-Propenoic acid, 2-methyl, methyl ester	80-62-6	Methyl methacrylate]
Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0	Methyl parathion; <u>Parathion methyl Dimethoate</u>	[2-Propen-1-ol	107-18-6	Allyl alcohol
Phosphorodithioic acid, 0,0-dimethyl S-(2-(methylamino)-2-oxoethyl) ester	60-51-5		2-Propyn-1-ol	107-19-7	2-Propyn-1-ol]
Phosphorothioic acid, 0,0,0-triethyl ester	126-68-1	0,0,0-Triethyl phosphorothioate	Pyrene	129-00-0	Pyrene
Piperidine, 1-nitroso-	100-75-4	N-Nitrosopiperidine	[Pyridine	110-86-1	Pyridine
[Potassium	7440-09-7	Potassium (total)]	Pyridine, 2-methyl	109-06-8	2-Picoline]
1-Propanamine, N-nitroso-N-propyl-	621-64-7	Di-n-propylnitrosamine; N-nitrosodipropylamine, N-	Pyridine, [Pyridine,] 1-nitroso-	930-55-2	N-nitrosopyrrolidine
			Selenium	7782-49-2	Selenium (total)
			Silver	7440-22-4	Silver (total)
			[Sodium	7440-23-5	Sodium (total)]
			Sulfide	18496-25-8	Sulfide
			[Sulfurous acid, 2-chloroethyl 2-(4d-(1,1-dimethylethyl)phenoxy)-1-methyl-ethyl-ester]	140-57-8	Aramite
			Thallium	7440-28-0	Thallium (total)
			[Thiodiphosphoric acid ((HO) <sub>2</sub> P(S)) <sub>2</sub> tetraethyl ester	3689-24-5	Tetraethylthiopyrophos-

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Tin	7440-31-5	<del>phate]</del> Tin (total)
Toxaphene	8001-35-2	Toxaphene
Vanadium	7440-62-2	Vanadium (total)
Zinc	7440-66-6	Zinc (total)

\*Xylene(total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

\*\*Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-06).

(c) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a United States Geological Survey datum.

(4) For residual landfills this characterization shall include parameters approved by the cabinet based upon the chemical analysis of the waste.

(5) For other sites or facilities the characterization shall be for parameters determined by the cabinet.

Section 11. Groundwater Monitoring Parameters. (1)(a) Operators of Class II and Class III landfarming facilities requiring groundwater monitoring shall monitor for the following parameters on a semiannual basis: temperature, chemical oxygen demand, total organic carbon, total nitrogen, nitrate nitrogen, lead, chromium, cadmium, coliform bacteria;

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a USGS datum; and

(c) Other parameters as approved by the cabinet based on the waste analysis.

(2) Operators of residual and construction/demolition debris landfills shall monitor semiannually for the following:

(a) Temperature, chloride, chemical oxygen demand, total dissolved solids, total organic carbon, specific conductance, pH, iron, sodium;

(b) Arsenic, barium, cadmium, chromium, lead, mercury, nitrate, selenium;

(c) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a USGS datum;

(d) Other parameters as approved by the cabinet-based on the waste analysis; and

(e) If after four (4) consecutive quarterly monitoring periods, analysis for the parameters in paragraphs (a) through (d) of this subsection indicates no exceedences above levels specified in Section 8(1) of this administrative regulation, the owner or operator may, upon request, be granted permission from the cabinet to reduce the monitoring parameters to those listed in paragraph (a) of this subsection.

(3) Operators of contained landfills shall be required to monitor quarterly for the following parameters:

(a) Temperature, chloride, chemical oxygen demand, total dissolved solids, total organic carbon, specific conductance, pH, ~~iron~~, ~~sodium~~; total organic halides, antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, iron, lead, mercury, nickel, nitrate, selenium, silver, sodium, thallium, vanadium, and zinc;

(b) Acetone; acrolein; acrylonitrile; benzene; bromochloromethane; bromodichloromethane; ~~[4-bromofluorobenzene]~~ bromoform (tribromomethane); bromomethane (methyl bromide); 2-butanone (methyl ethyl ketone); carbon disulfide; carbon tetrachloride; chlorobenzene; chlorodibromomethane (dibromochloromethane); chloroethane (ethyl chloride); 2-chloroethyl vinyl ether; chloroform (trichloromethane); chloromethane (methyl chloride); dibromomethane (methylene bromide); 1,2-dibromo-3-chloro-propane (DBCP); 1,2-dibromoethane (ethylene dibromide, EDB); 1,2-dichlorobenzene (o-

dichlorobenzene); 1,4-dichlorobenzene (p-dichlorobenzene); trans-1,4-dichloro-2-butene (butane); dichlorodifluoromethane; 1,1-dichloroethane (ethylidene chloride); 1,2-dichloroethane (ethylene dichloride); cis-1,3-dichloropropene; trans-1,3-dichloropropene; ~~[1,4-difluorobenzene]~~ ethanol; ethylbenzene; ethyl methacrylate; 2-hexanone (methyl butyl ketone); iodomethane (methyl iodide); methylene chloride (dichloromethane); 4-methyl-2-pentanone (methyl isobutyl ketone); 1,1-dichloroethene (1,1-dichloroethylene, vinylidene chloride); cis-1,2-dichloroethene (cis-1,2-dichloroethylene); trans-1,2-dichloroethene (trans-1,2-dichloroethylene); 1,2-dichloropropane (propylene dichloride); styrene; 1,1,1,2-tetrachloroethane; 1,1,2,2-tetrachloroethane; tetrachloroethylene (tetrachloroethene, perchloroethylene); toluene; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloroethane; trichloroethene (trichloroethylene); ~~[trichloroethane]~~ trichlorofluoromethane (CFC-11); 1,2,3-trichloropropane; vinyl acetate; vinyl chloride; xylene;

(c) Groundwater elevations recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a United States Geologic Survey datum;

(d) Determine the rate and direction of groundwater flow each time groundwater is sampled;

(e) ~~[(d)]~~ Other parameters as approved by the cabinet based on the waste analysis; and

(f) ~~[(e)]~~ If after four (4) consecutive quarterly monitoring periods, analysis for the parameters in paragraphs (a) and (b) of this subsection indicates no exceedences above the levels specified in Section 8(1) of this administrative regulation, the owner or operator may obtain permission from the cabinet to reduce the sampling program to annual sampling for parameters in paragraphs (a) and (b) of this subsection while sampling quarterly for the following:

1. Temperature;

2. Chloride;

3. [2-] Chemical oxygen demand;

4. [3-] Total dissolved solids;

5. [4-] Total organic carbon;

6. [6-] Specific conductance;

7. [6-] pH;

8. [7-] Iron;

9. [8-] Sodium; and

10. [9-] Total organic halides.

(4) Operators of residual landfills shall monitor quarterly for parameters to be determined by the cabinet based upon chemical analysis of the waste to be disposed.

(5) Other solid waste sites or facilities shall monitor for parameters and at a frequency determined by the cabinet.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 8, 1994

FILED WITH LRC: September 9, 1994 at 9 a.m.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amended After Hearing)

### 401 KAR 48:310. Financial requirements and bonds.

RELATES TO: KRS 224.01-010 to 224.01-070 [224-10], 224.40-100 to 224.43-345, [224-70-] 224.99-010, Chapter 355

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-650, 40 CFR Parts 257, 258

NECESSITY AND FUNCTION: KRS 224.40-305 requires the cabinet to promulgate administrative ~~[adept rules and]~~ regulations for the managing, processing, or disposal of wastes. KRS 224.40-650 requires that persons engaging in the management, processing, and

disposal of waste obtain a permit. KRS 224.650 and KRS 224.40-110 require ~~[requires nonpublic]~~ permit applicants to post a performance bond[s] with a mechanism of financial assurance. This chapter establishes the minimum technical standards for solid waste sites or facilities. This administrative regulation sets forth the financial requirements for closure, closure care, and corrective action.

Section 1. Financial Assurance Criteria. The financial assurance criteria and bond requirements apply to each [the] owner and operator of any [all] solid waste disposal site[s] or facility [facilities]. Any owner or operator that [which] is a city, county, urban-county government, 109 district, taxing district, political subdivision of the Commonwealth, the Commonwealth, or any agency [agencies] thereof, or any entity whose debts and liabilities are the debts and liabilities of the above entities, shall only be required to comply with Sections 2, 3, and 15 [42] of this administrative regulation.

Section 2. Closure Cost Estimate. Except as provided by KRS 224.40-120, the owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the solid waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in Section 4(1) of 401 KAR 48:060, Section (15) of 401 KAR 48:070, Section 4 of 401 KAR 48:170, Section 5 of 401 KAR 48:200, and KRS 224.40.650.

(1) The estimate shall equal the cost of closing the solid waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. The cabinet shall adjust the figure for inflation and other factors each year. The owner or operator shall base the cost estimate on the following elements:

- (a) Design;
- (b) Site grading and drainage;
- (c) Hauling and placing of each element of the approved cap;
- (d) Final grading and drainage of the cap;
- (e) Revegetation of the cap; and
- (f) Quality control and construction certification.

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Section 5 of this administrative regulation if changes to the closure plan or solid waste disposal site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 5 of this administrative regulation if he can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the solid waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the solid waste disposal site or facility until the owner or operator has been notified by the cabinet that he has been released from closure financial assurance requirements under Section 5 of this administrative regulation.

Section 3. Closure Care Cost Estimate. (1) Except as provided for by KRS 224.40-120, the owner or operator of each solid waste site or facility shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct each phase of closure care monitoring and maintenance ~~[of the solid waste landfill]~~ in accordance with the closure care plan developed to satisfy the closure care requirements of Section 3 of 401 KAR 48:060, Section 13 of 401 KAR 48:090, and Section 3 of 401 KAR 48:170. The closure care cost estimate for each phase of closure care used to demonstrate financial assurance in Section 6 of this administrative regulation shall be ~~be~~ calculated by multiplying the annual cost estimate for each phase of closure care by the number of years of closure care required. For contained landfills, the closure care estimate mandated by KRS 224.40-650 shall be a minimum of \$10,000 per year, using 1990 as the baseline year.

(2) The cost estimate for each phase of closure care shall be based on the most expensive costs of closure care during that phase. The cabinet shall adjust the figure each year for inflation and other factors.

(3) The owner or operator shall increase the amount of the closure care cost estimate and the amount of financial assurance provided under Section 6 of this administrative regulation if changes in the closure care plan or facility conditions increase the maximum costs of closure care.

(4) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 6 of this administrative regulation if he can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the maximum costs of closure care remaining over the closure care period.

(5) The owner or operator shall keep a copy of the latest closure care cost estimate at the facility until he has been notified by the cabinet that he has been released from closure care financial assurance requirements for the entire facility under Section 6 of this administrative regulation.

Section 4. Financial Mechanisms. The mechanisms used to demonstrate financial assurance under this administrative regulation shall ensure that the funds necessary to meet the costs of closure and closure care will [shall] be available in a timely manner whenever they are needed. The owner or operator shall execute a performance [use the] bond specified in Section 7 with one (1) or a combination of the financial mechanisms in Sections [7, 8,] 9 [and] 10, 11, 12, and 13 of this administrative regulation, that [which] satisfies the following criteria:

(1) The financial assurance mechanism shall ensure that the amount of funds is sufficient to cover the costs of closure and closure care;

(2) The financial assurance mechanism[s] shall ensure that funds shall be available in a timely fashion;

(3) The financial assurance mechanism[s] shall guarantee the availability of the required amount of coverage from the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, until the owner or operator establishes an alternative financial assurance mechanism or is released from the financial assurance requirements under Sections 5, 6, 7, and 14 [44] of this administrative regulation. The amount of financial assurance obtained from a single financial institution shall not exceed the limit of federal insurance, when such insurance is provided by a financial institution that uses federal insurance to guarantee the availability of funds.

Section 5. Closure Financial Assurance. Except as provided by KRS 224.40-120, the owner or operator of each solid waste disposal site or facility ~~[landfill or landfarm]~~ shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this administrative regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements. The owner or operator may be released from financial assurance requirements for closure after a site visit by a cabinet representative and approval by the cabinet. For contained landfills, the owner or operator shall submit the certification that closure has been completed in accordance with the approved closure plan. Following receipt of the closure certification or completion of the closure inspection, the cabinet shall:

(1) Notify the owner or operator in writing that he is no longer required to maintain financial assurance for closure; or

(2) Provide the owner or operator with a detailed written statement of any reason to believe that closure has not been conducted in accordance with the approved closure plan.

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Section 6. Closure Care. Except as provided by KRS 224.40-120, the owner or operator of each solid waste site or facility (landfill) shall provide for closure care as required under Section 3 of 401 KAR 48:060, Section 13 of 401 KAR 48:090, and Section 3 of 401 KAR 48:170 for the required period following the cabinet's acceptance of closure. The owner or operator of a contained landfill may be released from closure care requirements after the cabinet has received a certification that the closure care period has been completed in accordance with the approved plan as required under Section 13 of 401 KAR 48:090. Following receipt of the closure care certification, the cabinet shall notify the owner or operator with a detailed written statement of any reason to believe that closure care has not been conducted in accordance with the approved closure care plan.

Section 7. Performance Bond. Before the cabinet shall issue a permit, the owner or operator of a solid waste disposal site or facility that is required to execute ~~post~~ a performance bond and post a financial assurance mechanism or other security pursuant to KRS 224.40-650 shall complete the performance bond and financial assurance mechanism in a manner approved by the cabinet. To satisfy the financial requirement, the owner or operator shall submit a performance bond (see Section 8 ~~and Appendix A~~) of this administrative regulation) and one (1) or more of the ~~three (3)~~ following five (5) financial mechanisms:

- (1) Surety bond as specified in Section 9 of this administrative regulation ~~[8 and Appendix A of this regulation];~~
- (2) Letter of credit as specified in Section 10 of this administrative regulation; ~~[9 and Appendix B of this regulation; or]~~
- (3) Escrow agreement as specified in Section 11 of this administrative regulation; ~~[10 and Appendix C of this regulation;]~~
- (4) Trust agreement as specified in Section 12 of this administrative regulation; or
- (5) Insurance policy as specified in Section 13 of this administrative regulation.

Section 8. Wording of the Performance Bond. A performance bond guaranteeing performance of closure and ~~or~~ closure care, or closure individually and closure care individually, shall be executed on DEP Form 6053-A, entitled "Performance Bond" (September ~~July~~ 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays. ~~[a form provided by the cabinet. The surety bond form is a part of the performance bond form. The surety bond portion of the performance bond shall be completed only if a surety bond is being used; otherwise the surety bond portion of the performance bond shall be left blank. The performance bond form shall be as contained in Appendix A of this regulation.]~~

Section 9. Wording of Surety Bond. (1) A surety bond, as allowed in Sections 4 and 7 of this administrative regulation, shall be executed on DEP Form 6053-L, entitled "Surety Bond" (September 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

(2) To be eligible to issue a surety bond, a surety shall be listed as acceptable in the current edition of U.S. Treasury Circular 570. The penal sum of the bond shall not exceed the amount of the surety's underwriting limitation. ~~[The surety bond form is a part of DEP Form 6053-A. The surety bond portion of the performance bond shall be completed only if a surety bond is being used; otherwise the surety bond portion of the performance bond shall be left blank.]~~

Section 10. Wording of the Instrument for a Letter of Credit. A letter of credit, as allowed by Sections 4 and 7 of this administrative regulation, shall be executed on DEP Form 6053-B, entitled "Irrevocable Letter of Credit" (July 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays. ~~[a form provided by the cabinet. The letter of credit form shall be as contained in Appendix B of this regulation.]~~

Section 11. ~~[10-]~~ Wording of the Escrow Agreement. An ~~[solid waste facility]~~ escrow agreement, as allowed in Sections 4 and 7 of this administrative regulation, shall be executed on DEP Form 6053-C, entitled "Escrow Agreement" (July 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays. ~~[a form provided by the cabinet. The escrow agreement form shall be as contained in Appendix C of this regulation.]~~ If a certificate of deposit is used in conjunction with the escrow agreement, it shall be made payable to the financial institution as the escrow agent.

Section 12. Wording of Trust Fund Agreement. A trust fund, as allowed by Sections 4 and 7 of this administrative regulation, shall be executed on DEP Form 6053-K, entitled "Trust Fund Agreement" (September ~~July~~ 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

Section 13. Insurance Policies. (1) The owner or operator of a solid waste disposal site or facility may provide an insurance policy to demonstrate the financial assurance for closure or closure care of the facility. The insurance policy shall conform with the requirements of this section and shall be submitted along with DEP Form 6053-D, entitled "Certificate of Insurance for Closure or Closure Care" (July 1994), which is hereby incorporated by reference. DEP Form 6053-D may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

(2) The insurance policy shall guarantee that the funds will be available to close the solid waste disposal site or facility when closure occurs or to provide closure care for the solid waste site or facility when the closure care period begins, whichever is applicable. The policy shall guarantee that once closure or closure care begins, whichever is applicable, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or closure care, up to an amount equal to the face amount of the policy. The insurance policy shall be issued for a face amount at least equal to the current closure cost estimate for closure or the current closure care cost estimate, whichever is applicable. The term "face value" refers to the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of payments.

(3) The owner or operator, or any other person authorized to conduct closure or closure care, may receive reimbursements for closure or closure care expenditures. Requests for reimbursement for expenditures shall be made by submitting itemized bills to the cabinet. The cabinet shall determine whether the closure or closure care expenditures are in accordance with the approved closure or closure care plan, or are otherwise justified, and if so, shall instruct the insurer to make reimbursements in such amounts as the cabinet specifies in writing. If the cabinet has reason to believe that the cost of closure or closure care will be greater than the face amount of the



policy, then the cabinet may withhold reimbursement of such amounts and set forth the reasons for the withholding in writing.

(4) An insurance policy shall contain a provision allowing assignment of the policy to a successor owner or operator. This assignment may be conditional upon consent of the insurer, provided the consent is not unreasonably refused.

(5) The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of the cancellation by certified mail to the owner or operator and to the cabinet 120 days or more in advance of the cancellation. Cancellation, termination, or failure to renew shall not occur, and the policy shall remain in force, if on or before the date of expiration:

(a) Closure is ordered by the cabinet or a court of competent jurisdiction;

(b) The owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11 U.S. Code; or

(c) The premium is paid.

(6) If the insurer cancels the policy, the owner or operator shall obtain by the effective date of the cancellation, alternate financial assurance as specified in this administrative regulation.

(7) For insurance policies providing coverage for closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. This increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five (85) percent of the most recent investment rate or the equivalent coupon-issued yield announced by the U.S. Treasury for twenty-six (26)-week treasury securities.

(8) The owner or operator may cancel the insurance policy only if alternate financial insurance is substituted and approved by the cabinet, as specified in this administrative regulation, or if the owner or operator is no longer required to demonstrate financial assurance in accordance with Section 14 of this administrative regulation and 401 KAR Chapters 47 and 48.

(9) If the owner or operator chooses to purchase an insurance policy to cover the cost of closure or closure care, whichever is applicable, the chosen insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states of the United States of America.

(10) The owner or operator shall submit a copy of the insurance policy and an executed DEP Form 6053-D to the cabinet for approval prior to this method of financial insurance being accepted. The owner or operator shall also execute a performance bond in accordance with Section 7 of this administrative regulation.

Section 14. [44.] Release of Financial Assurance Mechanisms and Performance Bonds. (1) **Financial assurance mechanisms and performance** bonds posted to assure proper closure of a solid waste disposal site or facility shall be released two (2) years after the date that the cabinet determines the final cover has been constructed and revegetated with permanent vegetation and all of requirements of the approved closure plan have been accomplished. The cabinet may withhold a portion of the financial assurance mechanism in the [that] amount [of bond] necessary to correct deficiencies in the solid waste disposal site or facility [landfill] or its closure system.

(2) **Financial assurance mechanisms and performance** bonds posted to assure performance and closure of landfarming facilities shall be released when the owner or operator [applicant] demonstrates to the cabinet's satisfaction that the site has been closed and is in compliance with 401 KAR 47:030, 401 KAR 48:300, and KRS Chapter 224.

(3) **Financial assurance mechanisms and performance** bonds

posted to assure proper closure care shall be released when the owner or operator demonstrates to the cabinet's satisfaction that the solid waste disposal site or facility has completed closure care activities in conformance with the approved closure care plan under Section 3 of 401 KAR 48:060, Section 13 of 401 KAR 48:090, or Section 3 of 401 KAR 48:170.

Section 15. [42.] Financial Assurance for Publicly-Owned Facilities. The owner or operator of a publicly-owned solid waste disposal facility shall provide a budget for the permitting, construction, operation, closure, and closure care of the facility **consistent with the permit application, closure plan, and closure care cost estimates**. The budget shall be revised and submitted annually. When elements of the facility's permitting, construction, operation, closure, or closure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

Section 16. Financial Assurance for Captive Facilities. (1) A solid waste disposal site or facility that is operated exclusively by a solid waste generator on property owned by the solid waste generator for the purpose of accepting industrial solid waste exclusively from the solid waste generator may meet the financial assurance requirements of this administrative regulation by completing a performance bond and submitting one (1) of the following financial assurance mechanisms: any of the five (5) mechanisms set forth in Section 7 of this administrative regulation; a corporate guarantee, in accordance with Section 17 of this administrative regulation and executed on DEP Form 6053-E; a corporate financial test, in accordance with Section 17 and executed on DEP form 6053-F; or any alternative mechanism that meets the criteria of Section 4 of this administrative regulation and is approved by the cabinet.

(2)(a) The following documents are hereby incorporated by reference:

1. DEP Form 6053-E, entitled "Corporate Guarantee for Closure or Closure Care" (July 1994); and
2. DEP form 6053-F, entitled "Letter from Chief Financial Officer on Corporate Financial Test" (July 1994).

(b) The documents referenced in paragraph (a) of this subsection may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

Section 17. Financial Test and Corporate Guarantee. (1) The owner of a captive facility as defined in Section 16 of this administrative regulation may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test, the owner or operator shall meet the criteria set forth in paragraph (a) and either paragraph (b) or (c) of this subsection:

(a) Less than fifty (50) percent of the parent corporations' gross revenues are derived from solid waste disposal operations.

(b) The owner or operator shall have:

1. Satisfaction of at least two (2) of the following ratios: a ratio of total liabilities to net worth less than two (2.0); a ratio of the sum of net income plus depreciation, depletion, and amortization to total liability greater than one-tenth (0.1); or a ratio of current assets to current liabilities greater than one and five-tenths (1.5);

2. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and current closure care cost estimates;

3. Tangible net worth of at least ten (10) million dollars; and

4. Assets in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current closure and current closure care cost estimates.

(c) The owner or operator shall have:

1. A current rating for his most recent bond issuance of AAA, AA,

A, or BBB as issued by "Standard and Poor's" or AAA, AA, A, or BAA as issued by "Moody's";

2. Tangible net worth as least six (6) times the sum of the current closure and current closure care cost estimates;

3. Tangible net worth of at least ten (10) million dollars; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current closure and current closure care cost estimates.

(2) The phrase "current closure and current closure care cost estimates" as used in subsection (1) of this section refers to the cost estimates required under Sections 2 and 3 of this administrative regulation and referenced in the letter from the owner or operator's chief financial officer.

(3) To demonstrate that requirements of this test are met, the owner or operator shall submit the following items to the cabinet:

(a) A letter signed by the owner or operator's chief financial officer and worded as specified on DEP Form 6053-F;

(b) A copy of a report by an independent certified public accountant examining the owner or operator's financial statements for the most recently completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. The auditor has compared the data that the letter from the chief financial officer specified as having been derived from the independently audited year-end financial statements for the most recent fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

(4) After the initial submission of the items specified in subsection (3) of this section, the owner or operator shall send updated information to the cabinet not later than ninety (90) days after the close of each succeeding fiscal year. This information shall include all three (3) items specified in subsection (3) of this section.

(5) If the owner or operator no longer meets the requirements of subsection (1) of this section, notice shall be sent to the cabinet of the intent to establish alternate financial assurance, as specified in this administrative regulation. The notice shall be sent by certified mail no later than ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide that alternate financial assurance no later than 120 days after the end of that fiscal year.

(6) The cabinet may, based on a reasonable belief that the owner or operator no longer meets the requirements of subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the cabinet finds, on the basis of these reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator shall provide alternate financial assurance as specified in this administrative regulation no later than thirty (30) days after notification of this a finding.

(7) The cabinet may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner or operator's financial statements. An adverse opinion or disclaimer of opinion shall be cause for disallowance. The cabinet shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this administrative regulation no later than thirty (30) days after notification of the disallowance.

(8) The owner or operator is no longer required to submit the items specified in subsection (3) of this section when:

(a) The owner or operator substitutes alternative financial assurance for closure or closure care specified in this administrative regulation; or

(b) The cabinet notifies the owner or operator, in accordance with Section 14 of this administrative regulation, that it is no longer required to maintain financial assurance for closure or closure care of the solid waste disposal site or facility.

(9) The owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as a "corporate guarantee". The guarantor shall be the parent corporation of the captive facility as defined in Section 16 of this administrative regulation. The guarantor shall meet the requirements for owners or operators in subsections (1) to (7) of this section and shall comply with the terms of DEP Form 6053-E. The corporate guarantee shall accompany the items sent to the director as specified in subsection (3) of this section. The terms of the corporate guarantee shall provide that:

(a) If the owner or operator fails to perform closure or closure care of a facility provided for by the corporate guarantee in accordance with the closure or closure care plan and permit requirements, the guarantor shall do so or shall establish a trust fund, in the name of the owner or operator, as specified in Section 12 of this administrative regulation;

(b) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the cabinet. Cancellation may not occur, however, during the 120-day period beginning on the first day that both the owner or operator and the cabinet have received notice of cancellation, as evidenced by the certified mail return receipts; and

(c) If the owner or operator fails to provide alternate financial assurance as specified in this administrative regulation, and fails to obtain the written approval of this alternate financial assurance from the cabinet not later than ninety (90) days after both the owner or operator and the cabinet have received notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide the alternate financial assurance in the name of the owner or operator.

Section 18. Financial Assurance for Corrective Action. (1) The owner or operator of a facility required to prepare and submit a groundwater corrective action plan under 401 KAR 48:300 shall prepare a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct the corrective action activities in accordance with the corrective action plan developed under 401 KAR 48:300. The corrective action cost estimate shall account for the total cost estimate of corrective action activities as described in the corrective action plan for the entire corrective action period. The cabinet shall annually adjust this estimate for inflation and other factors, until the corrective action program is completed in accordance with 401 KAR 48:300 and the approved plan.

(2) The owner or operator shall increase the corrective action cost estimate in the amount of financial assurance provided under subsection (1) of this section if changes in the corrective action plan or conditions at the solid waste disposal site or facility increased the maximum cost of corrective action.

(3) The owner or operator may request from the cabinet a reduction in the amount of corrective action cost estimate and the amount of financial assurance provided under subsection (1) of this section if the cost estimate exceeds the maximum remaining cost of corrective action.

(4) The owner or operator shall provide continuous coverage for corrective action until released from the financial requirements for corrective action under subsection (7) of this section.

(5) Within 120 days of approval of the corrective action plan, the owner or operator shall post a performance bond executed on DEP Form 6053-G, entitled "Performance Bond for Corrective Action" (September [July] 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday,

excluding state holidays. The owner or operator shall also post one (1) or a combination of the following financial assurance mechanisms in the amount set forth in the corrective action cost estimate:

(a) A surety bond executed on DEP Form 6053-M, entitled "Surety Bond for Corrective Action" (September 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays; [6053-G;]

(b) A trust fund executed on DEP Form 6053-J, entitled "Trust Agreement for Corrective Action" (July 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays;

(c) A letter of credit executed on DEP Form 6053-H, entitled "Irrevocable Letter of Credit for Corrective Action" (July 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays;

(d) An escrow agreement executed on DEP Form 6053-I, entitled "Escrow Agreement for Corrective Action" (July 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays;

(e) Any other financial assurance mechanism that complies with subsections (1) to (4) of this section and is approved by the cabinet.

(6) The owner or operator may satisfy the requirements of this section by establishing one (1) or more of the financial mechanisms listed in subsection (5) of this section.

(7) The financial insurance mechanisms posted to assure performance of the corrective action required under 401 KAR 48:300 shall be released when the owner or operator demonstrates to the cabinet's satisfaction that the groundwater corrective action plan's remedial measures have been completed and that the facility is in compliance with 401 KAR 48:300 and KRS Chapter 224.

Section 19. Use of Multiple Financial Mechanisms at Single Facilities and Single Mechanisms at Multiple Facilities. (1) The owner or operator may satisfy the requirements of this administrative regulation by establishing more than one (1) financial mechanism for each facility. These mechanisms are limited to trust funds, escrow agreements, surety bonds, letter of credit, and insurance. The mechanisms shall be as specified in Sections 8 to 12 of this administrative regulation respectively, except that it is the combination of mechanisms, rather than each single mechanisms, that shall provide financial assurance for an amount at least equal to the current closure or closure care cost estimates. [If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as a standby trust fund for the other mechanisms.]

(2) The owner or operator may use a financial assurance mechanism specified in this administrative regulation to meet the requirements of this regulation for more than one (1) facility. Evidence of financial assurance submitted to the cabinet shall include a list showing, for each facility, the name, address, and amount of funds for closure and closure care assurance by the financial mechanism. The amount of funds available through the financial mechanism shall be no less than the sum of the funds that would be available if a separate financial mechanism had been established and maintained for each facility. In directing funds available through the financial mechanism for closure or closure care of any of the facilities provided for by the financial mechanism, the cabinet may direct only the amount of funds designated for the facility, unless the owner or operator agrees to the use of additional funds available under the

financial mechanism.

[APPENDIX A TO 401 KAR 48:310  
COMMONWEALTH OF KENTUCKY  
NATURAL RESOURCES AND ENVIRONMENTAL  
PROTECTION CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
DIVISION OF WASTE MANAGEMENT  
14 REILLY ROAD  
FRANKFORT, KY 40601  
PERFORMANCE BOND

Application Number: \_\_\_\_\_

Existing Permit Number: \_\_\_\_\_

Type of Bond: \_\_\_\_\_

\_\_\_\_\_ Cash Bond

\_\_\_\_\_ Surety Bond # \_\_\_\_\_

\_\_\_\_\_ Certificate of Deposit # \_\_\_\_\_

\_\_\_\_\_ Letter of Credit # \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, is/are held and firmly bound unto the Natural Resources and Environmental Protection Cabinet in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), which sum is herewith deposited with the Natural Resources and Environmental Protection Cabinet; \_\_\_\_\_ for payment of which sum is to be well and truly made: \_\_\_\_\_ which sum is herewith deposited with the Natural Resources and Environmental Protection Cabinet, by and through its Escrow Agent, \_\_\_\_\_ as a grantee that the provisions of the permit issued pursuant to Application Number \_\_\_\_\_, all applicable laws, rules, and regulations will be observed and hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. This bond is effective upon receipt by the Division of Waste Management (hereinafter Division).

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that, whereas, the above bound Principal, pursuant to the provisions of KRS Chapter 224 and 401 KAR Chapters 47 and 48 did file with the Division, an application for a permit to construct and/or operate a solid waste site or facility in the Commonwealth of Kentucky; that in said application the Principal identified the area to be permitted as \_\_\_\_\_ acres, located in \_\_\_\_\_ County, at or near the community of \_\_\_\_\_; and whereas the above described area will be affected by the facility during the life of the permit and until the Principal has completed proper closure and closure care; and corrective action, if required, and Cabinet, or, in the case of contained landfills, a professional engineer and Cabinet, has certified the same. Furthermore, it is understood that the obligation under this bond extends to environmental degradation occurring off the permitted area but proximately resulting from the construction, operation or closure of the solid waste site or facility.

Now, if said \_\_\_\_\_, as Principal, shall faithfully perform all the requirements of the above designated application, the permit issued pursuant thereto and the applicable laws, rules, and regulations, and the terms of this bond, then this obligation shall be released; otherwise, it is agreed that said penal sum shall be paid to the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, upon receipt of an Order of the Cabinet.

PRINCIPAL: \_\_\_\_\_ BY: \_\_\_\_\_

OFFICIAL POSITION: \_\_\_\_\_ DATE: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public, State at Large

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

COMPLETE FOR SURETY BOND:

SURETY:

# ADMINISTRATIVE REGISTER - 1118

ADDRESS:  
LOCAL AGENCY ISSUING BOND:  
ADDRESS:  
BY:  
OFFICIAL POSITION:  
SIGNATURE:  
DATE:  
NOTE: The person who signs for a surety company shall file with the bond a copy of the Power of Attorney showing authority to sign. All bonds executed by an out of state bonding agent shall be countersigned by a resident Kentucky agent.  
COUNTERSIGNED  
BY:  
AGENT FOR:  
ADDRESS:

## APPENDIX B TO 401 KAR 48:310 IRREVOCABLE LETTER OF CREDIT

(financial institution)

COMMONWEALTH OF KENTUCKY  
Natural Resources and  
Environmental Protection Cabinet  
Department for Environmental Protection  
Division of Waste Management  
18 Reilly Road  
Frankfort, Kentucky 40601

Date: \_\_\_\_\_  
IRREVOCABLE LETTER OF CREDIT NO: \_\_\_\_\_

Gentlemen:

We hereby open our irrevocable letter of credit in your favor for the account of \_\_\_\_\_ for a sum or sums not exceeding a total of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) available by your draft(s) on us at sight when accompanied by a Natural Resources and Environmental Protection Cabinet Order of Forfeiture.

It is a condition of this Letter of Credit that it will be automatically extended for additional periods of up to one (1) year from the then relevant expiry date unless thirty (30) days prior to that relevant expiry date, we notify you that we elect not to extend this Letter of Credit whereupon you may elect either to obtain cash collateral by drawing your on sight draft on us for an amount not to exceed the unused balance of this Letter of Credit, or to let the Letter of Credit expire. For the purposes of this credit, our notice not to extend shall mean:

1. That we send our notification to you at the above listed address by registered mail (return receipt requested) dated not less than thirty (30) days prior to expiration; and

2. That, in the event, prior to fifteen (15) days before the then relevant expiry date, we have not received either your draft or your written notice that you do not intend to draw from your draft on us, we will hand deliver our notification to obtain a receipt from: Director, Division of Waste Management, Natural Resources and Environmental Protection Cabinet, or that official's designated representative, not less than five (5) days prior to the then relevant expiry date. In the event we shall have failed to notify you as described above, this Letter of Credit shall be automatically extended for a period of one (1) year; and

3. That, in the event you draw your draft upon us in response to our notice not to extend, such draft need not be accompanied by an Order of Forfeiture.

Drafts must be negotiated not later than \_\_\_\_\_. All drafts drawn under this credit shall state that they are "drawn under \_\_\_\_\_, dated \_\_\_\_\_, associated with permit number \_\_\_\_\_."

This Letter of Credit is subject to the Uniform Commercial Code of the Commonwealth of Kentucky. Jurisdiction for any litigation

concerning this Letter of Credit shall be in Franklin Circuit Court, Commonwealth of Kentucky.

In the event we become unable to fulfill our obligations under the Letter of Credit for any reason, notice shall be given within five (5) days to the Permittee and Director, Division of Waste Management, at the address indicated in this Letter of Credit.

We hereby agree with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit that such drafts will be duly honored on due presentation to the drawee.

BY: \_\_\_\_\_  
Authorized Signer

Title

APPENDIX C TO 401 KAR 48:310  
COMMONWEALTH OF KENTUCKY  
NATURAL RESOURCES AND ENVIRONMENTAL  
PROTECTION CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
DIVISION OF WASTE MANAGEMENT  
18 REILLY ROAD  
FRANKFORT, KY 40601  
ESCROW AGREEMENT

THIS AGREEMENT, made, executed, and delivered this the \_\_\_\_\_ day of \_\_\_\_\_, 10\_\_\_\_, by and between \_\_\_\_\_ as Applicant, and \_\_\_\_\_, and the Kentucky Natural Resources and Environmental Protection Cabinet (hereinafter Cabinet);

WITNESSETH:

WHEREAS, Applicant desires to obtain a permit to construct and/or operate a solid waste site or facility in the Commonwealth of Kentucky; and

WHEREAS, the laws of the Commonwealth require that a bond be posted to insure proper closure, closure care of the facility and if required, corrective action to guarantee performance of the requirements in KRS Chapter 224 and the regulations promulgated pursuant thereto; and

WHEREAS, the Applicant desires to meet the bonding requirements for constructing and/or operating a solid waste site or facility in the Commonwealth of Kentucky by executing such bond and posting surety in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) with the Cabinet to be held by Escrow Agent, which sum is hereby acknowledged by the Cabinet to be sufficient and acceptable for the permit application number \_\_\_\_\_, relating to \_\_\_\_\_ acres located at \_\_\_\_\_ in \_\_\_\_\_ County, Kentucky; and

WHEREAS, such sum shall be placed in the safe custody of the Escrow Agent and the Agent is directed to purchase certificates of deposit of the \_\_\_\_\_, which certificates of deposit are hereinafter referred to as The Certificates, and are more fully described as follows, to-wit:

CERTIFICATE NO. DATE OF ISSUANCE PRINCIPAL AMT.

AND WHEREAS, this Agreement is a supplement to the bond filed by the Applicant with permit application number \_\_\_\_\_ for a permit to construct and/or operate a solid waste site or facility.

NOW, THEREFORE, in consideration of the premises set forth herein, the parties hereto mutually agree as follows:

1. The Escrow Agent hereby acknowledges receipt of The Certificates above listed, to be safely and securely kept for the stated purposes of this Agreement and subject to the terms and conditions herein, and hereby binds itself to perform completely under the terms of this Agreement and to dispose of The Certificates or the proceeds therefrom only as provided herein. The Escrow Agent further agrees

to exercise due care in the safekeeping and delivery of The Certificates;

2. The parties agree The Certificates or any subsequent Certificates are and shall be made payable in favor of the Escrow Agent only and the parties further agree that until such time as the Cabinet orders that the bond for the permit application be forfeited or until such time as the bond is released, all interest accruing on The Certificates shall be disposed of in accordance with paragraphs 4 and 5 of this Agreement;

3. The parties agree that the Escrow Agent is hereby authorized and directed to insure that The Certificates remain in full force during the term of this Agreement and the Escrow Agent may, upon notice to all parties, and upon the maturity of The Certificates, issue new Certificates of face value equal to the outstanding amount of the bond. In the event of such issuance, the new Certificates shall replace The Certificates herein for all purposes and shall be subject to the conditions of this Agreement;

4. Any interest accruing on The Certificates shall be held by the Escrow Agent until such time as the bond has been released or forfeited or The Certificates have matured and been replaced by new Certificates. No interest shall be paid to the Applicant on any Certificate until such time as the Certificate matures or a full release has been obtained from the Cabinet or until the bond has been forfeited and any penalty resulting from the cashing of the Certificate has been satisfied;

5. In the event of forfeiture of the performance bond herein and upon the Cabinet's written notice of such forfeiture to the Escrow Agent, the Escrow Agent shall promptly cash The Certificates and forward to the Cabinet a Cashier's Check in the outstanding amount of the bond, pay any penalties which result from the cashing of The Certificates from the interest accrued thereon, and remit any remaining interest and principal to the Applicant;

6. The parties agree that neither the Escrow Agent nor the Cabinet shall be liable for any loss of interest which may result to the Applicant as a result of an Order of Forfeiture;

7. The Escrow Agent shall not be liable for inquiring whether there has been performance by the Applicant or to see the application of any monies paid on the instruction of the Cabinet and in such matters the Escrow Agent may rely upon the instructions of the Cabinet executed by the Secretary of the Cabinet, his designee, or his successor or the successor agency as provided by law. The Escrow Agent need not verify the apparent authority of an agent of the Cabinet in carrying out the Cabinet's instructions. Nothing herein shall prevent the Commonwealth from designating a person authorized to act for it in any other lawful manner;

8. That for value received the Applicant does hereby assign, transfer, and set over to the Commonwealth of Kentucky all right, title, and interest which the Applicant may have in The Certificates. The parties agree that The Certificates are being held solely for the benefit of the Commonwealth of Kentucky and that the Applicant has relinquished all right, title, and interest to The Certificates as provided herein. The Applicant may not pledge or encumber in any manner The Certificates or any renewal certificates, or the interest due thereon, so long as the same are subject to the conditions of the bond herein;

9. The Cabinet agrees that upon completion of proper closure and closure care, or corrective action of or for the solid waste site or facility and upon the Cabinet's inspection and certification of same and in the case of contained landfills, upon certification by a professional engineer, the Cabinet shall release the bond herein and promptly notify the Escrow Agent and the Applicant of such release.

10. It is agreed, as between the parties, that in the event the Escrow Agent closes or goes into receivership, any Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Administration insurance proceeds paid on, to, or as a result of The Certificates, shall first be applied to cover The Certificates;

11. The parties agree that the Escrow Agent shall be the Cabinet's agent for holding The Certificates for the purpose of perfecting the Cabinet's security interest in those Certificates under KRS Chapter 355.

12. This agreement shall be binding upon the successors and assigns of the respective parties; and

13. Upon receipt by the Escrow Agent of written notification by the Cabinet of the forfeiture or the release of the bond herein, and disbursement pursuant to this agreement by the Escrow Agent of written notification by the Cabinet of the forfeiture or the release of the bond herein, and disbursement pursuant to this agreement by the Escrow Agent of The Certificates or the proceeds therefrom and any interest accrued thereon, the Escrow Agent shall be discharged of any and all duties and liabilities arising out of or as a result of this Agreement.

SIGNED, SEALED, AND DELIVERED, the day and date first above written by the appropriately authorized officers.

APPLICANT:

BY:

TITLE:

ESCROW AGENT:

BY:

TITLE:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

BY:

TITLE:]

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 8, 1994

FILED WITH LRC: September 9, 1994 at 9 a.m.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)

**405 KAR 5:001. Definitions for 405 KAR Chapter 5.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 5.

Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation.

(2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation.

(3) "Acid-forming materials" means earth materials or rock that contain sulfide minerals or other minerals which, if exposed to air, water or weathering processes, form acids that may create acid drainage.

(4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, holes or depres-



sions, repair areas, roads, storage areas, shipping areas and processing plants.

(5) "Backfill" means excavated overburden material used to regrade [recontour] a mined area.

(6) "Cabinet" is defined in KRS 350.010.

(7) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce run-off velocity for deterring erosion.

(8) "Clay" means a natural fine grained material which develops plasticity when mixed with water. ~~[sedimentary rock which becomes plastic when wet and has no well defined or developed partings along bedding planes, although it may display bedding.]~~

(9) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials.

(10) "Critical habitat" means the specific areas within the geographic area, occupied by a threatened or endangered species, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographic area occupied by the species essential for the conservation of the species. Critical habitat areas are designated lands.

(11) "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or legumes, and includes: row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to, or an integral part of, these operations is also included for purposes of this land use category.

(12) "Department" means the Kentucky Department for Surface Mining Reclamation and Enforcement.

(13) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released and processing plant and stockpile areas have been moved.

(14) "Diversion ditch" means a channel constructed to direct water from one (1) location to another.

(15) "Division" means the Division of Field Services of the Kentucky Department for Surface Mining Reclamation and Enforcement.

(16) "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite,  $\text{CaMg}(\text{CO}_3)_2$ . Many limestones contain small amounts of Dolomite; however, the term Dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate.

(17) "Dredging operation" means surface disturbance of dredging river or creek sand and gravel.

(18) "Edge effect" means the phenomena by which wildlife is enhanced and wildlife diversity is typically increased as a result of two or more different habitat types occurring in close proximity to each other. Where two (2) habitats meet is referred to as an "edge".

(19) "Embankment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(20) "Ephemeral stream" means a stream which only flows in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(21) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(22) "Fish and wildlife land use" means an area which is charac-

terized by an intermixed combination of habitat types including: woodlots or forested areas, shrub-scrub areas, grass-legume or open areas, and wetland or open water areas arranged in a manner as to promote edge effect for wildlife.

(23) "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year frequency flood.

(24) "Fluorspar" means an ore of the mineral Fluorite  $\text{CaF}_2$ . This occurs in veins and as bedding replacements found in Western Kentucky, as part of a mining district referred to as the Cave-In-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity.

(25) "Forest land" means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas planted throughout with trees.

(26) "Fragile lands" means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by mineral operations. Examples of fragile lands include uncommon geologic formations, paleontological sites, national natural landmarks, valuable habitats for fish or wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or plants, wetlands, environmental corridors containing a concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, and areas of recreational value due to high environmental quality.

(27) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(28) "Gravel" means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders; a naturally occurring aggregate.

(29) "Ground cover" means the area of ground covered by the combined aerial parts of live vegetation and the litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(30) "Groundwater" means water which is in the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bondage.

(31) "Growing season" means the period during a one (1) year cycle, from the last killing frost in spring to the first killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(32) "Highwall" means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine.

(33) "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties listed on or eligible for listing on a State or National Register of Historic Places, national historic landmarks, archaeological sites, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

(34) "Hollowfill" means a fill structure placed in a hollow where the side slopes of the existing hollow, measured at the steepest point, are greater than twenty (20) degrees or the average slope of the profile of the hollow, from the toe of the fill to the top of the fill, is greater than ten (10) degrees.

(35) "Hydrologic balance of surface waters" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, [aquifer, soil zone,] lake, or reservoir. It encompasses the dynamic relationship between precipitation, run-off, evaporation, and changes in [ground and] surface water storage.

(36) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of



a permit or other requirement of applicable state laws and administrative regulations in a mineral operation; which condition, practice, or violation could reasonably be expected to cause substantial, physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself to the danger during the time necessary for the abatement.

(37) "Impoundment" means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(38) "Industrial/commercial land use" means lands used for:

(a) The extraction or transformation of materials, for fabrication of products, wholesaling of products or for long term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included; or

(b) The retail or trade of goods or services, including: hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included.

(39) "Intermittent stream" means:

(a) A stream, or reach of stream, that drains a watershed of one (1) square mile or more but does not flow continuously throughout the calendar year; or

(b) A stream, or reach of stream, that is below the local water table for at least some part of the year, and obtains its flow from both surface water and groundwater discharge. This term does not include ephemeral streams.

(40) "Land use" means the specific functions, uses, or management related activities of the proposed permit area, including both premining use and postmining use.

(41) "License" means an authorization issued to a person, partnership or corporation to conduct mineral operations under their permit.

(42) "Limestone" means a crystalline sedimentary rock that is primarily composed of the mineral Calcite  $\text{CaCO}_3$ . However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly Calcite or Dolomite, but may contain small amounts of iron-carbonates (Siderite).

(43) "Mast" means nuts, acorns, and fruit produced by certain woody plant species.

(44) "Mineral operation" means noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluor spar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this Title. This term does not include coal mining, tar sand mining or oil shale mining.

(45) "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

(46) "Mineral permittee" means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

(47) "Natural drainways" means ephemeral areas, gullies, ravines, streams, and similar topographical features occurring naturally in an area which control the direction of surface water flow.

(48) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of mineral operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable

geology, or frequent flooding.

(49) "Noxious plants" means species that have been included on state and federal lists of noxious plants.

(50) "Outslope" means the face of the spoil, **natural ground**, or embankment sloping downward from the highest elevation to the **lowest elevation [tee]**.

(51) "Outstanding resource waters" means surface waters designated by the cabinet, pursuant to 401 KAR 5:031, Section 7.

(52) "Pastureland" means land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to, or an integral part of, these operations is also included.

(53) "Perennial stream" means a stream, or stream reach, that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off.

(54) "Permanent impoundment" means an impounded body of water, that is formed in the pit during mining or retained by a constructed embankment or dugout, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(55) "Permit" means written approval issued by the cabinet to conduct mineral operations.

(56) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by mineral operations under that permit. ~~[The permit area shall also include all areas overlying underground workings.]~~

(57) "pH" means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

(58) "PLS" means pure live seed.

(59) "Point source" **is defined in 401 KAR 5:050.** ~~[means any discernible, confined, and discrete conveyance, including, but not limited to: any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.]~~

(60) "Recreation land use" means land used for public or private leisure time use, including developed recreation facilities such as, parks, camps, and amusement areas, as well as areas for less intensive uses such as, hiking, canoeing, and other undeveloped recreational uses.

(61) "Residential land use" means tracts employed for single and multifamily housing, mobile home parks, and other residential lodgings. Also included, is land used for support facilities such as, vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(62) "Roads" means haul roads and access roads constructed, used, reconstructed, improved or maintained for use in mining and stockpiling finished products, within permit boundaries. **The term excludes any roadways located in the mining pit area.**

(63) "Run-off" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

(64) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by engineering practices.

(65) "Sand" means a sedimentary rock type that implies a loosely, compacted, fine sediment that is generally composed of particles that range in size from 1/16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

(66) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(67) "Sedimentation pond" means any natural or artificial structure

or depression used to remove sediment from water and store sediment or other debris.

(68) "Significant, imminent environmental harm to land, air, or water resources" means a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.

(b) An environmental harm is imminent if a condition, practice, or violation exists which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time.

(c) An environmental harm is significant, if that harm is appreciable, and not immediately repairable.

(69) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance. It may also be expressed as a percent or in degrees.

(70) "Soil horizons" means contrasting layers of soil parallel, or nearly parallel to, the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon". The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is then most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon". The layer commonly near the surface below the A horizon and above the B horizon. The E horizon is most commonly differentiated from the overlying A horizon by a lighter color and generally measurably less organic matter. The E horizon is most commonly differentiated from the B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon". The layer that is immediately below the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon". The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.

(71) "Spoil" means overburden which has been removed during mineral operations.

(72) "Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, draining, compacting, riprapping, or by vegetation.

(73) "Stream buffer zone" means an area of forest or field left untouched and undisturbed by the mineral operator during mining, including haul road construction.

(74) "Strip mining" is defined in KRS 350.010.

(75) "Surface disturbance of dredging river or creek sand and gravel" means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

(76) "Surface disturbance of underground mining" means above ground activities incidental to subsurface mineral extraction or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including, hoist and ventilating ducts, areas used for the disposal and storage of waste, and areas on which materials incidental to underground mining activities are placed.

(77) "Surface waters" means those waters having well defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; and marshes and wetlands. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger, are not considered to be surface waters of the Commonwealth.

(78) "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a .45 micron filter.

(79) "Temporary mineral operation" means a mineral operation that operates for a total of six (6) months or less at a location.

(80) "Threatened and endangered species" means those species of plants or animals listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species protected by similar state statutes.

(81) "Topsoil" means the A and E horizon layers of the four (4) master soil horizons.

(82) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(83) "Waste" means materials which are washed, (otherwise separated or left from a mineral product) slurried or otherwise transported from the processing facilities or preparation plants of any kind.

(84) "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(85) "Water withdrawal permit" means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

(86) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substance that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(87) "Wild river" means a water which has been designated as a wild river by the General Assembly pursuant to KRS Chapter 146. ~~[A wild river shall be free-flowing with its scenic vistas and shorelines relatively unchanged or disturbed by man, and shall be pleasing to the eye.]~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 9, 1994

FILED WITH LRC: September 12, 1994 at 3 p.m.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hesring)**

**405 KAR 5:015. General provisions.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions which apply to this chapter with regard to applicability, conflicting provisions,

severability, obligations of mineral permittees, and the need for a preliminary walk.

Section 1. Applicability. (1) This administrative regulation designates 405 KAR Chapter 5 as applicable to mineral operations and any lands used, disturbed or redisturbed, in connection with, or to facilitate those mineral operations, or any other activity related to mineral operation development conducted on or after the effective date of these administrative regulations.

(2) Mineral operations subject to 405 KAR Chapter 5, include: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining.

(3) Except for the provision of Section 4(2) of this administrative regulation, 405 KAR Chapter 5 does not apply to the mining of coal.

Section 2. Conflicting Provisions. The provisions of 405 KAR Chapter 5 are to be construed as being compatible and complementary with each other. If provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 3. Severability. If any provision or administrative regulation of 405 KAR Chapter 5 is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 4. General Obligations of Persons Engaged in Mineral Operations. (1) No person shall engage in a mineral operation or related activity without having obtained from the cabinet, a permit and license for the mineral being mined, as required and described under 405 KAR 5:030 and 405 KAR 5:025.

(2) No person shall remove and commercially use or sell coal from a mineral operation except where an exemption has been obtained under 405 KAR 7:035.

(3) A person engaged in a mineral operation, shall not throw, pile, dump, or permit, the throwing, piling, dumping, or otherwise placing of any: overburden, stones, rocks, shale, earth, soil; dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit; or push materials over outcrops in such a way that normal erosion or slides brought about by natural, physical, changes will permit the materials to go beyond or outside of the area of land, which is under permit.

(4) A person engaged in a mineral operation shall not engage in any activities, which will result in a condition or constitute a practice that, creates an imminent danger to the health or safety of the public.

(5) A person engaged in a mineral operation shall not engage in any activities which will result in a condition or constitute a practice that, causes or can reasonably be expected to cause[.] significant, imminent[.] environmental harm, to land, air, or water resources.

(6) Upon development of any emergency conditions which threaten the life, health, or property of the public, a person engaged in a mineral operation shall immediately notify the person or persons whose life, health, or property are so threatened; shall take all reasonable actions to eliminate the condition creating the emergency, and shall immediately provide notice of the emergency conditions to the division, to local law enforcement officials, and to local government officials. Any emergency action taken by a person engaged in a mineral operation, pursuant to this paragraph, shall not relieve that person of other obligations under this chapter or of obligations under other applicable local, state, or federal laws and regulations.

(7) ~~Requirements for exploration.~~

~~(a) Any person who intends to conduct noncoal mineral exploration shall at least twenty one (21) days prior to conducting the exploration, file with the cabinet a written notice of intention to explore.~~

~~(b) The notice shall include:~~

~~1. The name, address and telephone number of the person seeking to explore;~~

~~2. The name, address and telephone number of the representatives who will be present at, and responsible for, conducting the exploration activities;~~

~~3. A precise description of the exploration area (including latitude, longitude, nearest community, and a copy of a 7.5 minute series topographic map showing the quadrangle and proposed location for the exploration activities;~~

~~4. A statement of the period of intended exploration;~~

~~5. The names and addresses of the owner on record of the surface land and the subsurface mineral estate of the area to be explored; and~~

~~6. A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area, before equipment is removed from the proposed exploration area;~~

~~7. The cabinet shall place the notice on public file and make available for public inspection and copying at the appropriate regional office of the department.~~

~~(8) Compliance with the requirements of this chapter does not relieve any person engaged in a mineral operation from compliance with other applicable administrative regulations of the cabinet and other agencies.~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 9, 1994

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**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)**

**405 KAR 5:025. License requirements.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations, to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth licensing provisions for mineral operators with regard to general criteria, license duration, and handling of outstanding violations.

Section 1. General. Any person, partnership, or corporation desiring to conduct a mineral operation through a strip mining process, or through activities involving surface disturbance of underground mining, and surface disturbance of dredging operations, shall first obtain a license from the cabinet. One (1) license may cover more than one (1) mine site.

Section 2. License Duration. The license shall be issued to the mineral operator for a period of one (1) year; renewable each year thereafter. The license will not be renewed if there is a violation pending on a company until the violation has been abated. The company shall maintain a license as long as the mineral operation is permitted.

Section 3. Suspension of License. (1) After a reasonable notice is given and a hearing is held, pursuant to 405 KAR 5:085 and 405 KAR 5:095, a license may be suspended by the cabinet upon failure of a mineral operator to perform as required under a notice of

noncompliance and remedial measures or an order for cessation and immediate compliance.

(2) A mineral operator whose license has been suspended shall not be eligible to receive another license or to have a suspended license reinstated unless one of the following conditions are met:

(a) The mineral operator has complied with the notice or order and all other statutory and regulatory requirements have been satisfied;

(b) The land for which the license was suspended has been reclaimed without cost to the state; or

(c) The mineral operator has paid into the Kentucky State Treasury a sum that the cabinet finds is adequate to reclaim the lands.

Section 4. License Application Form. (1) The form, Application for Noncoal Surface Mining License, NCR-1, July/1994, is hereby incorporated by reference.

(2) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. SHEPHERD, Secretary

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**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)**

**405 KAR 5:030. Permit requirements.**

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300  
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations; to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation specifies certain information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies. Also contained herein, are provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation pertains to any person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements. A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas; including but not limited to, location of access roads, spoil or waste areas, and sedimentation ponds. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with appropriate persons including appropriate representatives of the applicant.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the location and address prescribed by the cabinet.

Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of:

(a) The applicant, including his phone number;

(b) The registered agent for service of process, if applicable, including his phone number;

(c) Any owners, partners, or if a corporation, any officers or stockholders owning ten (10) percent or more stock;

(d) The project engineer, along with his registration number and name of associated firm;

(e) The company and engineer in which correspondence concerning the subject permit shall be addressed to;

(f) Surface owners of record within the area proposed for mining, including areas overlying underground workings;

(g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and

(h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings.

(2) If the company has undergone a name change or changes during the previous five (5) years, list the names.

(3) Specify the applicant's legal structure.

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, specify the county and state where the name is registered.

(5) List previous Kentucky permits held by the applicant or any individual, partnership or corporation associated with the applicant.

(6) Provide the name of the contact person at the site, including his phone number.

(7) Specify whether the applicant currently holds a valid license from the division, and provide the effective date and expiration date of that license, if applicable.

(8) Specify the type of application, along with the permit number.

Section 3. Bond Information. When bond is required, as specified under 405 KAR 5:080, the following information shall be provided in the permit application:

(1) The bond amount per acre;

(2) The total amount of bond; and

(3) The bond type:

(a) If a surety is used, provide the bond number and surety.

(b) If a certificate of deposit is used, provide the bank name and CD number.

(c) If a letter of credit is used, provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If blasting [the proposed mineral operation] will occur within 300 feet of an occupied dwelling or if mineral extraction will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver from the [affected land]owner, acknowledging approval of the activity.

(2) If the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain a statement from the appropriate agency or local government with jurisdiction over the road that the public and the landowner affected will be protected.

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for [approving] the structure and a commitment from the landowner for maintenance [.] is required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the Commonwealth, the applicant shall

obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for any disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or any other point source discharge is proposed, a KPDES permit ~~[shall be obtained]~~ from the Kentucky Division of Water **is required**.

(6) If water withdrawal is proposed, a Water Withdrawal Permit shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, **state this in the application [show the zoning approval]**.

(8) If there are existing utilities such as gas lines, electric lines and poles, water lines, etc., the applicant shall submit letters of agreement signed by the applicant and the utility company that confirm that the applicant has consulted with the utility company and the company is in agreement that the proposed mining plan adequately protects the utilities.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with the appropriate date.

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representatives, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map which shall:

(1) Delineate the proposed permit area **and** ~~[including]~~ any areas overlying underground workings;

(2) Be of a scale of not more than one (1) inch to 400 feet;

(3) Show all other mine operations within 500 feet, of the proposed permit boundaries **and underground workings**, including~~;~~ those within the proposed permit boundaries;

(4) Delineate the property boundaries of all landowners within the proposed permit area **and areas overlying underground workings** and all landowners within 500 feet of the proposed permit boundary **and areas overlying underground workings**, along with the names of all the landowners;

(5) Delineate all **proposed [envisioned]** access roads onto the proposed mineral operation;

(6) Show the site slope;

(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 5:026 and 5:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as, parks, wildlife management areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary.

(8) Locate any sites listed on the National Register of Historic Places and any known archaeological sites.

(9) Delineate any wetlands which may be affected by the proposed mineral operation.

(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation.

(11) Show any proposed pit area, sediment structures, storage areas, and any other facilities and features related to the mineral operation.

(12) Provide a north point arrow.

(13) Contain a legend which shall:

(a) Provide the company name;

(b) Provide the application number;

(c) Provide the county and quadrangle names;

(d) Provide the site coordinates;

(e) Provide the site address;

(f) Provide the map scale and contour interval;

(g) Provide a description of the site location including:

1. The nearest stream; and

2. The distance and direction from the nearest road intersection or town;

(h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;

(i) Provide acreage breakdowns of the various mineral operation features and facilities including, pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected; and

(j) Specify the deposit to be mined.

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:

(a) The engineer's registration number; and

(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:

(a) Latitude and longitude;

(b) The nearest community;

(c) The name of the nearest stream;

(d) The nearest public road intersection;

(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur.

(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance.

(3) Specification of the mineral to be extracted.

(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation.

(5) Specification of whether any active discharges exist which may affect the proposed mineral operation. If so, provide the following information:

(a) The pH of the discharge; and

(b) The source of the discharge.

(6) Specification of whether underground workings will be encountered, and the distance, in feet, to the nearest active deep mine.

(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural resource information. The applicant shall specify whether any sites listed on the National Register of Historic Places or any known archaeological sites exist within, or adjacent to, the proposed permit boundary. If these sites exist, the following information shall be provided:

(1) Identification and description of the site or sites;

(2) A description of the measures to be taken to mitigate adverse impacts to the site or sites; and

(3) Show the location of the sites on the map.

Section 11. Environmental resources information. (1) ~~[The applicant shall specify whether the proposed mineral operation will occur within, or in any way affect, a wetland. If so, delineate wetland areas on the map.]~~

(2) The applicant shall indicate whether there are any wildlife management areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within

the vicinity of the proposed mineral operation. If these lands exist, delineate them on the map.

(2) [(3)] The applicant shall indicate whether disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.

(3) [(4)] The applicant shall indicate whether there are any outstanding resource waters, pursuant to 401 KAR 5:026 and 5:031, within the vicinity of the proposed mineral operation. If so, delineate these waters on the map.

Section 12. Hydrologic Balance of Surface Waters Protection Plan. The permit application shall contain a hydrologic balance of surface waters protection plan which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 5:055, and shall include the following information:

(1) The number of sedimentation ponds proposed, accompanied by designs, drawings and specifications for each structure to include:

- (a) The structure number;
- (b) The number of acres to be disturbed within the drainage area;
- (c) The number of acres in the drainage area;
- (d) Sediment storage capacity;
- (e) Storage capacity at the principal spillway;
- (f) Storage capacity at the emergency spillway;
- (g) Spillway capacities;
- (h) Structure height measured from the downstream toe; and
- (i) All other engineering designs, dimensions and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055 or otherwise required by the cabinet.

(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment will be removed and disposed.

(3) The applicant shall state whether any permanent sedimentation ponds are proposed.

(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate any other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. (1) If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment which demonstrates compliance with 405 KAR 5:055.

(2) If a permanent impoundment is proposed, a narrative shall be provided, in addition to the specifications of subsection (1), addressing information pertinent to the permanent impoundment.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:

(a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary.

(b) Specifies the intended postmining land use for the proposed permit area.

(c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.

(2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:001.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:070, and is consistent with, 405 KAR 5:065, and that provides the following information:

(1) Identification of the material that will be redistributed on the regraded area as a plant growth medium.

(2) ~~Results of analysis, or a commitment that analysis will be conducted, for the topsoil for the following parameters:~~

- (a) Buffer pH;
- (b) Nitrogen;
- (c) Potassium;
- (d) Phosphorus;
- (e) Percent of organic material; and
- (f) Texture class.

~~(3) Results of analysis, or a commitment that analysis will be conducted, for minimum application rates for fertilization requirements.~~

(4) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre).

(3) [(6)] Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre).

(4) [(6)] The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by appropriate descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky registered professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) A prospective applicant for a new permit required under KRS Chapter 350, shall publish at least once, a public notice of his intention to file an application for that permit. The publication shall be made by advertisement in the newspaper of largest bona fide circulation, in the county wherein the proposed mining site is located. If the proposed mining site is in more than one (1) county, publication is required in the newspaper of largest bona fide circulation in each county.

(2) The publication shall be made not less than ten (10) nor more



than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled, "Notice of Intention to Mine Noncoal Minerals", and shall be in a manner and form prescribed by the department and shall include, though not be limited to, the following:

- (a) Name and address of the applicant;
- (b) Permit application number;
- (c) The location of the proposed mining site;
- (d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mineral operations.
- (4) The applicant for a new permit required by KRS Chapter 350, shall establish the date and place at which the, "Notice of Intention to Mine Noncoal Minerals", was published, by attaching to his application proof satisfactory to the cabinet of ~~[an affidavit from the publishing newspaper certifying]~~ the time, place and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained when the mineral permittee desires to modify his mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:

- (1) The application for revision shall be filed with the cabinet and approved ~~[within sixty (60) days]~~ prior to the date on which the mineral permittee expects to revise the mineral operation;
- (2) The term of a permit shall remain unchanged by a revision; and
- (3) The application for revision shall be submitted in the form prescribed by the cabinet.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral operations under the permit. Applications for amendment may be filed at any time during the term of the permit.

- (1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit under this administrative regulation.
- (2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:080, for each additional acre or fraction thereof.

Section 24. Permit Renewals. Any valid permit issued pursuant to this chapter shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit.

- (1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.
- (2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized under the existing permit, the portion of the application which addresses any new land areas shall be subject to all applicable requirements of this chapter, and a new original permit application shall be required for these areas.
- (3) The permit renewal shall be issued if the following requirements are met:
  - (a) The application for renewal shall be submitted in the form prescribed by the cabinet;
  - (b) The mineral permittee shall submit all revised or updated information required by the cabinet, including but not limited to:
    1. An updated operational plan current to the date of request for renewal; and
    2. Specification of the status and extent of all mineral operations

on the existing permit area;

- (c) The mineral permittee is in compliance with all applicable statutes and administrative regulations;
- (d) The present mineral operation is in compliance with all applicable statutes and administrative regulations; and
- (e) The mineral permittee shall provide any additional bond that the cabinet may require.

Section 25. Permit Succession. ~~[transfers. (1) No permit issued pursuant to this chapter shall be transferred by sale, assignment, lease, or otherwise except upon the prior written approval of the cabinet.]~~

- (1) ~~[(2)]~~ There shall be no succession on the permitted area without the prior written approval of the cabinet.
- (2) ~~[(3)]~~ The initial mineral permittee shall notify the cabinet, in writing, of any proposed succession~~[- sale, assignment, lease, or other transfer]~~.
- (3) ~~[(4)]~~ The cabinet may release the first mineral operator from reclamation responsibility under this chapter as to that particular mineral operation, however:
  - (a) There shall be no release until the successive mineral operator has been issued a permit and has otherwise complied with the requirements of this chapter; and
  - (b) The successor shall immediately assume, as a part of his obligation under this chapter, all liability for the reclamation of the area affected by the former permitted mineral operation.
- (4) ~~[(5)]~~ If the cabinet has given its prior written approval to the succession ~~[transfer]~~, a successor in interest to a mineral permittee who applies for a successor ~~[new]~~ permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.
- (5) ~~[(6)]~~ The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:

- (a) To technically withdraw the permit application;
- (b) To deny the permit application; or
- (c) To approve the permit application.
- (2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.
- (3) The time period shall restart on the date when the permit application is returned with deficiencies corrected.
- (4) If the application is not approved, the cabinet shall set forth the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.
- (5) If the mineral permittee disagrees with the decision of the cabinet he may, by written notice, request a hearing by the cabinet, pursuant to 405 KAR 5:095.
- (6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.

Section 27. Criteria for Permit Approval and Denial. No application for a permit and no mineral operation shall be approved, unless the application affirmatively demonstrates and the cabinet determines on the basis of information set forth in the application, and other available pertinent information, that:

- (1) The permit application is accurate, complete, and that all requirements of 405 KAR Chapter 5 have been complied with.
- (2) The mineral operation proposed can be carried out under the

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method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5.

(3) The proposed mineral operation will not constitute a hazard to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation which constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation.

(4) The proposed mineral operation will not adversely affect fragile lands, natural hazard lands, a wild river established pursuant to KRS Chapter 146 or jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior, pursuant to the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.) or result in the destruction or adverse modifications of the habitat of these species.

(5) The proposed mineral operation will not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area.

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except:

1. Where mine access roads or haul roads join the right-of-way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made, by the cabinet, that the interest of the public and the landowners affected thereby will be protected.

(e) Not within the distances specified in Section 5 of this administrative regulation [300-feet], measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an allowance, as required by Section 5 of this administrative regulation. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver. Waivers obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to state law or if the mining has proceeded to within the distance limit prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required under Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates to

the satisfaction of the cabinet that the authorization is environmentally sound and that all other applicable laws and administrative regulations have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation will be conducted in compliance with all applicable statutes and administrative regulations.

(2) All mineral operations shall be conducted in accordance with all applicable statutes and administrative regulations and any conditions imposed by the cabinet on the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters 1 and 3, and 405 Chapters 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for any mineral operation or any surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless;

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum as the cabinet finds is adequate to reclaim the lands.

(4) If the applicant, mineral operator, any subcontractor, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied; however nothing contained herein shall be construed as to relieve a mineral permittee of responsibility with respect to any permit issued to him.

(5) If the cabinet determines that any activity regulated pursuant to 405 KAR Chapter 5, which is owned or controlled by the applicant, is currently in violation of any environmental law or administrative regulation of the Commonwealth, then the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof which is satisfactory to the cabinet that the violation has been corrected, or is in the process of being corrected in good faith; or

(b) Establish, to the satisfaction of the cabinet, that the applicant has filed and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of the violation.

(6) If the applicant submits the proof specified under subsection (5) of this section, then the cabinet may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that if the applicant loses his action contesting the violation that the violation be corrected within a specified time. Failure to comply with any conditions shall be grounds for revocation of the permit.

(7) If the applicant disagrees with the cabinet's determination under this section, then he has the right to request an administrative hearing pursuant to 405 KAR 5:095.

Section 30. Permit Conference and Public Comment. (1) Procedures for requests. Any person whose interests are or may be

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adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may request an informal conference. The agency or individual shall request that the Cabinet hold an informal conference on any application for a permit.

(a) [(1)] Briefly summarize the issues to be raised by the requester at the conference.

(b) [(2)] The conference shall be held at the Division of Field Services.

(c) [(3)] The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference.

(d) [(4)] The conference shall be conducted by a representative of the cabinet who may accept oral or written statements and any other relevant information from any party to the conference.

(e) [(5)] If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(f) [(6)] All comments and evidence will be taken into consideration by the Division of Field Services in Frankfort before a final decision is made on the disposition of the application.

(g) [(7)] The record shall be maintained and shall be accessible to the parties during the life of the mineral operation.

**(2) Any person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may submit written comments to the cabinet.**

### Section 31. Existing Mineral Operations not Previously Regulated.

(1) Existing mineral operations that were not permitted or regulated prior to the effective date of this administrative regulation shall obtain a permit within 180 days of the effective date of this administrative regulation.

(2) The cabinet may grant limited variances from the distance limitations of Section 27(6) of this administrative regulation where an existing disturbance within those limits was made prior to the effective date of this administrative regulation by an existing mineral operation that was not permitted or regulated prior to the effective date of this administrative regulation. These variances shall only be granted when no practical and reasonable remedial compliance measure can be identified.

Section 32. Documents Incorporated by Reference. (1) The following form is hereby incorporated by reference: Application for Surface Disturbance Mining Permit Noncoal Mining, NCR-2, March, 1990.

(2) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 9, 1994

FILED WITH LRC: September 12, 1994 at 3 p.m.

NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)

405 KAR 5:035. Signs and markers.

RELATES TO: KRS 350.010(2), 350.240, 350.300  
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029,  
350.240, 350.300  
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent

part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning signs and markers for noncoal mineral operations.

Section 1. General. (1) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of wood or metal.

(2) Signs and other markers shall be maintained by the mineral permittee during all mineral operations, to which they pertain, and shall be kept legible and visible and shall conform to all local ordinances and codes.

(3) Signs constructed pursuant to this administrative regulation shall be constructed of wood or metal, with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways.

(2) Signs shall clearly identify the name, business address, and telephone number of the mineral permittee and identification numbers of current mineral operation permits or other authorizations to operate.

(3) The signs shall not be removed until after release of permit.

(4) Failure to post the signs shall be grounds for revocation of the permit.

(5) The permit boundaries shall be clearly marked by durable and easily recognized markers **for the purposes of the permit walk.**

Section 3. Stream Buffer Zone Markers. Except where specifically approved, lands within 100 feet of perennial and intermittent streams shall not be disturbed. These areas are to be designated as buffer zones, and shall be marked along the interior boundary of the buffer zone **by durable and easily recognized markers.** [~~in a manner consistent with perimeter markers.~~]

Section 4. Blasting Signs. Blasting signs shall be posted in accordance with the requirements of the Department of Mines and Minerals.

Section 5. Topsoil markers. (1) If applicable, stockpiles, and other areas where topsoil or other plant growth material are segregated, shall be marked.

(2) If soil horizons are removed and stored separately, each soil horizon stockpile shall have a separate and appropriately marked sign.

(3) Placement and quantity of markers shall be sufficient to clearly define the stockpiles.

(4) Markers shall remain in place until the material is removed.

PHILLIP J. SHEPHERD, Secretary

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NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)

405 KAR 5:038. Blasting.

RELATES TO: KRS 350.010(2), 350.240, 350.300  
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029,

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350.240, 350.300

**NECESSITY AND FUNCTION:** KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation relates to the use of explosives for noncoal mineral operations.

Section 1. General. (1) If blasting is planned for the proposed mineral operation, it shall be conducted in accordance with the laws and administrative regulations of the Kentucky Department of Mines and Minerals, 805 KAR Chapter 4. ~~[(If at any time the laws and administrative regulations are not being complied with, Mines and Minerals Division of Explosives and Blasting, shall be notified.)]~~

(2) If flyrock falls outside the permit boundary, or if property damage occurs outside of the permit boundary, as a result of flyrock, then appropriate mitigative measures, as determined by the cabinet, shall be taken.

Section 2. Blasting signs. Warning signs shall be posted if explosives are to be used, in accordance with 405 KAR 5:035.

PHILLIP J. SHEPHERD, Secretary

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### **NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Amended After Hearing)**

#### **405 KAR 5:040. Access roads and haul roads.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

**NECESSITY AND FUNCTION:** KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions and specifications for constructing haul roads and access roads for noncoal mineral operations.

Section 1. General. (1) Each mineral permittee shall design, construct, utilize, and maintain roads and restore the area to meet the requirements of this administrative regulation and to control or minimize erosion and siltation, air and water pollution, and to prevent damage to public or private property.

(2) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run-off outside the permit area. Any additional contributions shall not be in excess of limitations of state or federal law.

(3) The design of roads shall be certified by a qualified registered professional engineer as being in accordance with specifications, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that they will result in performance, with regard to safety, stability and environmental protection, equal to or better than, that resulting from roads complying with the specifications of this administrative regulation.

(4) Use of a preexisting private road, or any portion thereof by the

mineral operator requires:

(a) That the road be kept open and in a condition that local traffic can use it without damage to their means of transportation.

(b) That if any disturbance by the mineral operator makes the road impassable, a detour of comparable usability shall be provided.

(5) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the cabinet for stream crossings.

(6) Stream fords are prohibited unless they are specifically approved by the cabinet as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Section 4 of this administrative regulation.

(7) Access roads, haul roads, and any yard areas or parking areas shall be maintained with proper surface materials to prevent erosion.

(8) The deposition of mud and other debris on public roads shall be minimized to the extent possible in order to prevent public nuisance.

Section 2. Specifications for Access and Haul Roads. (1) The grade of an access road shall be such that:

(a) There shall be no more than 400 feet of grade exceeding ten (10) percent.

(b) The maximum grade shall not exceed fifteen (15) percent for 300 feet.

(c) There shall not be more than 300 feet of maximum grade for each consecutive 1,000 feet of road constructed.

(d) All grades referred to in this subsection shall be subject to a tolerance of two (2) percent grade.

(2) Appropriate drainage control shall be provided for access and haul roads conforming to the following stipulations:

(a) A ditch shall be provided on both sides of a throughcut, and on the inside shoulder of a cut-fill section, with ditch relief cross drains being spaced according to grade.

(b) Water shall be intercepted before reaching a switch back or large fill and be led off.

(c) Water on a fill or switch back shall be released below the fill, not over it.

(d) Ditch relief structures shall be installed, where possible, according to Appendix A of this administrative regulation which represents spacing in terms of percent of ditch line grade on the basis of 100 square inch openings per culvert.

(3) Cut slopes shall not be steeper than specifically authorized by the cabinet, and shall not be steeper than 1v:1.5H in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be specifically authorized by the cabinet if geotechnical analysis demonstrates that a minimum safety factor of one and five-tenths (1.5) can be maintained.

(4) Embankment slopes shall not be steeper than 1v:2H, except where the embankment material is a minimum of eighty-five (85) percent rock. Slopes with eighty-five (85) percent rock shall not be steeper than 1v:1.35H.

(5) If a berm is produced in skimming the road, it shall not be left on the ditch side.

(6) Access roads shall not be surfaced with any acid-forming or toxic-forming material, the surface being that part of the road exposed to the elements of wind, rain, and sun.

(7) No bridges, culverts, stream crossings, or similar structures, shall be removed until the reclamation is completed.

(8) When an access road is to be abandoned, ~~[and will no longer be used as a road by the mineral operator, the landowners, or the state or national forest services,]~~ surface drainage and vegetative cover shall be provided to minimize erosion.

(a) Regardless of the future use of the road, adequate surface

drainage shall be provided.

(b) A road will be considered to be abandoned when the mineral operator has ceased to use the road and has not turned the road over to another party for his use.

(c) When adequate surface drainage and vegetative cover has been provided, the mineral operator shall be relieved of all further obligations in maintaining the road.

(9) If the cabinet determines that modifications are necessary because of topography or particular watershed situations, the cabinet may make the modifications.

(10) All measurements referred to in this section, including grade limitations, shall be subject to a tolerance of plus or minus five (5) percent of measurement.

(11) Typical section showing width of road cut, fill slopes, surface material of road, a center line profile with grades, pipe location and size, shall be included in the permit application.

Appendix A of 405 KAR 5:040

DITCH LINE GRADIENT SPACING OF CULVERTS (FEET)  
(PERCENT) (Shall not exceed)

2	600
3	500
4	400
5	320
6	275

PHILLIP J. SHEPHERD, Secretary

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**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)

**405 KAR 5:045. Protection of cultural and environmental resources.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for the protection of historical sites, archaeological sites, fish and wildlife values and related environmental entities.

Section 1. Cultural Resources. (1) No mineral operation shall adversely effect a site listed on the National Register of Historic Places.

(2) Adequate steps shall be taken for the protection of significant known archaeological sites, as determined by the cabinet.

(3) The cabinet may prohibit any mineral operation that would adversely affect any other historic land, as determined by the cabinet.

Section 2. Environmental Resources. (1) Any mineral permittee shall, to the extent possible, minimize disturbances and adverse impacts to fish and wildlife, and related environmental values.

(2) Any mineral permittee shall comply with all federal and state laws and regulations related to endangered or threatened species. [No mineral operation shall be conducted which is likely to

~~jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior, or which is likely to result in the destruction or adverse modification of a designated critical habitat of these species, in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.), or is likely to negatively impact a species protected by similar state statutes.]~~

(3) No mineral operation shall be conducted which will result in the adverse effects to or modification of a wetland without the appropriate permits and approvals.

(4) No mineral operation shall be conducted within the boundaries of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; National Recreational Areas; state nature preserves dedicated pursuant to KRS 146.410; or state wildlife management areas; the Wild and Scenic Rivers System, including study rivers designated under section 5(a), of the Wild and Scenic Rivers Act (16 USC Sec. 1276 (a)), or rivers or study river corridors as established in any guidelines pursuant to that Act; rivers and their corridors designated under the state Wild Rivers Act pursuant to KRS Chapter 146; or similar public lands.

(5) No land within 100 feet of an intermittent or perennial stream shall be disturbed by mineral operations, except where appropriate permits or approvals have been obtained.

(6) The cabinet may prohibit any mineral operation that would adversely affect any fragile land, as determined by the cabinet.

(7) The cabinet shall prohibit any mineral operation on a natural hazard land if necessary to protect the health, safety, or welfare of people, property, or the environment.

PHILLIP J. SHEPHERD, Secretary

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**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)

**405 KAR 5:050. Protection of the hydrologic balance of surface waters.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions and specifications for the protection of surface waters from noncoal mineral operations.

Section 1. General. (1) Appropriate protection measures shall be designed, constructed, and maintained to minimize disturbance of the hydrologic balance of surface waters within the permit area, to prevent material damage to the hydrologic balance of surface waters outside the permit area, and to prevent additional contributions of sediment to streamflow or to run-off outside the permit area.

(2) Protection measures include practices carried out within and adjacent to the disturbed area.

(3) The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the disturbance.

(4) Hydrologic balance of surface waters protection measures

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consist of the utilization of proper mining, reclamation methods, and incorporated practices, singly or in combination, including but not limited to:

(a) Disturbing the smallest practicable area at any one time during the mineral operation through progressive backfilling and grading, and timely revegetation;

(b) Shaping the backfill material to encourage a reduction in the velocity of run-off, to an extent which is consistent with the requirements of this chapter;

(c) Retention of sediment within the pit and disturbed area;

(d) Utilization of straw dikes, riprap, check dams, mulches, vegetative buffer zones, dugout ponds, silt fence, and other measures that reduce overland flow velocity, reduce run-off volume, and entrap sediment;

(e) Utilization of other appropriate treatment facilities such as chemical treatment for acid and metals; and

(f) Sedimentation ponds.

(5) Maximum utilization shall be made of on site sediment control practices.

(6) All surface drainage from the disturbed area, including disturbed areas which have been graded, seeded, or planted, shall pass through sediment control structures and, where necessary, other treatment facilities that have been approved by the cabinet, before leaving the permit area.

(a) Sediment control structures shall be retained until untreated drainage from the disturbed area has met the water quality requirements of the administrative regulations of the Division of Water and the revegetation requirements of 405 KAR 5:070 have been met.

(b) All sedimentation ponds required shall be constructed in accordance with this chapter and placed in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water.

(c) Sedimentation ponds may be used individually or in series, and shall be located as near as possible to the disturbed area, and where possible, out of major stream courses.

(7) No mineral operation shall violate any state or federal water quality standard or the effluent limitations established in the administrative regulations of the Division of Water.

(8) The cabinet may require other actions, above and beyond the requirements of this administrative regulation, as necessary to ensure that surface waters are protected.

Section 2. Pond Design Specifications. At a minimum, all sedimentation ponds shall be designed to meet the requirements for impoundments in 405 KAR 5:055 and the following additional specifications:

(1) Sedimentation ponds shall be designed, constructed, and maintained to prevent short circuiting.

(2) Sedimentation ponds shall **be designed** ~~[provide a detention time]~~ so that discharges from the pond shall meet the effluent limitations of the administrative regulations of the Division of Water.

(3) ~~[There shall be no overflow through the emergency spillway resulting from a ten (10) year, twenty four (24) hour precipitation event or lesser event, except where a single open channel spillway is approved under 405 KAR 5:055.]~~

(4) The elevation of the crest of the emergency spillway shall be a minimum of one and one-half (1.5) feet above the crest of the principal spillway.

Section 3. Sediment Removal. (1) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations of the administrative regulations of the Division of Water or as directed by the cabinet.

(2) Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and

groundwater quality.

(3) Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas.

Section 4. Other Permits and Approvals. (1) Storm water permits, withdrawal permits, and KPDES permits are issued by the Division of Water. General KPDES permits are available from the Division of Water on mineral operations that have a mineral operation permit from the department if they meet certain criteria.

(2) If a mineral operation is located in a flood plain it requires the approval of the Division of Water and the Corps of Engineers.

(3) If a mineral operation requires stream crossings such as low water fords, bridges, etc., the structures are required to be approved by the Division of Water.

PHILLIP J. SHEPHERD, Secretary

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### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Amended After Hearing)

#### 405 KAR 5:055. Permanent and temporary impoundments.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for impoundments.

Section 1. Requirements for Permanent and Temporary Impoundments. (1) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(2) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 401 KAR 4:030. Criteria for the hazard classifications are established by 401 KAR 4:030.

(3) Stability.

(a) 1. Permanent and temporary "dams" (as defined in KRS 151.100), permanent and temporary Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least one and two-tenths (1.2).

2. Impoundments not included in subparagraph 1 of this paragraph shall have a minimum static safety factor of one and three-tenths (1.3) for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, of the



embankment as measured from the upstream toe of the embankment to the top of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be ripped or otherwise stabilized and no vegetative cover is needed. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(i) Measures shall be taken to control seepage in order to ensure stability of the embankment.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the impoundment with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a) 1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary "dams" (as defined in KRS 151.100), for permanent and temporary Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. Where an approved temporary impoundment has been constructed and the mineral permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Spillways. Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in

this subsection, unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Class A impoundments that are not "dams" (as defined in KRS 151.100) shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary impoundment; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent impoundment.

(b) Temporary class A impoundments that are "dams" (as defined in KRS 151.100) shall pass the 100 year, six (6) hour precipitation event.

(c) Permanent and temporary class B and C impoundments and all permanent "dams" (as defined in KRS 151.100) shall comply with the criteria established in 401 KAR 4:030.

(d) Emergency spillway grades and allowable velocities shall be approved by the cabinet.

(7) Single spillway. Class A impoundments that are not "dams" (as defined in KRS 151.100) may use a single spillway if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) Emergency procedures. If any examination or inspection of an impoundment discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The mineral permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the mineral permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Additional Requirements for Permanent Impoundments.

(1) General.

(a) The retention of a permanent impoundment is subject to the approval of the cabinet.

(b) Permanent pit impoundments with no embankment are encouraged.

(c) ~~However,~~ It shall be demonstrated to the cabinet's satisfaction that adequate sources of water are available to maintain the water level of the impoundment at a reasonable elevation at all times. Adequate sources of water supply for impoundments may be from springs, drainage areas of sufficient size, groundwater percolation, a flowing stream, or any combination of these sources.

(d) ~~[(e)]~~ In accordance with 405 KAR 5:030, a narrative description of the water impoundment shall be submitted in addition to the plans and specifications. This narrative shall describe, in detail, all pertinent information pertaining to the water impoundment.

(e) ~~[(d)]~~ In accordance with 405 KAR 5:030, if a permanent impoundment is proposed, an affidavit from the landowner~~;~~ approving the impoundment and committing to maintenance, is required, except for final pit impoundments with no embankment.

(f) Permanent impoundments shall be demonstrated to be a part of the approved postmining land use.

(2) If a permanent impoundment is proposed, the following stipulations shall be met:

(a) Adequate means of access, such as roads or ramps, are left or provided to the water impoundment.

(b) A terrace shall be provided above, but in near proximity to, the high water level of the permanent impoundment, except on the portion of the impoundment comprising the highwall of the pit.

(c) Any spoil above the terrace shall be graded until it is rounded off and blended into the area contour above the terrace.

(d) All spoil piles adjoining access roads to permanent impoundments shall be graded to minimize erosion and blend into the

surrounding area.

(e) The angle of the slope from the roadbed to the top of the spoil may be greater than the surrounding area if adequate drainage measures are taken to prevent erosion of the slope, including but not limited to, terracing and vegetation.

(f) The roadbed shall be adequately drained and culverts shall be provided so as to prevent it from being eroded.

(g) The area above the highwall on any permanent water impoundment shall be protected by a landscape barrier or a fence approved by the Department for Surface Mining Reclamation and Enforcement.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 9, 1994

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**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)**

**405 KAR 5:060. Handling of materials.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning backfilling and grading, handling of wastes, handling of acid or toxic-forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mineral operations on steep slopes.

Section 1. Backfilling and Grading. (1) General statement concerning backfilling. All overburden that is not placed in approved excess spoil fills shall be placed back in existing pits and graded.

(2) Surface drainage.

(a) Natural drainways in the area affected by the mineral operation shall be kept free from overburden except where approved by the cabinet.

(b) If, during the mineral operation, it is necessary to cross a natural drainway, proper drainage structures shall be provided.

(c) Sufficient water retarding structures, silt control structures, and diversion ditches, constructed as approved by the cabinet, shall be placed to control all run-off from the mineral operation before the work begins. These structures shall be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet.

(d) Any water accumulating on a bench or similar area where the drainage is off the mineral operation shall be pumped or siphoned into sediment control structures.

(e) The moving of overburden to release accumulated water shall be prohibited unless a drainway can be constructed with the approval of the cabinet.

(3) If the mineral operation produces a highwall, at least one (1) suitable access shall be provided to lands above the highwall within each 4,000 feet of distance along the highwall. In addition, access shall be provided as necessary so no landowner is prevented access to his property.

(4) Spoil or overburden removed shall be placed, graded, and stabilized so that soil erosion, surface disturbance, and stream sedimentation will be minimized.

(5) All grading shall be kept current and shall be completed before equipment pertinent to the mineral operation is moved from the site unless approved, in writing, by the cabinet's inspector.

(6) If conditions develop in the mineral operation so that the approved reclamation plan and backfilling and grading plan cannot be carried out as planned, modifications of the plan shall be submitted by the mineral operator to the cabinet for approval.

Section 2. Waste Materials. (1) The conduct of mining and the handling of refuse and other mining wastes shall be done in such a way as to reduce adverse effects in the area and to protect the public and adjoining landowners from damage to their lands, to streams, and to other property.

(2) Upon final abandonment, all buildings, structures, metal, lumber, and other refuse resulting from the mineral operation shall be removed or buried.

(3) Spoil, overburden, refuse, or any other mining waste shall not be placed on a previous or potential slide area. The placement of the material shall be subject to approval by the cabinet.

(4) Unless specifically authorized by the cabinet by a permit from the Division of Waste Management, household wastes or other wastes, generated off site, shall not be placed within the pit area or within the permit boundary of a mineral operation.

Section 3. Acid-forming or Toxic-forming Materials. (1) All acid or toxic-forming material shall be buried with not less than four (4) feet of clean fill as cover.

(2) Measures shall be taken to prevent stream and soil pollution, such as placement of acid or toxic-forming materials outside of natural drainways.

(3) The mineral permittee shall conduct testing of materials as directed by the cabinet.

Section 4. Topsoil Handling. (1) General requirements.

(a) If practicable, all topsoil or subsoil to be saved for redistribution, specified under subsection (2) of this section, shall be removed as a separate layer or layers from the area to be disturbed and shall be segregated from other materials.

(b) If practicable, after removal, these materials shall be redistributed immediately to backfill areas, or otherwise stockpiled.

(c) After redistribution, if the topsoil becomes encrusted and hard, it shall be scarified prior to seeding.

(2) Soil removal. For areas where topsoil is to be removed and saved as a plant growth medium:

(a) Vegetative cover that would interfere with the salvage or use of the topsoil shall be cleared. Herbaceous vegetation and other small plant forms which will add to the organic constituency of the topsoil, but do not interfere with topsoil salvaging, may be retained along with the topsoil.

(b) All the topsoil present in the area to be disturbed shall be removed and segregated for redistribution.

1. If less than six (6) inches of topsoil is present, then at least the upper six (6) inches of topsoil shall be removed and segregated for redistribution, except where less than six (6) inches of soil is present.

2. Where less than six (6) inches of soil is present, whatever soil and subsoil is available, at the area to be disturbed, shall be removed and segregated for redistribution.

(c) To the extent practicable, all subsoil, above and beyond that which is referenced in this subsection, shall be removed and segregated for redistribution. This subsoil material shall be redistributed as a separate layer immediately below the soil materials referenced in this subsection.

(3) Soil storage.

(a) Soil materials removed pursuant to subsection (2) of this section shall be stockpiled only if it is impractical to promptly redistribute the materials on regraded areas.

(b) Stockpiled soil shall be selectively placed on stable areas,

outside of water drainways and shall:

1. Be protected from wind and water erosion through the seeding of quick cover grasses or legumes and application of mulch;
2. Be seeded with perennial grasses and legumes if the soil is to be stockpiled for more than two (2) years; and
3. Be protected from unnecessary compaction.

(4) Soil amendments.

(a) Lime shall be applied to redistributed topsoil in an amount to obtain a buffer pH of six and four-tenths (6.4).

(b) Adequate fertilizer shall be applied to redistributed topsoil [~~based upon soil tests performed by a qualified laboratory using standard methods~~]. At a minimum, 100 pounds of nitrogen (N) and 100 pounds of phosphate ( $P_2O_5$ ) shall be applied per acre.

(c) Areas where topsoil has been redistributed shall be seeded with quick cover and permanent grasses and legumes as soon as possible during first normal period of favorable planting.

(d) Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, promote germination of seeds, and increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent.

Section 5. Disposal of Excess Spoil. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water run-off from the fill on surface and groundwater;

(b) Ensure mass stability and prevent mass movement during and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Location. Where possible, placement in pits shall be the preferred location for disposal. Otherwise the disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of 405 KAR Chapter 5, and shall be placed, where possible, upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) Placement in pits. On a case-by-case basis, the cabinet may waive all or part of the requirements of subsections (4) through (7) of this section where spoil is placed in pits where there is no potential for mass movement or substantial erosion.

(4) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.

(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5). The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(5) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer. Parameters used in the stability analyses shall be based upon adequate investigations of foundation and fill material, as approved by the cabinet, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of the materials or, if approved by the cabinet, data obtained from other sources that yield results which ensure compliance with the applicable stability requirements of this administrative regulation. The analyses

of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8h:1v (thirty-six (36) percent) or a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock), rock toe buttresses, or a combination of these shall be constructed to ensure stability of the fill.

(6) Placement of excess spoil.

(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and redistributed in accordance with Section 4 of this administrative regulation. If approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts of a thickness approved by the cabinet; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material.

(c) 1. The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface run-off from the top surface of the fill shall not be allowed to flow over the outslope of the fill. The outslope of the fill shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion.

3. Terraces may be constructed on the outslope of the fill. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. The outslope between terrace benches shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion. Run-off shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route run-off to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the fill.

(7) Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive underdrain requirements for fills that are not hollowfills if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainways, or wet-weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. In no case shall surface run-off from above the fill be diverted through or under the fill.

(b) Surface water run-off from the area above the fill shall be diverted away from the fill and into stabilized diversion channels. Surface run-off from the fill surface shall be diverted to stabilized channels off the fill. Diversions associated with excess spoil fills and appurtenant structures shall be designed and maintained to safely pass the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event, except that diversions associated with hollowfills and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid-forming, and nontoxic-forming rock; shall be free of coal, clay, and nondurable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices. For hollow-fills a subdrainage system for the fill shall be constructed in accordance with the following:

1. Be installed along the natural drainways;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(8) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

Section 6. Additional performance standards for mineral operations on slopes of more than twenty (20) degrees.

(1) The mineral permittee shall prevent the following materials from being placed or allowed to remain on the downslope:

- (a) Spoil;
- (b) Waste materials, including waste mineral matter;
- (c) Debris, including that from clearing and grubbing of haul road construction; and
- (d) Abandoned or disabled equipment.

(2) Nothing in this section shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapter 5 and the material is moved and placed in a controlled manner.

(3) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(4) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

PHILLIP J. SHEPHERD, Secretary

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**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)**

**405 KAR 5:065. Premining and postmining land use.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning land use decisions for noncoal mineral operations.

Section 1. General. All areas within the permit boundary to be reclaimed shall be restored ~~[as soon as practicable]~~:

(1) To conditions capable of supporting the uses which those areas supported prior to the mineral operation; or

(2) To conditions capable of supporting a reasonable, alternative land use, as approved by the cabinet under section (2) of this administrative regulation.

Section 2. Land Use Selection. (1) The following is a list of land use categories to be applied under this administrative regulation. These land uses are defined under 405 KAR 5:001, as is the definition of land use:

- (a) Cropland;
- (b) Fish and wildlife;
- (c) Forest land;
- (d) Industrial/commercial;
- (e) Pastureland;
- (f) Recreation; and
- (g) Residential.
- (h) Permanent water impoundment.

(2) The premining land use selection, required under 405 KAR 5:030, shall be derived from the list of land uses established under subsection (1) of this section.

(3) The postmining land use selection, required under 405 KAR 5:030, shall be derived from the list of land uses established under subsection (1) of this section. The premining land use shall be strongly considered and be given the highest priority for the postmining land use selection.

(4) A land use for fish and wildlife shall be characterized by an intermixed combination of habitat types or vegetative types, such as a mix of forest land or woodlots, shrub/scrub areas, grass/legume areas, and wetland or open water areas, arranged in a manner as to maximize edge effect. In addition, the following specifications shall apply to a postmining land use selection for fish and wildlife:

(a) At least thirty (30) percent of the revegetated area shall be planted with trees and shrubs. The plantings may be arranged in clumps, blocks, or strips intermingled within open grass/legume areas.

(b) Plant species which provide special benefit as food or cover for wildlife shall be a central criteria for selection of plant species for revegetation.

(5) Various wildlife enhancement features and techniques may be allowed, if approved by the cabinet, for the fish and wildlife postmining land use, as well as the other land uses, such as:

- (a) Brush piles, not to exceed an aerial coverage of 2,800 square feet;
- (b) Windrowed brush;
- (c) Rock piles, not to exceed an aerial coverage of 300 square feet;
- (d) Permanent impoundments and other open water areas;
- (e) Food plots of small grains or similar crops; and
- (f) Bird houses or similar structures.

PHILLIP J. SHEPHERD, Secretary

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**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)**

**405 KAR 5:070. Revegetation.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029,

350.240, 350.300

**NECESSITY AND FUNCTION:** KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for the reestablishment of vegetation on noncoal mineral operations.

Section 1. General. (1) Each mineral permittee shall establish on all lands disturbed during the course of the mineral operation, a condition which will result in a permanent vegetative cover, effective in controlling erosion, and which supports the approved postmining land use.

(2) Plant species for revegetation shall be selected on the basis of:

- (a) Their ability to achieve the approved postmining land use;
- (b) Their ability to control erosion, both in the short term and in the future, but which will allow for plant succession for areas to be returned to forest land or fish and wildlife habitat;
- (c) Their ability to promote soil rebuilding; and
- (d) Their benefit to wildlife.

(3) Regraded areas shall be seeded or planted as soon as possible; however, the seeding or planting shall be conducted during the appropriate time of year for the plant materials selected in accordance with accepted agricultural or reforestation practices.

(4) Experimental seeding or stocking of trees or shrubs, not typically used, may be allowed if no more than twenty (20) percent of the permit area is seeded or planted with these species; except that, any species used shall meet the requirements of subsection (1) of this section, shall not be in violation of applicable state and federal introduced species statutes, and are not considered poisonous or noxious.

(5) Roads shall be seeded to legumes and perennial grasses only, unless the cabinet determines that the roadway will not contribute to significant off site damage to the public, the environment, or adjacent property owners if left unreclaimed.

(6) If conditions warrant, the cabinet may allow exceptions to this administrative regulation, if the exceptions are consistent with 405 KAR Chapter 5.

Section 2. Soil Stabilization and Amendments. Liming, fertilization, mulching and related practices shall be conducted in accordance with 405 KAR 5:060, Section 4. **If there is a problem in reestablishing vegetation, soil tests shall be performed to determine necessary remedial measures.**

Section 3. Revegetation Success. (1) Success of revegetation shall primarily be determined on the basis of ground cover, and if applicable, tree and shrub stocking.

(2) Ground cover.

(a) For establishing ground cover for the various postmining land uses, at least four (4) grass and legume species shall be seeded, one (1) of which may be a quick cover species. At least one (1) permanent legume species, in addition to two (2) or more permanent grasses, shall be required for the pastureland postmining land use.

(b) At least one (1) quick cover grass or legume species shall be seeded. However, annual grasses and small grains shall be considered only as a tool in establishing temporary vegetative cover for restoration, and shall not be included in the evaluation of revegetation success.

(c) Ground cover shall be at least ninety (90) percent for areas where the postmining land use is pastureland, or where the area will be seeded to grasses and legumes under the cropland land use.

(d) Ground cover shall be at least eighty (80) percent for all other postmining land uses.

(e) For the selection of ground cover species, the mineral permittee shall consider, but not necessarily be limited to, the seeding

mixtures listed in Appendix A of this administrative regulation.

(3) Tree and shrub stocking.

(a) For areas to be reforested, at least 450 trees or shrubs shall be present per acre, including volunteers, during the success evaluation required under Section 4 of this administrative regulation; except, where a greater stocking rate is required for shrub plantings for wildlife pursuant to paragraph (d) of this subsection. A lesser stocking rate may be approved by the cabinet if the tree or shrub planting is only for cosmetic purposes or for similar reasons.

(b) At least four (4) species of trees or shrubs shall be stocked for areas to be reforested with each of the four (4) principal species comprising at least ten (10) percent of the total stocking, of which none shall exceed fifty (50) percent of the total stocking. A lesser diversity may be approved by the cabinet if tree or shrub planting is only for cosmetic purposes or for similar reasons. **Only one (1) species of tree is required if a commercial pine plantation is established.**

(c) Of the four (4) or more species referenced in paragraph (b) of this subsection, at least one (1) conifer species and at least one (1) hardwood or mast producing species shall be selected for the forest land and fish and wildlife land uses. For forestland, at least fifty (50) percent of the woody plants shall be trees.

(d) For areas within the permit boundary where shrubs, and no trees, are stocked for wildlife a stocking rate of 600 stems per acre shall be required.

(e) If used, black locust (*Robinia pseudoacacia*) shall not exceed twenty-five (25) percent of the woody plant mixture; and European black alder (*Alnus glutinosa*) shall not exceed fifty (50) percent of the total woody plant mixture.

(f) Black locust shall not be intermixed with sycamore (*Platanus occidentalis*) or cottonwood (*Populus deltoides*), but may be planted within portions of the permit area where sycamore and cottonwood are not stocked.

(g) Black locust seed shall be scarified, except if used in fall and spring seeding.

(h) All trees and shrubs counted for success shall be alive and healthy.

(i) Only canopy forming trees shall be stocked for a postmining land use of forest land.

(k) Tree and shrub stocking for wildlife may include border plantings, clump plantings, or strip plantings.

(l) For areas to be reforested, the use of competitive ground cover species such as KY 31 tall fescue (*Festuca arundinaria*), crown vetch (*Coronilla varia*), alfalfa (*Medicago* spp.), and the nonprostate, highway variety of sericea lespedeza (*Lepedeza cuneata*) shall be limited.

(m) The area above the highwall on any water impoundment shall be planted with trees in order to provide a protective barrier and screen.

(n) On very stony areas that cannot be hand planted without difficulty, direct seeding of woody species will be permitted; otherwise, woody species shall be hand planted, except for black locust.

(4) If a seeding mixture other than one established in Appendix A is chosen, for guidance in selecting woody species, and for assistance in other areas of revegetation, the mineral permittee shall consult published reclamation documents. The information may be obtained from the cabinet.

(5) Bare areas within the revegetated area shall not exceed one-fourth (.25) acre in size.

(6) Where a seam or stratum of solid rock at the surface makes revegetation impractical, none shall be required.

Section 4. Inspection and Reporting Procedures. (1) When planting is completed a planting report shall be filed with the cabinet. The division's planting report form shall be used for compiling this information.

(2) Inspection and evaluation for vegetation success shall be made during appropriate seasons in order to determine if satisfactory

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vegetation has been established. In no instance shall this inspection be made until after the completion of two (2) growing seasons. The appropriate report forms shall be used for compiling this information.

(3) The following form is hereby incorporated by reference: Noncoal Planting Report, NCR-18, March, 1990.

(4) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

## APPENDIX A OF 405 KAR 5:070 RECOMMENDED HERBACEOUS MIXTURES FOR REVEGETATION

Note: A species enclosed in parenthesis may be substituted for the species to the left. Its seeding rate is enclosed in parenthesis.

Species Mixture	Seeding Rate (Pounds/acre PLS)
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### Spring - February 15 to May 15

1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
White or Ladino clover	1
Red clover	4
Korean or Kobe lespedeza or mix of these	10
3. Orchardgrass	10
Birdsfoot trefoil (Alfalfa)	8 (15)
Red clover	6
4. Wheat (Spring oats)	25 (32)
Switchgrass	10
Indiangrass	10
Big bluestem	5
Little bluestem	5
Birdsfoot trefoil	6

Except for mixture 4, add one (1) of the following quick cover species to the selected permanent spring seeding mixture:

Wheat (before April 15)	30
Spring oats (before April 15)	32
Balbo rye (before April 15)	30
Perennial ryegrass	10
Annual ryegrass	5
Weeping lovegrass (after April 1)	2

### Summer - May 15 to August 1

Orchardgrass	10
Korean or Kobe lespedeza or mix of these	15
Red clover	4
White clover (Birdsfoot trefoil)	1 (6)
Alfalfa	12

Add one (1) of the following quick cover species to the permanent summer seeding mixture:

Sorghum	20
Foxtail (German) millet	12
Japanese millet	15
Soybeans	40
Cowpeas	40
Pearl millet	10

### Fall - August 1 to October 1

1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
Alfalfa (Birdsfoot trefoil)	15 (8)
Red clover	6
3. Deertongue	12
Birdsfoot trefoil	8
Red clover	6

Add one (1) of the following quick cover species to the selected permanent fall seeding mixture:

Winter wheat	30
Balbo rye or Winter rye	30
Winter oats	32
Perennial ryegrass	10
Annual ryegrass	5

### Mixtures for Wet or Poorly Drained Areas and Pond Borders

#### Spring - February 15 to May 15

Japanese millet	10
Redtop (Reed canarygrass)	3 (15)
Alsike clover	4
Common annual lespedeza (quick cover species)	10

#### Fall - August 1 to October 1

Redtop	3
Reed canarygrass	15
Alsike clover	6
Common annual lespedeza (quick cover species)	10

### Mixture for Areas to be Stocked With Woody Plants

#### Spring or Fall Seeding

Redtop	3
Perennial ryegrass	5
Birdsfoot trefoil (Appalow lespedeza)	10 (20)
Foxtail millet (quick cover species)	5

If both Appalow lespedeza and birdsfoot trefoil are used, cut their seeding rates in half.

Note: Seeding Rates are for Pure Live Seed. Seeding rates of the permanent species can be increased if desired, but do not exceed the seeding rate of the temporary species.

Use only one (1) of the temporary species at the rates shown. If more than one (1) are used, reduce the seeding rates of each temporary species appropriately.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 9, 1994

FILED WITH LRC: September 12, 1994 at 3 p.m.



**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)

**405 KAR 5:085. Enforcement.**

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300  
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029,  
350.240, 350.300, 350.990

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions governing the issuance of the various notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation directs that there be issued a notice of noncompliance and order for remedial measures if there is a violation. The administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of an imminent danger to the health or safety of the public or significant, imminent environmental harm to land, air, or water resources. The administrative regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the administrative regulations contained in 405 KAR Chapter 5.

(2) Unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner of the Department for Surface Mining Reclamation and Enforcement are deemed the authorized representatives of the cabinet for the purposes of this administrative regulation.

Section 2. Inspections. (1) General. In accordance with the provisions of this chapter, the cabinet shall conduct or cause to be conducted such inspections, studies, investigations or other determinations as it deems reasonable and necessary to obtain information and evidence which will ensure that mineral operations are conducted in accordance with the provisions of all applicable statutes and administrative regulations, and all terms and conditions of the permit.

(2) Right of entry and access. Authorized employees of the cabinet shall have unrestricted right of entry to [all mineral exploration areas and] all parts of the mineral operation for any purpose associated with their proper duties pursuant to this chapter, including but not limited to, making inspections, and delivering documents or information of any kind to persons associated with the [exploration or] mineral operation.

(3) Timing and frequency of inspections.

(a) The cabinet shall conduct periodic inspections of all mineral operations.

(b) Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the cabinet deems these inspections necessary to properly monitor compliance with all applicable laws and administrative regulations.

(c) The cabinet shall have no obligation to give prior notice that an inspection will be conducted or to obtain a warrant.

(4) Citizens request for inspections. [Any citizen of this Commonwealth having knowledge that any of the statutes and administrative regulations pertaining to mineral operations are willfully and deliberately not being enforced may bring the failure to enforce to the

attention of the cabinet according to the provisions of this administrative regulation.]

(a) Any citizen may request that the cabinet conduct an inspection by furnishing to the cabinet, a signed, written statement, or an oral report followed by a signed written statement, giving the cabinet reason to believe that a violation, condition, or practice in violation of KRS Chapter 350, administrative regulations promulgated pursuant thereto, or permit conditions exists, and setting forth a telephone number and address at which the person can be contacted.

(b) The identity of any person supplying information to the cabinet relating to a possible violation or imminent danger or harm shall remain confidential with the cabinet if requested by that person, unless disclosure is required by law.

(c) Within a reasonable time, the cabinet shall send to the person the following:

1. If no inspection was conducted, an explanation of the reasons why no inspection was conducted;

2. If an inspection was conducted, a description of the enforcement action taken, if any, or an explanation of why no enforcement action was taken.

[All requests to enforce the law shall be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law, with sufficient information to identify the statutory provision, administrative regulation, order, or permit condition allegedly violated and the act or omission alleged to constitute a violation.

1. The request shall state the name, address and telephone number of the person making the request.

2. The request shall state the name, address and telephone number of the legal counsel, if any, of the person making the request.

3. The stating of false facts and charges in the affidavit shall constitute perjury and shall subject the affiant to penalties under the law of perjury.

4. The cabinet shall investigate the allegations made in the demand and respond, in writing, to the person making the request. The response shall specifically state the results of the investigation and the action, if any, the cabinet has taken or intends to take.

5. The identity of any person supplying information to the cabinet relating to a possible violation or imminent danger or harm shall remain confidential with the cabinet if requested by that person, unless disclosure is required by law.

(b) If the cabinet refuses a request for a hearing, or delays action for more than sixty (60) days after the request to enforce the provision, the citizen shall have the right to bring an action of mandamus in the circuit court of the county in which the subject mineral operation is being conducted. The action may be brought immediately after a request for enforcement if the violations constitute an imminent threat to the health or safety of the complaining citizen or would immediately affect a legal interest of the complaining citizen.]

Section 3. Notice of Noncompliance and Order for Remedial Measures. (1) Any authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of an inspection, he finds a violation of KRS Chapter 350, 405 KAR Chapter 5, any permit condition, or any other applicable statute or administrative regulation.

(2) A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized employee who issued it. The notice shall contain the following information:

(a) The nature of the violations;

(b) The remedial measures required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time table for remedial action, if any, which may include a time table for accomplishment of interim steps, if appropriate.

ate; and

(d) An adequate description of the portion of the mineral operation to which the notice applies.

(3) An authorized employee may modify an order for remedial measures for good causes.

(4) Extensions and modifications of notices for remedial action. An authorized employee may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued. The total time for remedial action under the notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice.

(5) Based upon the written recommendation of authorized representative of the cabinet who issued the notice of noncompliance and order for remedial measures, the director of the Division of Field Services may vacate a notice of noncompliance and order for remedial measures determined to be issued in error.

Section 4. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of the notice within the time for remedial action established in the notice or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, any condition or practice; any violation of KRS Chapter 350; any violation of 405 KAR Chapter 5; or any violation of a term or condition of the applicable permit ~~[or exploration approval]~~ which:

1. Creates an imminent danger to the health or safety of the public; or
2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, that mineral operations are being conducted by a person without a valid mineral operations permit for the activities ~~[or that exploration operations are being conducted without proper notice of intention to explore or approval for the operations, as applicable]~~ in accordance with this chapter.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;
2. A reasonable description of the portions of the mineral operations to which it applies;
3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and
4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he shall also issue a notice of noncompliance and order for remedial measures.

(3) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all mineral operations ~~[all exploration and reclamation operations]~~ or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet deems

necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (4) of this section; or until it is vacated, modified, or terminated by a hearing officer.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless the order states that the reclamation operations and other activities shall cease.

(4) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the director of the division of field services may vacate an order for cessation and immediate compliance determined to have been issued in error.

(5) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a person who has been identified as owning or controlling the mineral permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 5. Notice of Inspection of Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he shall reinspect the areas affected by the mineral operations ~~[or the exploration operations]~~ on or soon after the date given in the notice or order for completion of remedial measures. At the time of this reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

- (a) The remedial measures have been completed, and the notice or order is therefore terminated;
- (b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or
- (c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated, initiate an administrative hearing for suspension or revocation of the permit or approval, initiate an administrative hearing for bond forfeiture, or initiate administrative hearings for other appropriate relief.

Section 6. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, any order for cessation and immediate compliance, and any notice of inspection of noncompliance shall be served on the person to whom it was issued

or the person's designated agent promptly after issuance.

(2) Each notice or order shall be served by hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the mineral operations referred to in the notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For mineral operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the mineral permittee as identified on the permit or in the application; or, if no address is identified for the mineral permittee in the application, to such other address as is known to the cabinet. If no person is present at the site of the mineral operations, services by mail shall by itself be sufficient notice.

(3) Designation by any person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 5:085, shall be made a part of the applicable permit application. The person shall continue as agent for service of process until written revision of the permit is approved which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by the mineral operations and any person having an interest in the permit [or exploration].

Section 7. Penalties. The cabinet may assess penalties pursuant to KRS 350.990.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 9, 1994

FILED WITH LRC: September 12, 1994 at 3 p.m.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amended After Hearing)**

**405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions.**

RELATES TO: KRS 350.010(2), 350.240, 350.300, 350.990, 224.10-410

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.050, 350.0301, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350, in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings, service, and administrative hearings for orders to abate and alleviate.

Section 1. Conduct of Administrative Hearings. (1)(a) Requests for an administrative hearing by persons other than the cabinet. Any person aggrieved by an order or determination of the cabinet may request in writing that an administrative hearing be conducted by the cabinet. The request shall be filed with the Office of Administrative

Hearings in Frankfort. The request for an administrative hearing shall include a short and plain statement identifying the basis of the request and the order or determination being contested. If the request for an administrative hearing involves a notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment, the request shall plainly identify the notice or order being contested. The request shall not operate as a stay of any order or notice. The right to demand an administrative hearing shall be limited to a period of thirty (30) days after the requester has had actual notice of the action, or could reasonably have had the notice.

(b) Burden of proof. In review of notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice, order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner. In all other cases where the administrative hearing is requested by persons other than the cabinet, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(2) Initiation of an administrative hearing by the cabinet.

(a) The cabinet may initiate an administrative hearing and may seek suspension or revocation of the permit and forfeiture of the bond if:

1. It has reason to believe that a violation of KRS Chapter 350, 405 KAR Chapter 5, or a permit condition has occurred or is occurring; or

2. A mineral permittee has failed to pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or

3. The cabinet has reason to believe that additional remedies should be sought or that an order should be entered against any person to protect the environment or the health and safety of the public; or

4. The criteria of 405 KAR 5:080 apply.

(b) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense.

(3) At any administrative hearing held pursuant to subsection (1) or (2) of this section, the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations;

(e) Any other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) If the cabinet revokes or suspends the permit, mining operations on the permit area shall immediately cease, and the mineral permittee shall:

(a) If the permit is revoked, complete reclamation within the time specified in the order; or

(b) If the permit is suspended, complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order.

(5) Informal settlement conferences. As an alternative to the administrative hearings provided at subsection (1) of this section, a permittee or other person issued a notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment may request an informal conference with the director, Division of Field Services, by submitting a written request for an informal conference to the office of the director. The time for requesting an informal

conference shall be limited to a period of thirty (30) days following issuance of the notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment. A request for informal conference shall not toll the time for requesting an administrative hearing pursuant to subsection (1) of this section.

(6) Administrative summons. Upon request pursuant to subsection (1) of this section, or upon initiation by the cabinet pursuant to subsection (2) of this section, the cabinet shall schedule an administrative hearing before the cabinet to be held not less than twenty-one (21) days after the notice of demand for an administrative hearing, unless the person complained against waives, in writing, the twenty-one (21) day period. The administrative summons, including a notice of administrative hearing, shall be served in accordance with Section 2 of this administrative regulation and shall include the following: a statement of the time, place, and nature of the administrative hearing; a statement of the legal authority for the administrative hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for granting of the administrative hearing. For all administrative hearings initiated pursuant to subsection (2) of this section, notice shall also be mailed to any intervenors, and shall be posted at the department's appropriate regional office.

(7) Prior to an administrative hearing under this administrative regulation, and upon seven (7) days' written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, consolidation of actions, admission of facts and documents which will avoid unnecessary proof, limitation of the number of witnesses, and other matters as will aid in the disposition of the matter. Final disposition of the matter may be made at the conference by stipulation, settlement, agreed order, summary disposition, or default for nonappearance. The parties may hold additional conferences as may be proper to resolve any issue in dispute.

(8) Any party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and 400 KAR 1:040 shall apply to cases before the cabinet, consistent with KRS Chapters 224 and 350. The hearing officer shall permit any party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default. Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for default.

(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. If necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except if precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, if an administrative hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative

hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10) Each administrative hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. The record of the administrative hearing, consisting of: all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; proposed findings and recommended orders; and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS Chapter 224. If certified by the cabinet as a true and correct copy of the testimony, the transcript shall constitute the official transcript of the evidence.

(11)(a) After the administrative hearing, the hearing officer shall issue a determination based on the preponderance of evidence appearing in the record as a whole. The determination shall set forth whether, in fact, the violation did occur. If the violation occurred, the determination shall specify a recommended penalty and recommended remedial or compliance actions to be taken by the mineral permittee or the person conducting the mineral operation.

(b) In addition to the requirements of paragraph (a) of this subsection:

1. The hearing officer may recommend suspension or revocation of the permit or forfeiture of the bond if the mineral permittee has violated any provision of KRS Chapter 350; 405 KAR Chapter 5; a permit condition; or a final order, including failure to pay a civil penalty assessed in a final order of the cabinet;

2. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations;

3. The hearing officer may recommend that a person or persons be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350; 405 KAR Chapter 5; or a permit condition, if the violations are found to exist on the basis of a preponderance of the evidence; and

4. For permit determinations, the hearing officer may recommend that a permit was issued in violation of applicable statutory and regulatory criteria, and may recommend suspension or revocation of the permit and may further recommend remedial or compliance actions to be taken by the mineral permittee.

(12) The hearing officer shall recommend the amount of a civil penalty pursuant to KRS 350.990(1) and (2) and the recommendation shall be based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall state with particularity the reason, supported by the record of the administrative hearing, for the penalty assessed in the final written report.

(13) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall mail, postage prepaid, a copy of the report and recommended order to all parties. The parties may file, within fourteen (14) days of receipt of the hearing officer's report and recommended order, exceptions to the report and recommended order. There shall be no other or further submissions.

(14) The secretary shall consider the report and recommended

order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue his or her own final order.

(15) The cabinet shall mail the final decision of the cabinet to the parties. If any extension of time is granted by the secretary for a hearing officer to complete the report, the cabinet shall notify all parties at the time of the granting of the extension.

(16) The secretary shall not grant an extension of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) extensions shall be granted.

(17) A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.

(18) There shall be no ex parte communications between the parties or representatives of the parties and the hearing officer.

(19) Any person aggrieved by a final order of the cabinet may seek judicial review as set forth in KRS 224.10-470 (pertaining to abate and alleviate orders), 350.0305(2) and 350.032(2).

(20) Nothing herein shall prevent the cabinet from taking appropriate action in circuit court.

Section 2. Service. (1) Except as provided in subsections (3) and (4) of this section, any proposed penalty assessment, notice of administrative hearing, or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(a) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to any person authorized by the secretary or by any statute to deliver them, or to any person authorized to deliver service for the purpose of an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(2) Service is effective upon acceptance of the document by any mineral permittee at the permit address, upon refusal to accept the document by any person at the permit address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) In addition to the provisions of subsection (1) through (3) of this section, the provisions of 400 KAR 1:030, shall apply to service resulting from or attendant to administrative hearings under this

administrative regulation.

Section 3. Temporary Relief. (1)(a) Pending completion of the investigation and administrative hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or the administrative regulations or a determination by the cabinet to issue a permit or release a bond.

(b) A petition for temporary relief shall be in writing, shall be filed with the Office of Administrative Hearings, with notice to the Department of Law, and shall contain the following:

1. A detailed statement setting forth reasons why temporary relief should be granted;

2. A showing that there is a substantial likelihood that the petitioner will prevail on the merits upon a final determination of the proceeding;

3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources;

4. If the petition relates to an order for cessation and immediate compliance, a statement of whether the requirement for a decision on the petition within five (5) working days is waived; and

5. A statement of the specific relief requested.

(2) A hearing officer may grant temporary relief after making a written finding that the relief is warranted, and shall state the reasons for the finding. The hearing officer shall grant or deny relief expeditiously; however, if the petition relates to an order for cessation and immediate compliance relief shall be granted or denied within five (5) working days of receipt by the office of the petition. A hearing officer may grant temporary relief from notices and orders issued pursuant to 405 KAR Chapter 5 or a determination by the cabinet to issue a permit or release a bond, upon conditions as are deemed appropriate, only upon a finding that:

(a) The parties were given an opportunity to be heard in a location acceptable to both the cabinet and the petitioner;

(b) The petitioner has shown that there is a substantial likelihood that the findings on the merits in an administrative hearing conducted before the cabinet will be favorable to the petitioner;

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources; and

(d) The relief sought is not the issuance of a permit if a permit has been denied, in whole or in part, by the cabinet, nor the release of a bond if a bond release request has been denied.

Section 4. Orders to Abate and Alleviate. If the secretary issues an order to abate and alleviate pursuant to KRS 224.10-410 the cabinet shall provide the permittee or person to whom the order was issued an opportunity to be heard not more than ten (10) days following issuance of the order, unless waived in writing by the permittee or person. The order to abate and alleviate shall be filed with the Office of Administrative Hearings, which shall issue an administrative summons pursuant to Section 1(6) of this administrative regulation. Neither the scheduling nor holding of an administrative hearing pursuant to this section shall operate to terminate or stay the order, nor operate to relieve the permittee or person(s) named in the order from performing the affirmative obligations imposed in the order to abate and alleviate, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 9, 1994

FILED WITH LRC: September 12, 1994 at 3 p.m.

## ADMINISTRATIVE REGISTER - 1144

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement (Amended After Hearing)

**601 KAR 15:010. 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

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 misconduct 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 depart-

ment 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) **Temporary transfer of work station for up to sixty (60) days; or**

(e) 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.

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(6) 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.

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### (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

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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~~].

**(45) Sexual harassment.**

**(a) Commissioned employees shall not engage in any form of sexual harassment.**

**(b) Sexual harassment 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.**

**(c) Sexual harassment 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: September 6, 1994

FILED WITH LRC: September 9, 1994 at 9 a.m.

**WORKFORCE DEVELOPMENT CABINET  
Department of Vocational Rehabilitation  
(Amended After Hearing)**

**781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.**

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), 20 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195, 34 CFR 361.31(b)

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation sets forth when an order of selection and an economic need test will be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients. Federal guidelines for imposition of an order of selection necessitate state policies and practices as a condition for continuation of federal funding. KRS Chapter 13A requires that those policies and practices be promulgated as administrative regulations.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that is not readily amenable

to - or likely to be corrected through - surgical intervention or medical treatment. Use of the term permanent functional limitation in the agency's order of selection seeks to differentiate between those mental or physical conditions that are usually remedied through the provision of a physical or mental restoration service(s) and those other conditions or disabilities that impose or are likely to impose a permanent loss or substantial reduction in functioning regardless of surgical or medical intervention.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Individual with the most severe disabilities" means an individual who has a severe disability and who requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability.

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows and with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Books, supplies, tools and equipment for vocational and other training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) ~~Telecommunications, sensory, and other technological aids and devices;~~

(g) ~~Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;~~

(g) ~~[(h)] Postemployment services except as provided in subsection (2)(a) through (m) [(k)] of this section;~~

(h) ~~[(i)] Tuition and initial registration fees for training beyond the baccalaureate level;~~

(j) ~~Interpreter services for individuals who are deaf except as provided in subsection (2)(f) of this section;~~

(k) ~~Reader services for individuals who are blind;~~

(l) ~~Rehabilitation technology except as provided in subsection (2)(e) and (f) of this section; and~~

(i) ~~[(m)] Other goods and services which can reasonably be expected to benefit an eligible individual in terms of an employment outcome.~~

(j) Vehicle and property modifications in excess of \$6,000.

(2) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational [Diagnosis and evaluation of] rehabilitation needs [potential];

(b) Counseling and guidance;

(c) Services provided by staff at state-owned and operated rehabilitation facilities;

(d) Placement;

(e) [Professional] Rehabilitation technology [engineering services];

(f) [Rehabilitation engineering devices necessary for assessment of rehabilitation potential;

(g) Communication assistance in the individual's native language; [including interpreters for individuals who are deaf for purposes of providing services set forth in paragraph (a), (b), (c), (d) or (e) of this subsection];

(g) [(h)] Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

[(i)] Adjustment training, driver training, on-the-job training; and

(h) [(j)] Supported employment; [job coaching];

(i) Interpreter services for the deaf;

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(j) Reader services for the blind;

(k) Personal assistance services;

(l) Tutors, note-takers, and assistive technology educational aides;  
and

(m) Other training, including driver training, on-the-job training, job coaching, job development and training.

(3) Except as provided in 781 KAR 1:060, clients who do not meet total financial need criteria shall apply 100 percent of the monthly excess household income to their rehabilitation program.

(4) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test in figuring the excess monthly household income.

Section 3. Order of Selection. When the commissioner determines that the agency shall be unable to provide services to all eligible applicants, the agency shall implement the order of selection.

(1) A client previously declared eligible for vocational rehabilitation services shall not be affected when the agency implements an order of selection.

(2) The order of selection shall not regulate the provision of information and referral, [be applicable for clients whose needs are for nonpurchased services only - (counseling, guidance, [placement, referral services,] coordination of comparable benefits, [or] third party payments, or job development and job placement to otherwise eligible individuals)].

~~(3) [The order of selection shall not be applicable for clients whose needs are for services at agency-owned and-operated rehabilitation facilities or for services at contracted private not-for-profit rehabilitation facilities.]~~

(4) On implementation of the order of selection, the agency shall continue to accept referrals of and applications from individuals with disabilities.

~~(4) [(6)]~~ The order of selection shall not regulate the provision or authorization of assessment for determining eligibility [diagnostic and evaluation services].

~~(5) [(6)]~~ All applicants shall be declared eligible or ineligible as appropriate ~~[on a timely basis].~~

(6) [(7)] Any client entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If, however, the priority category is closed, the individual's case shall be held in accepted status until such time as the priority category assigned is opened or the order of selection is lifted.

(7) [(9)] The order of selection policy shall permit immediate reclassification into a higher priority category whenever circumstances justify the reclassification.

~~(8) [(9)]~~ If the agency is unable to provide services to all eligible individuals [clients] with severe disabilities, eligible individuals with the most severe disabilities shall be served. If the department is unable to serve all eligible individuals [identify clients] with ~~[the most]~~ severe disabilities, eligible individuals [clients] with severe disabilities shall be served on a first-applied, first-served basis established by date of application.

~~[(10) Clients with nonsevere disabilities who are receiving nonpurchased services and who, due to unanticipated events, need purchased services, shall receive the necessary purchased services.]~~

(9) [(11)] The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) [(12)] The order of selection system shall have six (6) priority categories as follows:

(a) Priority I - eligible individuals with the most severe disabilities.

(b) Priority Category II - eligible individuals with a severe disability.

(c) Priority Category III - eligible public safety officers with a nonsevere disability sustained in the line of duty.

(d) Priority Category IV - eligible individuals with a nonsevere disability that results in permanent functional limitations and who are served as part of a cooperative funding agreement.

(e) Priority Category V - eligible individuals with a nonsevere disability that results in permanent functional limitations.

(f) Priority Category VI - all other eligible individuals whose disability is nonsevere.

SAM SERRAGLIO, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 8 a.m.

### CABINET FOR HUMAN RESOURCES Department for Social Services (Amended After Hearing)

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

RELATES TO: KRS Chapters 158, 161, 605, 610, 630, 635, 640, 645, 1994 Acts ch. 376 [326]

STATUTORY AUTHORITY: KRS 158.135, 194.050, 605.110

NECESSITY AND FUNCTION: KRS 605.110 requires that children maintained in a facility or program operated by the Cabinet for Human Resources shall so far as possible maintain a common school education. This administrative regulation sets forth policies for complying with KRS 158.135 and KRS 605.110 in Department for Social Services (DSS), Children's Residential Services (CRS), residential, day treatment programs, and group homes; other treatment programs operated, [or] contracted, or financed by the Cabinet for Human Resources serving committed youth and private child caring agencies serving committed children.

Section 1. Definitions. (1) "Cabinet for Human Resources programs" means both state-operated and state-contracted programs.

(2) "Citizens interest committee (CIC)" means the community group of volunteers and parents of youth currently served by the treatment facility, who serve as liaisons to the local treatment facility.

(3) "Department" means the Department for Social Services (DSS), Cabinet for Human Resources.

(4) "Educational administrative staff" means a principal, assistant principal, supervisor, coordinator, director, pupil personnel worker or guidance counselor employed or contracted by the Kentucky Educational Collaborative for State Agency Children to provide educational services.

(5) "Head teacher" means the lead teacher, principal, or lead educator designated by the local district or by the Kentucky Educational Collaborative for State Agency Children (KECSAC) to be responsible for the operation of the daily education program. The head teacher may also be the program director in some facilities.

(6) "Individual education program [plan] (IEP)" means the instructional program [plan] required for state agency children identified as having educational disabilities.

(7) "Individual plan of instruction (IPI)" means the instructional plan required for state agency children not identified as having educational disabilities.

(8) "Individual treatment plan (ITP)" means a social and behavioral intervention plan, including the plan for educational instruction, that is developed for each state agency child being served by a treatment institution or facility.

(9) "Instructional calendar" means the yearly schedule of educational events, including instructional, recreational, and teacher professional development days, holidays and vacation days.

(10) "KDE" means the Kentucky Department of Education.

(11) "KECSAC" means the Kentucky Educational Collaborative for

State Agency Children.

(12) "KERA" means Kentucky Education Reform Act.

(13) "Local school district" means the school district where the state agency child resides [~~state agency children are provided educational services~~].

(14) "Program director" means the administrator at a state operated or contracted institution or day treatment facility or administrator of a private child care agency that is responsible for the safety and security of youth and staff and the operation of the treatment facility.

(15) "Private child care agency" means a private, not state operated program, which provides care or treatment for committed children on a per child contractual basis.

(16) "SAEC" means State Agency Education Council that functions as the site-based decision-making body for state agency children schools.

(17) "School" means the site where the educational program for state agency children is provided.

(18) "State agency children" means those children financed by the Cabinet for Human Resources or those children of school age committed to or in the custody of the Cabinet for Human Resources and placed in a Cabinet for Human Resources operated or contracted institution, facility or day treatment program, or committed children placed in private child care agencies as governed by KRS 158.135(1)(a).

(19) "State agency children's fund" means appropriations to support KRS 158.135 previously known as out-of-district funds.

(20) "Treatment" means the total array of services utilized to produce a positive change in children served by the treatment facility.

Section 2. Governance. (1) An advisory board for the Kentucky Educational Collaborative for State Agency Children (KECSAC) composed of twelve (12) members appointed by the Governor shall provide recommendations in policy development. The KECSAC shall determine the length of terms for members. The advisory board shall meet at a minimum biannually.

(2) Contracting procedures.

(a) The department shall contract with a university training resource center for the establishment of the KECSAC which shall be responsible for the oversight or administration of state and federal education funding to provide educational services to state agency children. The KECSAC shall be financed by the state agency children's fund. The KECSAC shall have knowledge and experience in the following:

1. Kentucky Education Reform Act (KERA), and Kentucky's system of schools;

2. State and federal statutes pertaining to youth with educational disabilities; i.e., American with Disabilities Act and Section 504 of the Rehabilitation Act;

3. Kentucky Unified Juvenile Code and the operation of agency programs for juvenile offenders, status offenders and dependent children; and

4. Research regarding the education of at-risk, incarcerated and difficult to motivate youth.

(b) KECSAC shall cooperatively plan programs and state agency children's fund budgets with the department, KDE, State Agency Education Councils (SAEC) and local school districts providing programs to state agency children. Local school districts shall be notified of projected funding levels by KECSAC by January 1, for the following school year.

(c) The KECSAC application to the department shall contain educational goals and objectives for the biennium for which funding is requested. The goals and objectives shall reflect KERA mandates, American Correctional Association standards, Correctional Education Association standards and the specific educational needs of state agency children. The educational goals and objectives shall be compatible with and complimentary to the treatment goals for state

agency children.

(d) The KECSAC with the cooperation of the department and KDE shall develop written procedures for the operation of the statewide education system for state agency children to be completed by July, 1995.

(3) Staffing.

(a) Teachers and other educational staff shall be employed through the local school district where the treatment facility is located. If the local school district is not able or willing to provide the educational personnel for the state agency children's treatment facility, the KECSAC shall be notified in writing no later than one year prior to the expiration of the current contract. The KECSAC may contract with another school district for educational staff.

(b) Educational administrative staff, supervisors and teachers employed or contracted by the KECSAC shall meet Kentucky education certification requirements and shall be annually evaluated. Educational staff employed by school districts shall be evaluated in accordance with local school district policy. The KECSAC shall develop procedures for evaluating staff employed directly by the KECSAC and shall receive copies of the evaluation of educational staff by the local school district.

(c) Each state agency school program shall designate a head teacher.

(d) Education staff directly employed by the KECSAC shall be compensated at rates at least commensurate with public school employees with comparable qualifications, experience and assignments in the school district where the treatment facility is located. Statewide KECSAC positions shall be compensated at rates comparable to the average of education positions with similar responsibilities, credentials and experience providing education to state agency children.

(e) State agency children programs shall have a minimum of one (1) certified special education teacher on staff by the 1995-96 school year. The employment of special education certified teachers shall reach at least one-half (1/2) of the total teachers employed in each state agency program by the school year 1996-97. Exceptions shall be made only with the agreement of the agency treatment facility, the local school district, and KECSAC.

(f) Other specific services identified by the admission and release committee as needed for a youth shall be accessed by contract agent. The KECSAC shall comply with the following administrative regulations relating to youth with disabilities: 707 KAR 1:160, 707 KAR 1:170, 707 KAR 707 KAR 1:180, 707 KAR 1:190, 707 KAR 1:200, 707 KAR 1:210, [and] 707 KAR 1:220, 707 KAR 1:230 and 707 KAR 1:240.

(4) State Agency Education Council (SAEC). Pursuant to KERA requirements related to site-based decision making councils, state agency education programs shall establish SAEC for each school operated under KECSAC by school year 1996-1997.

(a) Formation of SAEC.

1. The SAEC shall have as members, two (2) teachers, one (1) head teacher, one (1) juvenile counselor or one (1) direct care staff in private child care program, one (1) local citizens interest committee member from the treatment facility and the facility program director. In cases where the head teacher or principal and program director are the same person, an additional educational representative shall be selected. The head teacher shall serve as the chair of the SAEC.

2. Teacher members of the council shall be nominated and elected by the teachers at the school where they are assigned. The juvenile counselor or direct care staff council member shall be nominated and elected by juvenile counselors or staff at the facility where the counselor is assigned.

3. The local CIC members of the SAEC shall be nominated and elected by CIC members, and shall not be an employee or relative of an employee of the school district, local school board, or employees or relative of an employee of the state or private child care agency staff.

4. Nomination and election of council members shall be held during April each year with the term of services to begin July 1. Each member shall be selected by secret ballot by their respective classification peers, except in circumstances where that member class is comprised of only one individual who shall automatically be a member of the council. Council members shall serve terms of one (1) year and are eligible for reelection.

(b) Training of council members shall be the responsibility of the KECSAC. The council shall work cooperatively with the local school district, KDE, and KECSAC to pursue training that meets the needs of the council.

(c) Responsibilities of the SAEC.

1. The SAEC shall have the authority to establish school policy which provides an environment to enhance student achievement and assist schools in meeting goals established by state and federal regulations, local school district policy, KECSAC and program contract requirements and the school council itself. Activities of the SAEC shall be designed to improve the identified educational goals of state agency youth.

2. The head teacher shall be the primary educational administrator and the instructional leader of the school and shall be responsible for insuring implementation decisions of the council.

3. Areas of responsibility assumed by the council shall be in compliance with KRS 160.345. The council, within KECSAC, department and local school district policies, shall adopt policies to be implemented by the state agency school program. The SAEC functions may include the following:

- a. Establish rules and bylaws for general operating procedures;
- b. Determining school priorities, based on an assessment of the educational needs of the students and goals for schools as established in KRS 158.6451 for state agency children.
- c. Plan the process for the initial and periodic academic, behavioral, cognitive and vocational assessments of state agency youth.
- d. Plan for regular involvement of educational personnel on state agency program treatment teams.
- e. Establish procedures to coordinate the educational planning with treatment planning.
- f. Establish program-level budget priorities within funding allocations to assist the students in the school in meeting the established educational goals.
- g. Plan the curriculum to enhance the attainment of student educational goals;
- h. Conduct educational program needs assessment;
- i. Plan for technology and its utilization;
- j. Select instructional materials appropriate to address educational goals improvement;
- k. Review and determine instructional practices and needed professional development for improved programs;
- l. Determine which instructional supplies shall be ordered in the school;
- m. Prioritize and select equipment;
- n. Determine educational staff time and assignments including paraprofessional and other support personnel;
- o. Schedule the academic day and week consistent with treatment facility policy and local education agency policy;
- p. Make recommendation of use of school space during the school day;
- q. Establish relationships with parents and members of the surrounding community;
- r. Coordinate the implementation of special programs as mandated by state and federal statute and regulation;
- s. Develop procedures for and facilitation of academic transition of youth to local educational and work settings;
- t. Recommend the employment of head teacher or principal and other teacher and staff vacancies within contract limitations and in consultation with the local education agency or the Director of KECSAC.

4. The SAEC shall submit to the KECSAC and the local school district an annual program plan or transformation plan. The components of the plan shall be specified by KECSAC.

5. SAEC meetings.

a. The head teacher or principal shall be the chair of the council and shall be responsible for securing minutes that record the council's actions.

b. Decisions shall be made by consensus.

c. Meetings of the council are open to the public and subject to open meetings as governed by KRS 61.805, KRS 61.810 and KRS 61.815.

6. Appeal of SAEC decisions. Appeal of council decisions may be made by a parent, student, employee of the school, state agency program staff or resident of Kentucky. The SAEC and the KECSAC shall develop a process for appealing a decision made by the SAEC as governed by KRS 160.345.

(5) Policy application. In the case of conflicting policies (e.g. the use of corporal punishment), the Cabinet for Human Resources policies for the care and treatment of youth shall be followed.

(6) Student eligibility. If a specific activity (e.g., football, debate, etc.) is not provided to youth in a state or private contracted agency program, the youth shall not lose eligibility to participate based on the requirements in 702 KAR 7:070. Eligibility shall be figured on a month to month basis (e.g., nine (9) months in a DSS facility without a formal football program leaves nine (9) months of eligibility in a local school district). The eligibility period shall not exceed one (1) additional year. Other eligibility criteria however, shall be met by the youth.

Section 3. Finance. (1) The amount of funds generated by state agency children under the Support Education Excellence in Kentucky (SEEK) Program as specified in KRS 157.360 for the guaranteed SEEK base and adjustments shall be sent annually to the Cabinet for Human Resources to utilize in total to contract with the KECSAC for the purpose of providing education for state agency children as governed by KRS 158.135. The KECSAC shall contract with local school districts where state agency programs are located. If a school district has elected not to provide educational services to state agency children, the KDE shall annually deduct the state SEEK base and adjustments and an amount equal to the local portion of the SEEK base and adjustments from the school district that choose not to provide services. This amount shall be sent to the Cabinet for Human Resources to utilize in total to contract with the KECSAC to provide educational services to state agency children.

(2) Funds generated by the Support Educational Excellence in Kentucky (SEEK) formula by state agency children shall be used to fund the contract budgets between the KECSAC and local school districts and shall be used in total for direct and supportive educational services for state agency children. The base funding level set out in KRS 157.360 and KRS 160.470 which is the guaranteed amount of revenue per pupil which is generated by the state agency children shall:

(a) Consist of a combination of state SEEK funds and state funds designated through KRS 158.135 for state agency children who were not residents of local school districts providing education to the children prior to placement in the state agency program; and

(b) Consist of a combination of state and local SEEK funds and state agency children's funds designated through KRS 158.135 for children in state agency programs who were already residents of the local school district providing education to the children prior to placement in the state agency program.

(3) The KECSAC shall be considered the same as a school district for the generation, application, distribution and accountability of state and federal funds, other than SEEK, available to educate state agency children.

(4) An annual contract or memorandum of agreement shall be negotiated between the KECSAC and each school district providing

education to state agency children. An itemized budget shall be part of the contract.

(5) The State Agency Children's Fund as specified in KRS 158.135 shall be sent from KDE to the Cabinet for Human Resources and provided to the KECSAC through contract with the Cabinet for Human Resources. Budgeting procedures utilized for the school year 1993-94 shall be utilized as part of the 1994-96 biennial plan for allocation of funds. By the 1996-1998 biennium, the KECSAC shall design and phase in an equitable system to distribute these funds by approved contract with local school districts to provide state agency children educational programs, educational administration, educational support services and discretionary funds which support projects designed to improve the education of state agency children.

(6) The KECSAC as part of the contract with each local school district shall facilitate, with the State Agency Education Council and the local school district, the plan for professional development of certified staff. If the local school district has chosen not to provide the educational services to state agency children, the KECSAC with the State Agency Education Council shall develop and present to the KDE a plan for professional development. The KECSAC shall submit the annual consortia professional development plan to the KDE. The professional development plan shall summarize the professional development activities for certified education staff.

(7) The KECSAC shall submit a master technology plan to the School Facilities Construction Commission and the KECSAC shall receive a direct allocation of technology funds which shall be matched by state agency children's funds.

(8) Pursuant to KRS 157.190, 157.110, and 160.330 the KECSAC staff shall, as part of the biennial budget plan, make a request to the Commissioner of KDE for the textbook needs of state agency children. The State Agency Educational Councils shall provide the KECSAC with projected textbook needs for the children in their specific state agency program.

(9) The KECSAC shall obtain information from the Kentucky Department of Education and the Workforce Development Cabinet regarding all discretionary and entitlement state, federal and miscellaneous funding opportunities available to local school districts and file applications or reports necessary to procure and use funds for the education of state agency children.

(10) If the Cabinet for Human Resources is opening or contracting with a new program for treatment services, the Cabinet for Human Resources shall notify KDE and KECSAC prior to the biennial budget submission regarding the projected number of youth to be educated in the new program. The education budget for the new program shall be based on expected capacity for the first year of operation rather than prior year average daily attendance. Thereafter, the budget shall be based on prior year average daily attendance.

(11) The KECSAC shall submit an application for adult education services for youth age sixteen (16) years and above who are committed to the Cabinet for Human Resources and shall use funds received to provide Adult Basic Education services to eligible youth.

#### Section 4. Operations. (1) Assessments.

(a) KECSAC shall develop procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas in order to determine educational objectives for the individual treatment plan. Educational goals and objectives shall be consistent with goals specified in each youth's individual treatment plan.

(b) If the youth is suspected to have an educational disability as governed by 707 KAR 1:180 and 707 KAR 1:190 an assessment shall be administered, following required due process procedures.

(c) School psychologists may be employed or contracted by the KECSAC for purposes of meeting required procedures for state agency children with educational disabilities.

(2) State agency children with identified educational disabilities. In school districts providing contract services, the KECSAC staff and agency program staff shall coordinate the completion of required

individual education plan procedures for the identification, evaluation, implementation and placement of children with educational disabilities pursuant to 707 KAR 1:180 and 707 KAR 1:190.

#### (3) Instructional services.

(a) The teacher pupil ratio for state agency children shall be no more than ten (10) students to one (1) teacher without a classroom aide and fifteen (15) students to one (1) teacher with a classroom aide and comply with 707 KAR 1:230.

(b) An individual plan of instruction shall be developed for state agency children with goals and objectives that relate to the education goals set out in KRS 158.6451. The individual plan of instruction shall be developed in coordination with the ITP. If a youth is determined to have an educational disability the IEP requirements as governed by 707 KAR 1:180 shall apply.

(c) A 230 day school calendar year shall be in operation unless specified otherwise in the youth's ITP or IEP. The head teacher in consultation with the local school district and program director shall submit a 230 day school calendar to the KECSAC with the annual contract for services. The calendar shall specify instructional, professional development, holiday and vacation days for the school year beginning July 1 of the contract year.

(d) State agency children who are fourteen (14) years of age or older who do not have an identified educational disability with an IEP and who do not read at a sixth grade level as measured by a standardized achievement test, shall be provided developmental reading, listening and writing instruction.

#### (4) Accountability.

(a) State agency children shall have the same assessments administered as other public school youth in A-5 and A-6 schools as specified in 703 KAR 4:080. The average daily attendance data for day treatment programs and the results of the assessments shall be included in the accountability index of the last A-1 school the youth attended prior to admittance to a state agency program or the A-1 school the youth would have attended if the youth had remained in that local school district.

(b) State agency children shall develop portfolios consistent with the content requirements of the state's assessment program. A youth's portfolio shall be sent to the receiving school as part of the educational records when youth transition from the state agency program.

(c) An accountability system shall be designed by the KECSAC for state agency school programs. The accountability system shall address the attainment of the goals for schools set out in KRS 158.6451 for state agency children. A companion system of rewards and sanctions to those specified in 703 KAR 4:080 for A-2 through A-6 schools shall be designed by the KECSAC.

(d) State agency children's school programs shall be in compliance with accreditation standards of the American Correctional Association and the Correctional Educational Association, if appropriate and if consistent with the KECSAC mission and school goals set out in KRS 158.6451.

#### (5) Transition.

(a) The KECSAC shall develop transition procedures for state agency children moving from the treatment programs to the next instructional or vocational setting. The transition procedures shall address responsible staff, timelines, format of information to be transmitted, support systems necessary and follow-up schedules. **The transition plan shall comply with the transition plan and services requirement of Individuals with Disabilities Education Act (IDEA) for students with educational disabilities.**

(b) The KECSAC shall design and implement a system to collect school follow-up data.

(c) The last school or school district a state agency youth attends prior to placement in a state agency program shall be responsible for forwarding the educational records to the state agency program within five (5) school days of receipt of the request. Upon receipt of the school records, the state agency program shall notify the sending

school district office of the pupil personnel director, that the child is now in school attendance and not a drop out.

(d) The head teacher shall insure that the educational records of state agency children be forwarded to the receiving school within five (5) school days following the release of the youth from the treatment facility.

(e) The KECSAC shall develop a systematic transition process for students with disabilities in compliance with requirements in 707 KAR 1:220, Section 10.

MASTEN CHILDERS II, Secretary

PEGGY WALLACE, Commissioner

APPROVED BY AGENCY: September 6, 1994

FILED WITH LRC: September 6, 1994 at 11 a.m.

**CABINET FOR HUMAN RESOURCES  
Department for Medicaid Services  
(Amended After Hearing)**

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer Medicaid the program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid program in behalf of both the categorically needy and medically needy.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 13961 shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.)

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.)

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid program.

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Medicaid Services, Cabinet for Human Resources. A vendor number shall be assigned to the facility by the cabinet when participation status is achieved.

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program) before the conditions of participation for Medicaid shall be deemed met.

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation requirements in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.)

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual resident review requirements specified in 42 USC 1396r, effective with regard to admissions and resident stays occurring on or after January 1, 1989. Facilities failing to comply with this requirement shall be subject to disenrollment, with exclusion from participation to be



accomplished in accordance with 907 KAR 1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at 42 CFR 431.153 and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status; a facility not appropriately certified shall not participate in the Medicaid program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990.

(6) A facility shall have appropriate accreditation to provide specialized rehabilitation services as approved by the state. Appropriate accreditation shall have occurred when the facility has been accredited by a nationally recognized accrediting agency or organization such as the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this administrative regulation. A nursing facility or nursing facility with waiver may provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria if the services are provided in beds also participating in the Medicare Program and a nursing facility or nursing facility with waiver may provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria when the services are provided in any Medicaid participating beds; an ICF-MR may provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified, in accordance with standards and conditions specified in 907 KAR 1:545, Incorporation by reference of the nursing facility services manual, to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

Section 4. Determining Patient Status. Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) A patient shall not qualify for Medicaid patient status unless the person is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in 42 USC 1396r with regard to admissions and resident stays occurring on or after January 1, 1989.

(2) Patients qualify for high intensity nursing care when their needs mandate high intensity nursing or high intensity rehabilitation services on a daily basis and when, as a practical matter, the care can only be provided on an inpatient basis. Where the inherent complexity of a service prescribed for a patient exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the patient would qualify for high intensity nursing care. A patient with an unstable medical condition manifesting a combination of care needs in the following areas shall qualify for high intensity nursing care:

- (a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;
- (b) Nasogastric or gastrostomy tube feedings;
- (c) Nasopharyngeal and tracheotomy aspiration;
- (d) Recent or complicated ostomy requiring extensive care and self-help training;
- (e) In-dwelling catheter for therapeutic management of a urinary tract condition;

(f) Bladder irrigations in relation to previously indicated stipulation;

(g) Special vital signs evaluation necessary in the management of related conditions;

- (h) Sterile dressings;
- (i) Changes in bed position to maintain proper body alignment;
- (j) Treatment of extensive decubitus ulcers or other widespread skin disorders;

(k) Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

(l) Initial phases of a regimen involving administration of medical gases;

(m) Receiving services which would qualify as high intensity rehabilitation services when provided by or under the supervision of a qualified therapist(s), for example: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status when the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status when the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

- 1. Assistance with wheelchair;
- 2. Physical or environmental management for confusion and mild agitation;
- 3. Must be fed;
- 4. Assistance with going to bathroom or using bedpan for elimination;
- 5. Old colostomy care;
- 6. In-dwelling catheter for dry care;
- 7. Changes in bed position;
- 8. Administration of stabilized dosages of medication;
- 9. Restorative and supportive nursing care to maintain the patient and prevent deterioration of his condition;
- 10. Administration of injections during time licensed personnel is

available.

11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care.

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria when care needs are limited to the following:

1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
4. Medications that can be self-administered or the individual requires minimal supervision.

(4) Evaluation of patient status for persons with mental disorders or mental retardation. A person with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) When the cabinet determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the patient, other patients in the facility, or staff of the facility; and

(b) When the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) When the patient does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and persons with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities;
4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only when the individual also has care needs as shown in paragraph (a) or (b) of this subsection, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded), and the individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) It shall be the policy of the cabinet that no individual shall be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual

qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the patient no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Persons with Brain Injuries. Patients who are brain injured and meet usual high intensity nursing facility patient status criteria or as qualified under subsection (5) of this section may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) when the care is preauthorized by staff of the Department for Medicaid Services using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

- (a) Central nervous system injury from physical trauma;
- (b) Central nervous system damage from anoxia or hypoxic episodes; and
- (c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) The following is a list of indicators [indications] for admission and continued stay [shall be as follows]:

- (a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;
- (b) The individual shall not be in a persistent vegetative state;
- (c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;
- (d) The individual requires coma management; and
- (e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis ~~or cardiovascular accident with rehabilitation potential~~.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

- (a) The presenting problem;
- (b) The goals and expected benefits of the admission;
- (c) The initial estimated time frames for goal accomplishment; and
- (d) The services needed.

(4) The following is a list of conditions which are not considered brain injuries requiring specialized rehabilitation under this section [are indicators that show it shall be inappropriate to preauthorize coverage for services provided in a certified brain injury unit]:

(a) Strokes treatable in ~~[-(note:)]~~ nursing facilities providing routine [provide] rehabilitation services [that are expected to meet the needs of most stroke patients];

(b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation ~~[-developmental disabilities,]~~ and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical

conditions of a chronic, degenerative nature.

(5) A patient may qualify for coverage under the brain injury program if the patient meets low-intensity level of care and has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require an intensity of care which is equal to high intensity nursing care, if the following criteria are met:

(a) The patient shall not have previously received specialized rehabilitation services (persons discharged for the purpose of transfer to another brain injury facility are not considered to have "previously received specialized rehabilitation services") as provided for in this section;

(b) The patient shall have the potential for rehabilitation;

(c) The care shall be prior authorized on an individual basis by the Department for Medicaid Services; and

(d) The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Reserved Bed Days. The cabinet shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with waiver shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and persons with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during a recipient's absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The person shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Persons for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) For ~~in the case of~~ leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994 [7-1993].

MASTEN CHILDERS II, Commissioner, Secretary

APPROVED BY AGENCY: September 6, 1994

FILED WITH LRC: September 6, 1994 at 11 a.m.

CABINET FOR HUMAN RESOURCES  
Department for Medicaid Services  
(Amended After Hearing)

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.640

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Kentucky Hospital Care Program (KHCP) program, which is a program of hospital care for the indigent provided by Kentucky acute, psychiatric and rehabilitation hospitals participating in the Kentucky Medicaid Program. The cabinet is responsible for establishing eligibility guidelines for determinations of KHCP eligibility to be made by the hospitals. This administrative regulation sets forth provisions relating to the eligibility requirements and benefits for recipients under KHCP.

Section 1. Definitions. (1) "Family unit" means the parents, stepparents, their minor children and stepchildren living in the same household; unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household; or a child under age eighteen (18), legal guardian and the legal guardian's family living in the same household. A minor child who is also a minor parent and who lives with his parents is included in the family unit along with his child; if the minor parent, his child and the child's other parent, regardless of their marital status, are in the same household, they shall be considered a separate family unit from any other family unit in that household.

(2) "Kentucky Hospital Care Program" (KHCP) is a program of inpatient and outpatient hospital care, but excluding nonemergency care rendered in the emergency room, for Kentucky's indigent citizenry provided by Kentucky hospitals participating in the Kentucky Medicaid Program.

(3) "Minor children" means individuals under the age of twenty-one (21) living with a parent, or under the age of eighteen (18) living with a legal guardian in the same household, or one (1) of the previously described children attending college or a similar type of higher education facility.

(4) "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

(5) "Self-support" means a demonstration by the minor child that he is paying more than fifty (50) percent of his living expenses (i.e., proof of wages versus expenditures for living expenses, etc.).

Section 2. KHCP Eligibility Manual. (1) The KHCP Eligibility Manual, dated July 15, 1994, which describes the processes for determining KHCP eligibility, is incorporated by reference.

(2) The KHCP Eligibility Manual is available for inspection and copying during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) A fee shall be charged for the KHCP Eligibility Manual not to exceed the approximate cost of copying and materials.

Section 3. Eligibility Requirements. (1) For an individual or family unit to be KHCP eligible the following requirements shall be met:

(a) The individual or family unit shall be a resident(s) of Kentucky. Transients (individuals traveling through but not residing in the state) and non-U.S. citizens in visa status (i.e., visitors, students, etc.) shall not be eligible for KHCP;

(b) The individual's or family unit's income shall not exceed 100 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually except for Medicaid recipients receiving additional days of coverage per hospital stay based on

medical necessity determined in accordance with 907 KAR 1:012, Inpatient hospital services;

(c) The individual or family unit shall be encouraged to apply for Medicaid at the local Department for Social Insurance office if potentially eligible;

(d) Except for Medicaid recipients receiving additional days of coverage per hospital stay, a potential KHCP recipient receiving services on or after July 15, 1994 shall be required to apply for KHCP benefits by not later than thirty (30) days from the date of service or notification by the hospital of potential KHCP eligibility, whichever is later; and

(e) A potential KHCP recipient receiving services on or before June 30, 1994 shall be required to apply for KHCP services by August 15, 1994 or thirty (30) days from date of notification by the hospital of potential KHCP eligibility, whichever is later.

(2) Any Medicaid recipient receiving additional days of coverage per hospital stay, based on medical necessity determined in accordance with 907 KAR 1:012, shall be determined KHCP eligible without further verification.

(3) Individuals or families found eligible prior to July 1, 1993 for the Hospital Indigent Care Assurance Program for a period of time extending past July 1, 1993 shall be determined eligible for KHCP without further verification for that portion of the period of time extending past July 1, 1993.

Section 4. Exclusions from Eligibility. The following shall not be eligible for coverage under KHCP:

(1) Individuals within a correctional system (i.e., inmates of jails, prisons, etc.);

(2) Individuals in the custody of a unit of government which is responsible for coverage of the acute care needs of the individuals; ~~with the exception of individuals in a state-operated psychiatric hospital~~;

(3) Medicaid recipients who have been decertified by the utilization [peer] review organization for not meeting psychiatric level of care;

(4) Individuals who receive ongoing Medicaid in any category including Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI); ~~and~~

(6) ~~KHCP eligibility shall not exist for Medicaid recipients during a hospital stay (during the first fourteen (14) day period) which would not have been approved or covered under the Medicaid Program.~~

Section 5. Eligibility Periods. The following provisions shall be applicable for eligibility periods.

(1) For inpatient hospital stays, each determination of eligibility shall be for the period of hospitalization.

(2) For major or minor outpatient procedures or services, a determination of eligibility shall be for the date or dates of service. A single determination of eligibility shall be considered sufficient for a prescribed course of outpatient treatment (for example, physical therapy) covering several days or weeks.

(3) A retroactive determination of eligibility shall be completed for inpatient hospital stays, and major or minor outpatient procedures or services for any period of time preceding the month of application. No retroactive coverage shall be provided for a period of time prior to July 1, 1993.

(4) No retroactive coverage for individuals between the ages of twenty-two (22) through sixty-four (64) residing in a psychiatric facility shall be available for any period prior to July 15, 1994.

Section 6. Income Considerations. Eligibility shall be determined by comparing the family unit's (or that of the individual not living with other family members) total annual gross income to the poverty income guidelines for the appropriate family size. In comparing the family unit's total annual gross income to 100 percent of the official poverty income guidelines, the following policies shall be applied:

(1) Total annual gross income shall be based on income received during the ~~[prior]~~ twelve (12) months preceding the month of application with adjustments for projected changes in income as appropriate;

(2) Hospitals may require submission of tax returns, pay stubs, employer statements, and similar documents to verify income;

(3) Upon verification that income will increase or decrease, the anticipated income shall be used;

(4) The gross income or adjusted gross income for self-employment shall be used; the adjusted gross income shall be determined by allowing work expense deductions that are directly related to producing the goods or services and without which the goods or services could not be produced;

(5) Income of all family unit members, including ineligible members, shall be considered and compared to the appropriate KHCP family size;

(6) Parental income shall not be considered in eligibility determinations for children age twenty-one (21) or older. If the child, regardless of age, is not living with the parent or attending college or a similar type of higher education facility, parental income shall not be considered;

(7) A legal guardian's income shall be considered in determining eligibility for children living in the same household as the legal guardian until the child reaches the age of eighteen (18);

(8) A grandparent's income shall not be considered for grandchildren living with the grandparent (but not also living with the minor parent) unless the grandparent is the legal guardian;

(9) Income from a common law spouse living in the same household shall be considered. (Common law marriages shall be recognized if that marriage was recognized in [by] other states or the couple has held [are holding] themselves out to that [the] community as married); and

(10) State supplemental payments to individuals in personal care homes shall be excluded from consideration.

Section 7. Resource Considerations. (1) Resources shall not be considered in determining KHCP eligibility for the period of July 1, 1993, through January 31, 1994.

(2) Effective for determinations of eligibility for the period beginning on February 1, 1994, and ending on April 15, 1994 the following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments, but not including real or personal property including jewelry, household goods, clothing, buildings, land, businesses, and professional practices) shall be applicable: \$2,000 for an individual; \$4,000 for a family size of two (2); and fifty (50) dollars for each additional family member.

(3) Effective for determinations of eligibility for periods beginning on or after April 16, 1994 the following provisions shall be applicable with regard to the computation of allowable resources:

(a) The following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments) shall be applicable: \$2,000 for an individual; \$4,000 for a family size of two (2); and fifty (50) dollars for each additional family member;

(b) A homestead, household goods, and personal property including jewelry, clothing, and other items of a personal nature shall be excluded from consideration;

(c) Equity of \$6,000 in income producing nonhomestead real property, business or nonbusiness, essential for self-support shall be excluded from consideration;

(d) Equity of \$4,500 in automobiles shall be excluded from consideration;

(e) Burial reserves of up to \$1,500 per individual, burial spaces including the plot, casket, vault, and items of a similar nature, and irrevocable prepaid burial plans, contracts and burial trusts shall be excluded from consideration;

(f) The value of excludable assets in excess of excluded amounts shall be added to liquid assets for comparison against the liquid asset upper limits; and

(g) Other assets not excluded or within the upper limits shall be added to liquid assets for comparison against the liquid asset upper limits.

(4) Resources above the allowable amounts shall result in ineligibility for benefits under KHCP, but only to the extent that liquid resources exceed the allowable upper limits; this means that liquid resources can be spent down to establish eligibility. For example, if an otherwise eligible individual with \$2,300 in liquid assets is hospitalized, he would become eligible for KHCP coverage after receiving \$300 in billable services.

Section 8. Verification Requirements. Except as specified in Section 3 of this administrative regulation, the cabinet shall require verification in accordance with the following in eligibility determinations (although verification of residency should be accomplished in questionable situations):

(1) Income verification for all family unit members shall be required for inpatient hospital admissions and major outpatient procedures or services;

(2) Verification shall be required every six (6) months, or more frequently at the option of the hospital, unless the family unit's income has increased;

(3) If the family unit's income has increased, the hospital shall not be required but may require verification of income if the newly reported income exceeds the KHCP income limits;

(4) If the family unit alleges zero income, verification may be obtained or at the option of the hospital waived;

(5) Income and resource verification may be waived at the option of the hospital for minor outpatient procedures or services;

(6) Self-support verification for children under age twenty-one (21) not living with parents and who attend college or a similar type of higher education facility shall be required; and

(7) Applicants for KHCP benefits must provide requested information within ten (10) days unless this requirement is waived by the hospital.

Section 9. Dual Eligibility. The individual or family unit may be referred to apply for Medicaid benefits. The following provisions shall be applicable for dual eligibility.

(1) An individual may be KHCP eligible and simultaneously determined Medicaid eligible. An individual may apply for ongoing Medicaid and KHCP eligibility concurrently.

(2) An individual may apply for both KHCP and Medicaid spenddown eligibility.

(3) For Medicaid spenddown eligibility any hospital expense attributed to the individual's KHCP eligibility shall not be considered as an incurred cost in determining Medicaid spenddown eligibility.

(4) Individuals who are eligible as qualified Medicare beneficiaries (QMBs) only recipients may apply for KHCP eligibility.

(5) An individual may apply for both KHCP and SSI Medicaid benefits.

(6) If an individual or family unit is subsequently approved for Medicaid or QMB benefits during a period of KHCP eligibility, the hospital may bill the Medicaid Program in accordance with Medicaid policy shown in 907 KAR 1:013 and 907 KAR 1:015 provided the hospital reports the KHCP adjustment prior to billing the Medicaid Program.

Section 10. Fair Hearing. (1) An applicant may request a fair hearing on his KHCP eligibility determination within thirty (30) days of the denial or approval date.

(2) Each hospital shall be responsible for conducting hearings to determine if KHCP eligibility was determined correctly and for correcting any errors in KHCP eligibility which have been made.

(3) The hearings shall be conducted by impartial hospital staff not involved in the KHCP eligibility determination.

(a) Hearings shall be conducted within thirty (30) days of the date of the hearing request.

(b) During the hearing:

1. The appellant shall be provided an opportunity to review evidence against him;

2. To cross-examine witnesses against him;

3. To present evidence in his behalf; and

4. To be represented by counsel.

(c) Hospital decisions regarding the hearing shall be rendered within fourteen (14) days of the hearing and a copy of the decision provided to the KHCP applicant and the Department for Medicaid Services.

(d) The hearing process may be terminated at any time a corrected decision of KHCP eligibility is made in favor of the potential KHCP recipient with appropriate notice of KHCP eligibility and termination of the hearing process required.

(e) Further appeal may be to the local court having competent jurisdiction.

(2) If a hospital contests medical necessity (whether before or after the fact) for a KHCP eligible person or for a Medicaid recipient with regard to additional days of inpatient coverage, the Medicaid Peer Review Organization (PRO) shall be contacted by the hospital for a determination of the appropriateness of the service using Medicaid standards of medical necessity; the decision of the PRO shall be binding upon the hospital for KHCP purposes. It shall be the PRO's responsibility to advise the hospital, the KHCP or Medicaid recipient, and the recipient's physician, in writing, of the PRO's decision. If the KHCP or Medicaid recipient is dissatisfied with the decision of the PRO, he may appeal the decision in accordance with 904 KAR 2:055.

Section 11. Benefits. Benefits under KHCP shall be as follows:

(1) Medicaid recipients shall receive any necessary days of coverage for hospital stay as specified in KRS 205.640;

(2) Except for nonemergency care rendered in the emergency room, KHCP recipients, including individuals with a pending KHCP application, shall not be billed for hospital services provided by Medicaid participating hospitals in accordance with KRS 205.640.

Section 12. Except as otherwise specified, the provisions of this administrative regulation shall be applicable for determinations of eligibility made, and services provided, on or after April 16, 1993 except that the Medicaid Program shall also recognize and accept determinations of eligibility made under the previous program guidelines for the period of July 1, 1993 through April 15, 1994.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: September 6, 1994

FILED WITH LRC: September 6, 1994 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 1994

**TOURISM CABINET**  
**Department of Fish and Wildlife Resources**  
**(Proposed Amendment)**

**301 KAR 1:085. Mussel shell harvesting.**

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.190, 150.510, 150.520

STATUTORY AUTHORITY: KRS 13A.150, 150.025, 150.170, 150.175, 150.520

NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking mussels because of their value and their susceptibility to overharvest. This amendment is necessary to extend the mussel sanctuary on the Green River because of the presence of threatened or endangered mussel species. ~~[allow the sale of additional musseling licenses and to establish improved reporting requirements.]~~

Section 1. All persons except helpers and those specified in Section 4 of this administrative regulation, who actively participate in the harvesting and sale of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, shall have an appropriate license. Each licensed musseler may employ one (1) helper to assist in the harvesting, transporting and sale of mussels. A licensed musseler shall accompany each helper when brailing, transporting or selling shells.

Section 2. Only persons having a valid musseling license or mussel buyers license may sell mussels or mussel shells. Mussel buyers shall purchase mussels or mussel shells only from individuals possessing a valid musseling license or mussel buyers license.

Section 3. All musselers shall paint or affix their department issued identification number to their brail boat so as to be clearly visible to aerial observation. Boats used in musseling operations shall have a licensed musseler in the boat.

Section 4. A person shall not possess more than six (6) mussels without having an appropriate musseling license or mussel buyers license. Mussels shall be legal size according to Section 9 of this administrative regulation.

Section 5. Mussel License Application Procedure. (1) The department shall not issue more than 500 mussel licenses per calendar year.

(2) Persons wishing to purchase musseling licenses shall apply during the November before the year they wish to mussel.

(3) Applicants shall complete a musseling license application provided by the department.

(4) If the number of applications exceeds 500, the department shall first grant new licenses to current mussel license holders, then select the remaining applicants by a random drawing.

(5) If the number of applications is less than 500, the department shall grant licenses to all applicants, and shall grant licenses to persons applying after November 31 on a first-come, first-served basis until 500 licenses have been issued.

(6) The appropriate resident or nonresident mussel license fee shall accompany each application. The department shall return the fees of those not drawn.

Section 6. Except as specified in Sections 7 and 8 of this regulation, the musseling season is open year around only on the following waters:

(1) Kentucky Lake;

- (2) Barkley Lake;
- (3) Tennessee River from Kentucky Lake dam to the mouth;
- (4) Cumberland River from Barkley Lake dam to the mouth;
- (5) Ohio River;
- (6) Green River from Green River Lake dam to the mouth;
- (7) Barren River from Barren River Lake dam to the mouth;
- (8) Kentucky River from Beattyville downstream to the mouth;
- (9) Rough River from Rough River Lake dam to the mouth;
- (10) Rolling Fork River.

Section 7. Musseling is prohibited in the following designated areas which are established as mussel sanctuaries:

(1) The Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8).

(2) The stream segments 200 yards below any dam on any stream.

(3) The Cumberland River from Barkley Dam downstream to U.S Highway 62 bridge.

(4) All embayments on Barkley and Kentucky Lakes as defined by the Kentucky Lake Musseling Waters Map and the Lake Barkley Musseling Waters Map, both of which are hereby incorporated by reference. Maps shall be available for inspection or purchase by contacting the Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. on Monday through Friday, except holidays. The effective date of the maps shall be August 15, 1993.

(5) The Ohio River between river mile 418 and river mile 419 and between river mile 965.0 and river mile 974.1.

(6) The Green River from lock and dam #5 downstream four and eight-tenths (4.8) miles to the confluence of Ivy Creek and from the eastern boundary of Mammoth Cave National Park upstream ninety-seven and six-tenths (97.6) miles to the Green River Lake dam. ~~[twenty-nine and six-tenths (29.6) miles to the US Highway 31E bridge.]~~

(7) The Barren River from lock and dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch.

Section 8. Musseling is permitted during the hours of 6 a.m. and 6 p.m. daily except in Barkley and Kentucky Lakes where the hours shall be as follows:

(1) West side of each lake as marked by the red navigation buoys or fifty-five (55) feet of water depth.

(a) December - February - 8:30 a.m. to 3:30 p.m.

(b) March - November - 8 a.m. to 6 p.m.

(2) East side of each lake as marked by the red navigation buoys on both lakes.

(a) December - February - 9:30 a.m. to 3 p.m.

(b) March - November - 9:30 a.m. to 5 p.m.

(3) Exception: The brailing hours for the entire canal area connecting Kentucky and Barkley lakes and all of Barkley Lake from Barkley Dam south to Cumberland River mile 36.2 (Big Horse Ford light and day marker) shall be as follows:

(a) December - February - 8:30 a.m. to 3:30 p.m.

(b) March - November - 8 a.m. to 6 p.m.

(4) Saturday and Sunday brailing on Kentucky Lake is prohibited during the month of March and during the period beginning on the Saturday preceding Memorial Day and extending through Labor Day.

(5) Saturday and Sunday brailing on Barkley Lake is prohibited beginning on the Saturday preceding Memorial Day and extending through the 30th day of September. Brailing is further prohibited on Kentucky and Barkley Lakes on Memorial Day, July 4th and Labor Day.



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Section 9. The statewide size limits for taking of mussels shall be as follows. All mussels smaller than these minimum sizes shall immediately be returned to the bed from which taken.

(1) Washboard mussels, *Megalania nervosa*, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of three and three-fourths (3 3/4) inches.

(2) Three (3) ridge mussels, *Amblema plicata*, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and three-fourths (2 3/4) inches.

(3) All other mussels, except the Asiatic clam, *Corbicula* sp. shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and one-half (2 1/2) inches.

(4) The Asiatic clam, *Corbicula* sp., may be taken at any size.

Section 10. Method of Harvest. (1) Mussel harvesting, except as provided in Section 11 of this regulation, shall be by brail only.

(2) No more than two (2) brails each sixteen (16) feet or less in length shall be simultaneously operated from any boat.

(3) More than two (2) brails may be carried aboard the boat.

(4) Mussel brail hooks shall be constructed of wire of at least fourteen (14) gauge; smaller wire is prohibited.

(5) Prongs of hooks shall be no longer than one and one-fourth (1 1/4) inch as measured from the tip of point to place on hook where the prongs are joined.

(6) Persons shall not possess dredges or compressed air tanks while on a licensed brail boat.

Section 11. Mussel Harvesters' Reporting Requirements. (1) Mussel license holders shall submit annual written reports to the department by December 31 of each year.

(2) Musselers shall provide the department with the following information:

(a) Name, address and mussel license number;

(b) Dates of brailing activity;

(c) Waters brailed;

(d) Name or category of mussels taken;

(e) Weight of each type or category;

(f) Price received per pound of each type or category;

(g) Total value of mussels sold;

(h) Name and license number of buyer who bought mussels.

(3) The department shall not renew the license of a musseler who fails to submit a report or does not provide the required information until the complete report is submitted.

Section 12. Mussel Buyers' Reporting Requirements. (1) Mussel buyers shall complete a mussel transaction report each time shells are acquired.

(2)(a) Mussel buyers shall use the Mussel Transaction Report form (July 1994) which is incorporated by reference; and

(b) copies of the form may be inspected, copied, or obtained from the offices of the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday except holidays.

(3) Mussel buyers shall use forms in sequential order.

(4) Mussel buyers shall submit voided forms to the department. They shall write "void," their license number, date and signature on voided forms.

(5) Mussel buyers shall submit reports on each month's activity. Reports are due by the 15th of the month following the reported transaction.

(6) Mussel buyers who do not acquire shells during a particular month shall submit a report stating that no business was conducted.

(7) The department shall not renew the license of a mussel buyer who fails to submit monthly reports or who does not provide the required information until all completed reports for the year are received.

Section 13. The commissioner may designate as disaster areas waters in which all live mussels have been killed, and may issue a special permit allowing the use of various harvest methods.

Section 14. No mussels designated as endangered shall be taken.

C. TOM BENNETT, Commissioner

CRIT LUALLEN, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 26, 1994

FILED WITH LRC: September 13, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, October 28, 1994 at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 24, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish & Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

### REGULATORY IMPACT ANALYSIS

Contact Person: Peter Pfeiffer

(1) Type and number of entities affected: There are approximately 250 licensed musselers in Kentucky. None are musseling in the waters covered by this amendment.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received. Since there is no current musseling activity in the area closed by this amendment, there will be no economic impacts.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation will have no impact on the costs of doing business, either in the geographical area or the state.

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

1. First year following implementation: No additional paperwork requirements will result from amending this regulation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings are anticipated.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund revenues will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received. There are no anticipated economic impact on the geographical area.

(b) Kentucky: No economic impacts are anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The presence of federally threatened or endangered mussel species in the Green River allow no alternative except closing the area, since mussel brailing is indiscriminate and would allow the harvest of these federally protected species.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no public health issues. The biological diversity of Kentucky will be maintained by protecting threatened or endangered species.

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

(c) If detrimental effect would result, explain detrimental effect: If the amendment to this administrative regulation were not implemented, threatened or endangered species would be subject to commercial harvest.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes or regulations in conflict.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because protection of threatened or endangered species applies equally to all citizens.

#### TOURISM CABINET

#### Department of Fish and Wildlife Resources (Proposed Amendment)

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

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.320, 150.330, 150.360, 150.365, 150.390, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: To assure [This administrative regulation pertains to seasons and limits for wild turkey. the commissioner with the concurrence of the commission finds this administrative regulation necessary for] the continued protection and conservation of wild turkey populations, and [to insure] a permanent and continued supply for present and future residents of the state. [The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply.] This amendment is necessary to designate currently appropriate turkey hunting requirements [rules] and seasons for specific counties and wildlife management areas, and to comply with the wording and formatting requirements of KRS Chapter 13A.

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

(2) "Quota hunt" means a hunt whose participants register in advance and are selected by a drawing.

(3) "Statewide seasons" mean the provisions of Sections 1 through 7 of this administrative regulation.

(4) "Youth hunt" means a hunt open to persons at least ten (10) years old but who have not reached their 16th birthday by the day of the hunt.

(5) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

#### Section 2. Seasons and Counties Open to Wild Turkey Hunting.

##### (1) Season dates and shooting hours.

(a) Spring: gun and archery, fourteen (14) consecutive days beginning the third Wednesday in April; one-half (1/2) hour before sunrise until 1 p.m.

(b) Archery only, October 1 through November 30, except during the modern gun deer season; daylight hours.

(2) During the 1995 spring and fall seasons, the following counties and portions of counties are open to turkey hunting: [Except as specified in Section 5 of this administrative regulation, wild turkey hunting season shall begin on the third Wednesday in April for fourteen (14) consecutive days and either sex archery only from October 1 through October 31 in] Adair [except west of Highway 61], Allen east of Highway 31E, Anderson, Ballard, Barren north of I-65 and [;] Barren south of the Cumberland Parkway [Highway 1297 and west of Highway 249], Bath south of I-64, Bell, Boone, Boyd south of I-64, Boyle except west of Highway 68 [south of Highway 37 and west of Carpenter Fork Road], Bracken, Breathitt east of Highway 15, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Campbell, Carroll, Carter north of I-64, [Casey north of Highway 49 west of Jacktown and north of Highway 78 east of Jacktown,] Christian, Clark, Clinton [except north of Highway 90 and east of Highway 127], Crittenden, Cumberland, Daviess north of Highway 54, Edmonson, Elliott, Estill [north of the Kentucky River], Fayette, Floyd except east of Highway 80 and south of Highway 460 [east of Highway 23], Franklin except south of Highway 12-O'Nan's Bend Road and west of Kentucky River, Fulton, Gallatin, Garrard [south of Highway 52], Grant north of Highway 22 and west of I-75, Graves, Grayson, Green, Hancock southeast of Highway 1389, Hardin, Harlan, Harrison east of Highway 27, Hart, Henry, Henderson west of Highway 41, Hickman, Hopkins, Jackson north of Highway 30, Jefferson, Jessamine south of Highway 169, Johnson north of Highway 460 and west of Highway 23, Kenton, Knott, Knox south of Highway 25E and east of Highway 11, and north of Highway 25E and east of Highway 223, Larue except south of Highway 61 and west of Highway 31E, Laurel west of I-75, Lawrence [north of Highway 32], Lee west of Highway 11, Letcher,, Lincoln [east of Highway 27], Livingston, Logan [except southeast of Highway 70 and southwest of Highway 100], Lyon, Madison east of I-75 [and north of Highway 52], Magoffin south of Mountain Parkway west of Salyersville and south of Highway 114 east of Salyersville, Marion, Marshall, Martin [south of Highway 40], Mason, McLean south of Highway 138 and west of Highway 81, McCracken, McCreary, Meade, Menifee, Mercer except south of Highway 1160 and west of Highway 127, Metcalfe [south of Cumberland Parkway], Monroe, Morgan north of the Licking River [Highway 610 and west of Highway 7], Muhlenberg, Nelson, Ohio [west of Green River Parkway], Oldham, Owen [except south of Highway 22 and east of Highway 227], Owsley, Pendleton [east of Highway 27 and south of Highway 22], Perry, Pike east of Highway 23, Powell, Pulaski except north of Highway 80 and west of Highway 461, Robertson, Rockcastle [south of Highway 150 and] west of I-75 and [;] Rockcastle east of Highway 1955, Rowan, Russell, Scott east of I-75, Shelby, Simpson west of Highway 31W, Spencer, Taylor, Todd, Trigg, Trimble, Union north of Highway 360 east of Uniontown [Highland Creek], Warren north of Highway 80 and west of Highway 185, Washington, Wayne, Webster west of Highway 41A, Whitley north of the Cumberland River and west of I-75 [Highway 90 and west of Highway 25W], Wolfe north of Mountain Parkway and west of Highway 746, and Woodford.

(3) [(2)] All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 8 [5] of this administrative regulation.

(4) In 1996 and subsequent years, all counties shall be open to wild turkey hunting.

Section 3. Bag and Possession Limits. Except as specified in Section 8 of this administrative regulation and by 301 KAR 2:111, a person [A hunter] shall not take [be prohibited from taking] more than:

- (1) One (1) turkey per day; [Three (3) turkeys in a calendar year];
- (2) Two (2) turkeys with visible beards during the [per] spring season;
- (3) [One (1) turkey per day; and
- (4) One (1) turkey of either sex during [in] the fall archery season.

Section 4. Juvenile Hunters, Tagging and Checking. (1) An adult shall accompany and maintain control of turkey hunters under sixteen (16) years of age.

- (2) After taking wild turkeys, persons shall:
  - (a) Immediately attach the transportation tag portion of the turkey permit to the carcass.
  - (b) Have the turkey checked on the same day it was taken:
    1. At a check station; or
    2. By an authorized employee of the department.
  - (c) Fill out a game check card and return it to the person checking the turkey.
  - (d) Keep the hunter's portion of the game check card in possession until the turkey is processed.
  - (e) Attach to turkeys taken to a taxidermist:
    1. The taxidermy portion of the game check card;
    2. A Ft. Campbell game check card; or
    3. A Land Between the Lakes game check card.
  - (f) Check turkeys before transporting them out of Kentucky.
- (4) Persons taking turkeys on wildlife management areas shall follow the tagging and checking requirements in Section 8 of this administrative regulation.

Section 5. Firearms and Archery Equipment. Persons hunting wild turkey shall not use or carry:

- (1) Rifles or handguns.
- (2) Shotguns larger than ten (10) gauge or smaller than twenty (20) gauge.
- (3) Shot larger than Number Four (4).
- (4) Shotgun slugs.
- (5) Firearms during archery-only seasons.
- (6) Crossbows, except on the Pioneer Weapons Area.
- (7) Barbed broadheads.
- (8) Broadheads smaller than seven-eighths (7/8) inch wide.
- (9) Arrows with chemical treatments or attachments containing chemicals.

Section 6. Baiting. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

- (a) While bait is present; or
- (b) For thirty (30) days after the bait has been removed.
- (2) Persons may hunt wild turkeys on areas where grains, feed or other substances exist as the result of:
  - (a) Bona fide agricultural practices; or
  - (b) Manipulating a crop for wildlife management purposes, provided that grain, feed or other substances once removed from a field are not returned to or scattered on the field.

Section 7. Turkey Hunting Restrictions. (1) Turkey hunters:

- (a) Shall not use dogs.
- (b) Shall not hunt from boats.
- (c) Shall not use electronic calls.
- (d) May use hand- or mouth-operated calls.
- (e) Shall not use live decoys.
- (f) Shall not take roosting turkeys.
- (2) Persons shall not mimic the sound of a turkey from March 1 until the opening of the spring season in areas open to hunting where turkeys are reasonably expected to occur.

(3) Persons shall not take turkeys by means other than those specified in this administrative regulation.

Section 8. Seasons and Exceptions on Wildlife Management Areas. (1) Statewide seasons apply to wildlife management areas located in counties or portions of counties listed in Section 2 of this administrative regulation unless otherwise specified in this section.

(2) Persons shall not hunt wild turkeys on the areas listed in this section except on the dates specified.

- (3) Turkeys listed as bonus birds:
  - (a) Do not count against statewide limits.
  - (b) Do not require a state transportation tag be attached to the carcass.

(4) Ballard Wildlife Management Area, Ballard County.

(a) Season. Quota youth hunt, the weekend preceding the third Wednesday in April.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the first Saturday in April on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) Turkey hunters:

1. Shall check in and out daily.
2. Shall not take more than one (1) turkey.
- (5) Fort Campbell Wildlife Management Area, Christian and Trigg Counties.

(a) Season: the first Saturday in April through the second Sunday in May.

(b) Turkeys taken on Fort Campbell are bonus birds.

(c) Turkey hunters:

1. Shall obtain a postcombination hunting-fishing permit before hunting.
2. Shall hunt only during daylight hours.
3. Shall not take more than two (2) turkeys per spring season.
4. Shall attach a Fort Campbell game check card to turkeys before leaving the post.

(6) Fort Knox Wildlife Management Area, Hardin, Bullitt and Meade Counties.

(a) Seasons: Saturdays and Sundays in April and the first two (2) Saturdays and Sundays in May.

(b) Turkeys taken on Fort Knox are bonus birds.

(c) Turkey hunters:

1. Shall hunt in assigned areas.
2. Shall check turkeys by 2 p.m. on the day harvested.
3. Shall not take more than one (1) turkey per spring season.
- (7) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) Seasons: quota youth hunts.

1. The weekend preceding the third Wednesday in April.

2. The weekend following the fourth Wednesday in April.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the first Saturday in April on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) Turkey hunters:

1. Shall check in and out daily.
2. Shall not take more than one (1) turkey.
- (8) Green River Wildlife Management Area, Adair and Taylor Counties. Statewide seasons apply except as noted in this subsection.

(a) Quota youth hunt, the weekend preceding the third Wednesday in April.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the first Saturday in April on the area.

(c) Shooting hours for the youth hunt are one-half (1/2) hour before sunrise until noon.

(d) Persons participating in the youth hunt:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.  
(9) Higginson-Henry Wildlife Management Area, Union County.  
(a) Seasons, archery only.  
1. The third Wednesday in April for nineteen (19) consecutive days.  
2. October 1 through November 30, except during gun deer hunts.  
(b) Turkey hunters shall check in and check out daily.  
(10) Land Between the Lakes, Trigg and Lyon Counties.  
(a) Seasons.  
1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April and ending before the third Wednesday in April.  
2. Fourteen (14) consecutive days beginning on the third Wednesday in April.  
(b) Turkey hunters:  
1. Shall check in and out.  
2. Shall hunt in assigned areas.  
3. Shall check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.  
4. Shall affix a Land Between the Lakes game check card and a state transportation tag to the carcass.  
5. Shall take turkey only during daylight hours.  
6. Shall not take more than one (1) turkey in the spring.  
(11) Pioneer Weapons Wildlife Management Area, Bath and Menifee Counties. Statewide seasons apply except that turkey hunters:  
(a) Shall not use breech-loading shotguns.  
(b) May use crossbows with working safety devices.  
(12) Reelfoot National Wildlife Refuge, Fulton County.  
(a) Season: quota hunt, the Friday closest to April 1 for three (3) consecutive days.  
(b) Turkey hunters:  
1. Shall not take more than one (1) turkey.  
2. Shall obtain Reelfoot permits before hunting.  
(13) Redbird Wildlife Management Area, Clay and Leslie Counties. Statewide seasons apply.  
(14) Swan Lake Wildlife Management Area, Ballard County, is closed to turkey hunting.  
(15) West Kentucky Wildlife Management Area, McCracken County, is closed to turkey hunting.  
Requirements and Restrictions: (1) The use of dogs is prohibited.  
(2) All turkey hunters shall have in their possession a valid wild turkey permit and, unless exempted by KRS 150.170(3), (5), (6), (7) or (8), a valid annual Kentucky hunting license.  
(3) Turkey shall be taken only from one half (1/2) hour before sunrise until 1 p.m. During fall seasons, turkey shall be taken only during daylight hours. Shooting turkey while they are roosting shall be prohibited.  
(4) Turkey may be taken with the aid of hand or mouth operated calls. Electronic calls are prohibited.  
(5) Shotguns no larger than ten (10) gauge or no smaller than twenty (20) gauge are the only firearms which shall be used or possessed while turkey hunting. Only Number 4 shot or smaller shall be used. Shot larger than Number 4 or slugs shall not be possessed while turkey hunting.  
(6) Longbows, recurve and compound bows which do not have devices to hold an arrow at full or partial draw without human aid are the only archery equipment which shall be used. Only barbed arrows without chemical treatment or chemical attachments, with broadhead points at least seven eighths (7/8) inch wide are permitted.  
(7) The hunter shall attach the transportation tag to the turkey immediately after taking.  
(a) Any hunter harvesting a wild turkey shall have it checked at the nearest check station or by the nearest available conservation officer on the day the turkey is taken except as required on specified wildlife management areas.

(b) The hunter shall fill out an official game check card and submit it to the check station operator or conservation officer.  
1. The hunter's portion of this card shall be retained in the hunter's possession until the turkey is processed.  
2. A completed state, Fort Campbell, or Land Between the Lakes game check card shall be attached to and remain with any turkey taken to a taxidermist.  
(c) Turkeys shall be checked before being transported out of the state.  
(8) Turkeys may be taken with the aid of decoys. Live turkeys shall not be used as decoys.  
(9) Turkeys shall not be hunted on any baited area or be taken by the aid of baiting.  
(a) These areas shall be considered baited for thirty (30) days following the complete removal of all bait.  
(b) The limitation found in paragraph (a) of this subsection shall not prohibit hunting while turkeys on areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.  
(10) Turkeys shall not be hunted from boats.  
(11) All turkey hunters less than eighteen (18) years of age shall be accompanied by an adult who shall maintain reasonable control of the underage hunter at all times while hunting.  
(12) Calling or attempting to call wild turkeys using any turkey call to mimic the sounds made by a wild turkey shall be prohibited from March 1 to the opening day of spring turkey season in any area open to turkey hunting. This shall not apply to places where turkeys are not reasonably expected to occur.  
(13) Turkeys shall not be taken by any means other than those specified in this administrative regulation.

Section 5. Seasons and Exceptions on Wildlife Management Areas. All provisions of this administrative regulation apply unless otherwise specified in this section.

(1) Wild turkey season in the Fort Knox Wildlife Management Area, located in Hardin, Bullitt and Meade Counties, shall be open on Saturdays and Sundays in April and the first two (2) Saturdays and Sundays in May.  
(a) Hunters shall check turkeys by 2 p.m. on the day harvested.  
(b) Hunters shall be permitted to take one (1) turkey per season.  
(c) Turkeys taken on Fort Knox shall not count against statewide limits and shall not have to be tagged.  
(d) Turkey hunters shall hunt in assigned area(s) only.  
(2) Wild turkey season in the Land Between the Lakes Wildlife Management Area, located in Trigg and Lyon Counties, shall be a two (2) day quota hunt beginning the second Wednesday in April; a three (3) day quota hunt beginning the first Saturday following the second Wednesday in April; and a fourteen (14) consecutive day nonquota hunt beginning on the third Wednesday in April.  
(a) Wild turkey shall be taken only in designated areas.  
(b) Hunters shall:  
1. Check in and out;  
2. Check a turkey before leaving the Land Between the Lakes; and  
3. Affix an LBL game check card to the carcass.  
(c) State game check cards shall not be required.  
(d) Shooting hours shall be limited to daylight hours.  
(e) Hunters shall be permitted to take one (1) turkey per season.  
(3) Wild turkey season in the Reelfoot National Wildlife Refuge, located in Fulton County, shall be open for quota hunt on the first Friday in April for three (3) consecutive days.  
(a) Hunters shall be permitted to take one (1) turkey per season.  
(b) A Reelfoot permit shall be required.  
(c) Turkeys shall be checked at the closest county check station

on the day harvested.

(4) Wild turkey season in the Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties, shall be open the first Saturday in April through the second Sunday in May.

(a) A post combination hunting-fishing permit shall be required.

(b) Shooting hours shall be limited to daylight hours.

(c) Hunters shall be permitted to take two (2) turkeys per spring season.

(d) Turkeys taken on Fort Campbell shall not count against statewide limits and shall not have to be tagged.

(e) A Fort Campbell game check card shall be attached to turkeys before leaving the post and shall remain on the bird until processed.

(f) State game check cards shall not be required.

(5) Wild turkey season in the Blue Grass Ordnance Depot Activity, located in Madison County, shall be open on the third Wednesday in April for fourteen (14) consecutive days.

(6) Wild turkey season in the Ballard Wildlife Management Area in Ballard County and Grayson Lake Wildlife Management Area in Carter County and that portion in Elliott County east of Bruin Creek shall be open only for quota youth hunt Saturday and Sunday preceding the third Wednesday in April. The Green River Wildlife Management Area in Adair and Taylor Counties shall be open for a quota youth hunt Saturday and Sunday preceding the third Wednesday in April.

(a) Hunters shall be permitted to take one (1) turkey per season.

(b) Shooting hours shall be limited to one-half (1/2) hour before sunrise until noon.

(c) Hunters shall be required to check in and out daily.

(d) Hunting shall be restricted to persons at least ten (10) years of age but who have not reached their 16th birthday. Each youth shall be accompanied by an adult and hunt in assigned areas only.

(e) An in-person drawing shall be held on the respective wildlife management area at 1 p.m. on the first Saturday in April to determine who will get to hunt.

(7) Swan Lake Wildlife Management Area in Ballard County is closed to turkey hunting.

(8) Wild turkey season in the Higginson Henry Wildlife Management Area, located in Union County, shall be open only for archery the third Wednesday in April for nineteen (19) consecutive days and either sex, October 1 through 31. Hunters shall be required to check in and check out daily.

(9) Robinson Forest Wildlife Management Area in Breathitt and Knott Counties shall be closed to turkey hunting.

(10) West Kentucky Wildlife Management Area in McCracken County shall be closed to turkey hunting.

(11) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties shall be open to legal muzzle-loading shotguns only.

(a) Breech-loading shotguns shall be prohibited.

(b) Legal archery equipment and crossbows with a working safety shall be permitted.

(12) Redbird Wildlife Management Area in Clay and Leslie Counties shall be open to turkey hunting.]

C. TOM BENNETT, Commissioner

CRIT LUALLEN, Secretary

MARK BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 26, 1994

FILED WITH LRC: September 8, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, 1994 at 9 a.m. at The Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the commission room. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing

is open to the public. Any person who attends shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, 502/564-4406.

## REGULATORY IMPACT ANALYSIS

Agency contact: Lauren Schaaf

(1) Type and number of entities affected: An estimated 22,000 persons participate in turkey hunting.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license/turkey permit. Indirect costs would be determined by the hunter, depending on his level of participation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no anticipated impact on the cost of doing business.

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

1. First year following implementation: Turkey hunters are required to possess a valid hunting license (\$12.50 for residents) and turkey permit (\$17.50) unless exempt by statute. These are existing requirements which this administrative regulation will not change.

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

(3) Effects on the promulgating administrative body: The time and effort required to develop, publish, report on, and enforce this proposed administrative regulation are annually recurring and will not change as the result of the amendments to this administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will not impose additional costs or create additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: An annual turkey harvest report will be prepared.

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average turkey hunter in Kentucky will expend about \$338 a season on food, lodging, transportation and equipment. This will add about \$7,500,000 to the income of local businesses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and will be used for implementation and enforcement of this administrative regulation.

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

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

(b) Kentucky: None

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(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is to close the season which was rejected since turkeys are a renewable resource and at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is intended to conserve populations of wild turkeys, a positive impact on environmental welfare. It also allows utilization of these populations as a recreational resource, having a positive effect on the health and well-being of those who participate.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Reduction in the potential recreational opportunity and the loss of conservation of wild turkeys.

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

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

(a) Necessity of proposed regulation if in conflict: 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. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks office serves as a distribution system for the hunting licenses required by this regulation.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in the sale of hunting licenses and turkey tags. This office receives a \$.75 fee for selling licenses and turkey tags. The County district courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

### TOURISM CABINET

#### Department of Fish and Wildlife Resources (Proposed Amendment)

**301 KAR 3:030. Year-round season for some birds and animals.**

RELATES TO: KRS 150.010, [450.025,] 150.170, 150.330, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025, 150.170, 150.360

NECESSITY AND FUNCTION: [This administrative regulation pertains to the open season for unprotected species of wild birds and wild animals.] This administrative regulation is necessary to establish hunting requirements for [the] species that can be taken [hunted] year-round, and to specify species that are unprotected. [insure that

~~only these species unprotected (except crow) may be taken by the use of hand, or mouth, mechanically or electronically operated calling or attracting devices. The function of this administrative regulation is to furnish sport and recreation while utilizing wildlife species that sometimes create a nuisance or a health hazard. This administrative regulation enacts a closure for hunting some species in early November.] The purpose of this amendment is to eliminate the closed season on certain species from November 1 through the gun deer season and to bring this administrative regulation into compliance with the formatting and wording requirements of KRS Chapter 13A. [remove crows from the list of unprotected species of wild birds and wild animals listed in this administrative regulation.]~~

Section 1. Year-round Season. (1) The hunting season for coyotes, woodchucks, English sparrows or starlings is year round.

(2) Unless exempted by KRS 150.170, persons taking these species shall possess a hunting license.

(3) Persons who are not legal deer hunters shall not take these species:

(a) During modern gun deer season in counties or portions of counties open to deer hunting.

(b) During wildlife management deer hunts where modern, breech-loading firearms are allowed.

(4) Persons hunting these species may use:

(a) Hand or mouth operated calls.

(b) Electronic or mechanical calls during daylight hours only. [The following species of wild birds and wild animals may be taken, pursued, possessed or transported all year except as stated in Section 3 of this administrative regulation, by any person possessing a valid hunting license: coyote, woodchuck, English sparrow and starling.]

Section 2. Unprotected Wildlife. (1) Except for rare or endangered species protected by state and federal laws, persons may take or possess all species of:

(a) Moles, mice, rats or shrews.

(b) Snakes or lizards.

(c) Terrestrial invertebrates.

(2) Hunting licenses or pet permits are not required. [Unprotected wild animals. All species of moles, mice, rats, shrews, terrestrial invertebrates, snake and lizards, except those which may be protected as rare or endangered species under the provisions of 301 KAR 3:061, are unprotected and may be taken without possessing a hunting license. All other wild birds and wild animals are protected except during open season and as specified by other administrative regulations.]

Section 3. Nothing in this administrative regulation shall prohibit landowners or tenants from taking the species listed in Section 1(1) of this administrative regulation which are posing an immediate threat to body or other persons, or causing damage to property which they own or where they reside. [Closed season. There shall be a closed season on all species of wild birds and wild animals, protected or unprotected, unless opened by other administrative regulations, from November 1 to midnight on the day of the closure of statewide deer gun season, except that coyotes may be taken during this period by deer hunters, only as specified in administrative regulations 301 KAR 2:047, 301 KAR 2:111 and 301 KAR 2:170. This does not prohibit tenants residing on the land, nor landowners from killing wildlife which is causing damage to persons or property on their land.]

Section 4. Except as otherwise provided by administrative regulation, only those birds and animals listed in Section 1 of this administrative regulation may be taken by the use of hand or mouth calling or attracting devices, or mechanically or electronically operated calling or attracting devices during daylight hours only.]



C. TOM BENNETT, Commissioner  
CRIT LUALLEN, Secretary  
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 26, 1994

FILED WITH LRC: September 13, 1994 at 9 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on October 28, 1994 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 24, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Mr. Lauren E. Schaaf, Director of Wildlife, Department of Fish & Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Lauren E. Schaaf

(1) Type and number of entities affected: An estimated 21,400 Kentuckians hunt woodchuck, 13,000 hunt coyotes, 251,600 hunt small game and 204,600 hunt deer. This administrative regulation will provide approximately two weeks of additional hunting opportunity per year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on the costs of doing business.

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

1. First year following implementation: This administrative regulation imposes no additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings are anticipated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: This administrative regulation imposes no additional paperwork or reporting requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated change in economic impacts.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: The purpose of this amendment is to remove a closed season on species which could otherwise be hunted year round. Recent small game season changes made this prohibition unnecessary. The alternative of leaving this closed season in effect was rejected because there is no reason to prohibit hunters already in the field from taking these species.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation could provide some increase in recreational opportunities statewide.

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

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

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation because all hunters are regulated the same statewide.

#### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Proposed Amendment)

##### 415 KAR 1:050. Definitions.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-120 and 224.60-130 require the Petroleum Storage Tank Environmental Assurance Fund Commission to adopt regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This regulation defines essential terms used in connection with the regulations of the commission in this chapter. 1992 Kentucky Acts Chapter 450 amended the statutory provisions for the fund. This regulation repeals the prior regulations of the commission.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context terms in the Petroleum Storage Tank Environmental Assurance Fund Commission regulations shall have the meanings given in this regulation.

(1) "Abandoned" means a prior owner, of the tank, has relinquished all connections with or concern in ownership with no intention to return or claim again and that the owner seeking assistance from the fund acquired the property where the tank is located without knowledge of the tank's existence. Physical acts by the owner or operator, applying for assistance, will be considered in determining the applicants knowledge of the tank's existence.

(2) "Assets" shall have the meaning in KRS 224.60-120(3);

(3) [(2)] "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(4) [(3)] "Cabinet" means the Underground Storage Tank Branch or other branch or division of the Natural Resources and Environ-

mental Protection Cabinet;

(5) [(4)] "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrical chemical cell;

(6) [(5)] "Claim" shall have the meaning in KRS 224.60-115(4);

(7) [(6)] "Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;

(8) "Contract" means the written agreement for performance of corrective action entered into by an owner or operator and a contractor certified pursuant to 415 KAR 1:114.

(9) [(7)] "Corrective action" shall have the meaning in KRS 224.60-115(5);

(10) "Corrective action plan" means a long-term remediation proposal employing corrective action technologies to obtain site closure. (Not depending solely on excavation and removal of contaminated soil.)

(11) [(8)] "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030;

(12) [(9)] "Currently exist" means an existing petroleum storage tank that has or does contain petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;

(13) [(10)] "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes, [er] storage of petroleum, or is in compliance when temporarily closed under the requirements of 401 KAR 42:070;

(14) [(11)] "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;

(15) [(12)] "Eligibility" means compliance with the criteria for eligibility established in this chapter;

(16) [(13)] "Entry level" means the amount of financial responsibility determined by the commission to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

(17) [(14)] "Extent of environmental harm" means the extent of horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;

(18) [(15)] "Facility" shall have the meaning in KRS 224.60-115(7);

(19) [(16)] "Federal regulation" shall have the meaning in KRS 224.60-115(8);

(20) [(17)] "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;

(21) [(18)] "Guarantor" shall have the meaning in KRS 224.120(4);

(22) [(19)] "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;

(23) [(20)] "Net worth" shall have the meaning in KRS 224.60-120(3);

(24) [(21)] "Maximum contaminant level" means the maximum permissible level of a contaminant in water established pursuant to the regulations of the cabinet or applicable federal regulations;

(25) [(22)] "Newly discovered tanks" mean petroleum storage tanks at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;

[(23)] "Nonretail facility" means a facility that does not sell petroleum products from petroleum storage tanks to the general public;

(26) [(24)] "Occurrence" shall have the meaning in KRS 224.115(12);

(27) "Operation" with respect to a UST or UST system means a

UST or UST system currently being used for the storage and dispensing of a regulated petroleum substance.

(28) [(25)] "Original invoice" means the original or a duplicate original of an invoice;

(29) "Permanently closed" means a UST or UST system that was closed after December 22, 1988 pursuant to the requirements of 40 CFR 280 Subpart G or a UST or UST system closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, applicable industry standards at the time of closure and closed in such manner as to prevent any future use of the UST or UST system.

(30) "Petroleum storage tank" shall have the meaning in KRS 224.60-115(15);

(31) [(26)] "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(15);

(32) [(27)] "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(17);

(33) [(28)] "Ranking system" means the system for determining financial ability and extent of environmental harm established by these regulations;

(34) [(29)] "Release" shall have the meaning in KRS 224.60-115(19);

(35) [(30)] "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;

(36) [(32)] "Release detection" means a method of determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it that complies with the requirements of 40 CFR 280 Subpart D;

(37) [(33)] "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum to comply with the regulations of the cabinet;

(38) [(34)] "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a level of a petroleum constituent in a drinking water supply significantly exceeds background;

(39) "Temporary closure" means taking a UST or UST system out of operation pursuant to the requirements of 40 CFR 280.70;

(40) [(34)] "Upgrade" means the addition or retrofit of some system such as cathodic protection, lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product, or the replacement of tanks with new tanks.

Section 2. These definitions are intended to be consistent with the definition of terms in the waste management regulations of the cabinet and in applicable federal regulations.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1994, at 1 p.m. at the Petroleum Storage Tank Commission, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1994, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the

contact person.

CONTACT PERSON: Stephen W. Atwood, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

# REGULATORY IMPACT ANALYSIS

Agency contact: Stephen Atwood

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 94 administrative budget was 639,500.

2. Continuing costs or savings: The commission anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) House Bill 402, codified at KRS 224.60-120 imposed new entry level payment requirements on the owner or operator of petroleum storage tanks.

Alternative: 1. Less stringent: The commission cannot be less stringent than statute allows.

2. More stringent: The commission cannot be more stringent than statute allows.

3. Present proposal: The amended regulation contains definitions for terms used in 415 KAR Chapter 1.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

Tiering: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks

owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

## FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates a underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

## PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Proposed Amendment)

### 415 KAR 1:060. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator of petroleum storage tanks in operation meeting the following requirements shall

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be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the commission, pursuant to 415 KAR 1:020 (1991) or 415 KAR 1:160 (1993), prior to the effective date of this administrative regulation ~~shall be [pursuant to 415 KAR 1:020 (1991)]~~ is eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2)(a), (b), (d), (e) and (f) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility, prior to the effective date of this administrative regulation ~~[for the facility pursuant to 415 KAR 1:020 (1991)]~~ shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040, or be permanently closed in compliance with 40 CFR 280.71 or temporarily closed in compliance with 40 CFR 280.70 ~~[401 KAR 42:070]~~;

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150; ~~[and]~~

(f) Have tanks "in operation" on or after the compliance dates set forth in 40 CFR 280.91 and be mandated by 40 CFR 280.90 to demonstrate financial responsibility as specified under 40 CFR 280.93; and

(g) Have demonstrated financial responsibility, as required, in the amount of entry level to the fund established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; ~~and [or the owner or operator was issued a certificate of eligibility prior to the effective date of this administrative regulation pursuant to 415 KAR 1:020 (1991);]~~

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991) or 415 KAR 1:060 (1993) may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Section 1(2)(a), (b), (d), (e), (f), (g) and Section 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the commission a copy of the Eligibility and State Financial Responsibility Affidavit form dated July 1994 ~~[October 1992]~~, hereby incorporated by reference. Copies of this form may be obtained ~~[copied]~~ and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive ~~[59 Fountain Place]~~, Frankfort,

Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the commission.

~~[(3) An owner or operator issued a written notification of eligibility by the commission pursuant to 415 KAR 1:020 (1991) is eligible to participate in the financial responsibility account for facilities that comply with the requirements of Section 1(1) of this administrative regulation without the issuance of a new certificate of eligibility pursuant to this administrative regulation.]~~

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. For the purpose of potential eligibility for participation in the financial responsibility account ~~[fund]~~, in no event shall the report of the release be made to the cabinet more than seven (7) ~~[thirty (30)]~~ days after discovery; and [;]

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at \$1,000 ~~[40,000]~~ per occurrence for taking corrective action and ~~[\$10,000 per occurrence for]~~ compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) ~~[or more]~~ tanks shall be established and maintained at \$5,000 ~~[25,000]~~ per occurrence for taking corrective action and \$5,000 ~~[25,000]~~ per occurrence for compensating third parties for bodily injury and property damage.

(3) The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$25,000 per occurrence for taking corrective action and \$25,000 per occurrence for compensating third parties for bodily injury and property damage.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the commission on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business

in the Commonwealth and who shall furnish any financial reports as may be required by the commission;

(c) A guarantor with a ~~[direct or indirect]~~ controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the commission in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the commission if the owner or operator has certified to the commission the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the commission within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time the commission determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the commission shall notify the owner or operator of the noncompliance.

(2) A facility shall ~~[may]~~ be deemed ineligible to receive payment from the financial responsibility account, pursuant to a previously approved assistance agreement or a certificate of eligibility issued pursuant to this administrative regulation, [in the event of a release] if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation during the ongoing corrective action and a release occurs during the period of noncompliance with the eligibility requirements of this administrative regulation.

(a) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the actions necessary to bring the facility into compliance are made to the satisfaction of the cabinet.

(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of a percentage of the total reimbursable remediation costs in the following amounts:

1. Failure to maintain compliance with release detection as required by 401 KAR 42:040, ten (10) percent;

2. Failure to report the release as required by 401 KAR 42:050, ten (10) percent;

3. Failure to comply with cabinet direction for corrective action as

required by 401 KAR 42:060, ten (10) percent.

4. The owner or operator shall not be eligible for payment of the costs of third-party liability ~~[for releases occurring before the facility is brought back into compliance].~~

(3) An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(4) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

(5) ~~[A facility issued a certificate of eligibility for the financial responsibility account pursuant to Section 3(2) of this administrative regulation shall not be eligible to participate in the petroleum storage tank account.]~~

~~(6) [An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation [pursuant to 415 KAR 1:020 (1994)] may be eligible to participate in the petroleum storage tank account [for facilities that do not qualify for eligibility in the financial responsibility account if the eligibility requirements of 415 KAR 1:070 are met.]~~

~~(6) [(7)]~~ Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than \$1,500,000 to ensure a \$1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a \$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. When funds are withdrawn for emergency abatement actions by the cabinet, the commission shall replace the amount immediately.

(2) If the unobligated balance of the financial responsibility account is \$1,500,000, or less, or the obligation [payment] of a claim shall cause the unobligated balance of the fund to be less than \$1,500,000, the commission shall immediately suspend the obligation [payment] of claims until the unobligated balance is greater than \$1,500,000. Obligations submitted for approval [Claims approved for payment] by the commission at the time of suspension shall be obligated [paid] in accordance with the date of initial submission [final approval] of the obligation [claims] when the suspension is lifted.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1994, at 1 p.m. at the Petroleum Storage Tank Commission, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1994, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

## ADMINISTRATIVE REGISTER - 1174

CONTACT PERSON: Stephen W. Atwood, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

### REGULATORY IMPACT ANALYSIS

Agency contact: Stephen Atwood

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 94 administrative budget was 639,500.

2. Continuing costs or savings: The commission anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) House Bill 402, codified at KRS 224.60-120 imposed new entry level payment requirements on the owner or operator of petroleum storage tanks eligible for the financial responsibility account.

Alternative: 1. Less stringent: The commission cannot be less stringent than statute allows.

2. More stringent: The commission cannot be more stringent than statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account which provides for reimbursement to facilities that are required by 40 CFR 280 Subpart H to demonstrate financial responsibility for corrective action and third party compensation resulting from petroleum contamination. The proposed amended regulation meets the requirements of 40 CFR 280 Subpart H.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates a underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Proposed Amendment)

415 KAR 1:070. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.



Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases from petroleum storage tanks removed from the ground after January 1, 1974 ~~and before December 22, 1988~~ may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily ~~permanently~~ closed after ~~December 22, 1988~~ ~~before January 1, 1974~~ may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 ~~2~~ of this administrative regulation are met; and

~~(d) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after January 1, 1974 and before December 22, 1988 may be eligible for payment by the petroleum storage tank account if the requirements of Section 2 of this administrative regulation are met;~~

~~(e) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;~~

~~(f) Costs of corrective action for releases from petroleum storage tanks removed from the ground after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;~~

~~(g) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and~~

~~(h) Costs of corrective action for releases from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.~~

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150;

(c) Submitted the Eligibility and State Financial Responsibility Affidavit form to the commission to certify eligibility for the petroleum storage tank account; and

(d) Filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirement of 401 KAR 42:020.

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b), ~~(c), (d), (e) and (f)~~ of this Administrative Regulation. An owner or operator of a facility of the class~~es~~ described in Section 1(1)(b), ~~(c), (d), (e) and (f)~~ of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with

the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)~~(c)~~ ~~(g)~~ of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)~~(c)~~ ~~(g)~~ of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a)1. A release of petroleum is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a regulated substance until the upgrade is completed.

~~[(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.]~~

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)~~(d)~~ ~~(h)~~ of this Administrative Regulation. An owner or operator of a facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet;

(3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and

(4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at \$1,000 per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$5,000 per occurrence for taking corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$25,000 per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)(c) and (d) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) The entry level payments contained in subsections (1), (2) and (3) of this section shall apply retroactively to any facility involved in corrective action that had not been issued a closure letter by the

cabinet prior to July 14, 1994.

~~(1)(a) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility was a retail facility and the facility is permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility was a nonretail facility. The entry level is:~~

- ~~1. \$10,000 for an owner or operator of five (5) or less tanks; or~~
- ~~2. \$25,000 for an owner or operator of six (6) or more tanks.~~

~~(2)(a) An owner or operator of a facility of the class described in Section 1(1)(e) and (f) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(e) and (f) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility, or the facility will continue in service. The entry level is:~~

- ~~1. \$10,000 for an owner or operator of five (5) or less tanks; or~~
- ~~2. \$25,000 for an owner or operator of six (6) or more tanks.~~

~~(3)(a) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:~~

- ~~1. \$10,000 for an owner or operator of five (5) or more tanks; or~~
- ~~2. \$25,000 for an owner or operator of six (6) or more tanks.~~

~~(4)(a) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:~~

- ~~1. \$10,000 for an owner or operator of five (5) or less tanks; or~~
- ~~2. \$25,000 for an owner or operator of six (6) or more tanks.~~

~~(5) An owner or operator of a nonretail facility who meets the requirement of 415 KAR 1:060, Section 3(2)(a) as to financial ability may request the commission to waive the payment of an entry level required by this section on the basis of financial hardship, if the facility is taken permanently out of service.]~~

Section 6. Ineligibility. (1)(a) The commission may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) The commission shall [may] require an owner or operator to pay twenty (20) percent of the reimbursable remediation costs, [an entry level] for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42, instead of making a determination that the facility is not eligible for participation as provided in paragraph (a) of this subsection.

(c) The owner or operator of a facility placed in the petroleum

storage tank account by the commission pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a), (b), and (c).

(2) An owner, operator with an assistance agreement [or contractor] may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(3) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) Costs incurred at a facility for site investigation or corrective action at the direction of the cabinet at a facility that is later classified as a nonregulated tank shall be reimbursed if the requirements of this administrative regulation are met.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1994, at 1 p.m. at the Petroleum Storage Tank Commission, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1994, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: Stephen W. Atwood, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

# REGULATORY IMPACT ANALYSIS

(1) Type and number of entities affected: The proposed amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 94 administrative budget was 639,500.

2. Continuing costs or savings: The commission anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) House Bill 402, codified at KRS 224.60-120 imposed new entry level payment requirements on the owner or operator of petroleum storage tanks.

Alternative: 1. Less stringent: The commission cannot be less stringent than statute allows.

2. More stringent: The commission cannot be more stringent than statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account which provides for reimbursement to facilities that are not eligible for reimbursement from the financial responsibility account due to noncompliance with the applicable state and federal regulations pertaining to underground petroleum storage tanks or for facilities that are not required by 40 CFR 280 Subpart H to maintain responsibility for taking corrective action and compensating third party damages.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional

information.

TIERING: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

## FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates a underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank that are out of compliance or exempt from the requirements of 40 CFR 280 Subpart H, may be eligible for reimbursement of corrective action cost from this fund account. Excepting the required entry level imposed on the local government, extensive savings will be realized by the local government.

## PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Proposed Amendment)

### 415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the commission for reimbursement or payment of the costs of corrective action.

Section 1. Assistance Agreement. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for an assistance agreement with the commission.

(2) Application shall be made on the Assistance Agreement form dated October 1992, hereby incorporated by reference. This form may be inspected and obtained [eepied] and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leewood Drive [69 Fountain Place], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release from an eligible facility has occurred and has been reported to the cabinet.

(3) If the owner or operator meets the requirements of subsection (2) of this section the commission may enter into an assistance agreement and establish the amount to be obligated by the appropri-

ate account based upon the approved contract. ~~[bid. The assistance agreement may be used as a guarantee of payment to a contractor performing corrective action to the extent of the approved amount.]~~

(a) Reimbursement pursuant to an assistance agreement is restricted to documented costs approved by the commission.

(b) The assistance agreement may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the commission.

(4) The assistance agreement may be amended upon application by the eligible owner or operator upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action; and that the additional costs are necessary to comply with the administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the commission.

(5) Payment under the terms of the assistance agreement may be made when the eligible owner or operator submits a claim form, and a certification by the certified contractor that the costs were consistent with the bid and necessary to comply with the administrative regulations of the cabinet. The requirement for a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the claim form established by the commission dated October 1992, hereby incorporated by reference. This form may be inspected and obtained [copied] and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive [59 Fountain Place], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The claim shall contain:

(a) Original invoices for all costs for which payment is sought;

(b) A copy of the contract [bid-proposal] submitted to the owner or operator by the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating the necessity of the corrective action to be or having been performed; and

(e) Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.

(2) Commission staff may require additional information to determine the eligibility of a cost for payment.

(3)(a) Commission staff shall review all claims within ninety (90) days of submission, unless an extension of time is agreed to by the applicant;

(b) If the claim ~~[application]~~ is determined to be incomplete, commission staff shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the commission within fifteen (15) days of the notice of receipt by the applicant. The commission may grant the applicant a thirty (30) day extension if the written request is received, by the commission, within fifteen (15) days of receipt of the notice of deficiency; [The applicant shall submit supplemental information to correct the deficiencies within fifteen (15) days of receipt of notice.]

(c) If the applicant fails to correct the deficiency or to supply the additional information required by commission staff, that portion of the claim shall be denied.

(4) The commission shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment ~~[and the amount of payment shall be obligated in the appropriate account].~~

(5) The claim may be submitted with the application for an assistance agreement.

(6) An owner or operator of a facility, covered by a fund obligation, shall submit to the commission, a copy of all reports required by administrative regulation or requested in writing, by the cabinet detailing the status of remedial action at the facility, including site check, site investigation, corrective action plans, quarterly reports, closure assessment reports, site classification documents and any correspondence with the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

(a) The documents shall be included with a claim for reimbursement. If a claim for reimbursement was not filed for costs incurred by the owner or operator at the facility in a calendar quarter, the documents shall be due no later than the last working day of the calendar quarter; and

(b) Failure to submit the documents to the commission in three (3) consecutive calendar quarters shall result in the disallowance of ten (10) percent of the total reimbursable costs or the remainder of the current obligation and no additional obligation shall be made.

Section 3. Contracts. [Bids from Contractors.] (1) Effective after July 14, 1993, an owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain an executed contract [bid-proposal] from one (1) certified [at least three (3)] contractor[s] to be eligible for reimbursement or payment from the fund. The contract [bid-proposal] shall be obtained prior to commencing the activity except emergency response measures as directed by the cabinet. The contract [bid-proposal] shall set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including, but not limited to, the costs of personnel, sampling, removal, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.

(2) A copy ~~[Copies]~~ of the contract [bid-proposal] shall be submitted with an application for assistance agreement.

(3) An application for assistance received prior to this administrative regulation shall be required to submit a copy of a signed contract setting forth the unit costs to be eligible to receive reimbursement or payment from the fund.

Section 4. Signatures. (1) A claim form or an application for ~~[an]~~ assistance ~~[agreement]~~ shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification.

(3) The authorized representative of an owner or operator signing the certification shall submit documentary evidence as requested by the commission staff to substantiate the legality of the authorized representatives power of agency.

Section 5. Criteria For Approval of a Claim. (1) Commission staff shall review all claims in the order in which they are received.

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied.

~~[(d) The claim is received within one (1) year from completion of the corrective action for which payment is sought.]~~

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) Claims shall be reviewed by the commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(2) Requests for payment under an assistance agreement may be submitted thirty (30) [sixty (60)] days following initiation of corrective action. Subsequent requests for payment may be made [and] at thirty (30) [sixty (60)] day[s] intervals thereafter, if the payment request exceeds \$1,000, until completion of the authorized activities. Upon request, the executive director [commission] may submit [approve] interim payments to the commission at more frequent intervals or for amounts below the \$1,000 payment request threshold. Each request shall be reviewed by commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(3) All payments shall be subject to approval of the commission.

Section 7. Payment Procedures. (1) When an owner or operator has submitted a claim for payment by the commission, payment shall be made by a check written to the eligible owner or operator, or to a third party designated in an assistance agreement.

(a) A request for an interim partial payment shall be accompanied by documentation required by Section 2(6) of this administrative regulation; or

(b) A final payment shall be accompanied by a closure letter issued by the cabinet; or

(c) A one (1) time payment in full shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying [verify] that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible Costs. Payment for costs of corrective action shall be limited to reasonable costs, expenses and other obligations incurred for corrective action or site investigation as the result of release into the environment from a petroleum storage tank.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure;

(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

~~(c) [Removal, treatment, and disposal of petroleum products from petroleum storage tank systems, liquids, and soils;~~

(d) Performance of site checks, and site investigation to assess the extent of contamination caused by release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(d) [(e)] Preparation of corrective action plans;

(e) [(f)] Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(f) [(g)] Necessary laboratory services to analyze samples taken

as part of the site check, site investigation, corrective action, or maintenance of the corrective action system;

(g) [(h)] Restoration or replacement of a private or public drinking water supply;

(h) [(i)] Removal, treatment, and disposal of contaminated liquids and soils resulting from corrective action;

(i) [(j)] The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(j) [(k)] The costs of implementation of corrective action technologies such as soil venting or bioremediation, and groundwater treatment systems, if approved by the cabinet for the facility;

(k) [(l)] Costs for replacing blacktop or concrete if removal was necessary to perform the corrective action;

(l) [(m)] Attorney fees integral to the performance of site corrective action, such as preparation of off-site access agreements; and

(m) [(n)] Other costs requested by the applicant and approved by the commission, demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(n) Purchases of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the commission or their appointed delegate.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs, earth moving equipment~~[-and pumps];~~

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on regulatory regulations;

3. Consultation on petroleum storage tank environmental assurance fund regulations;

4. Preparation or submittal of commission documentation; and

5. Any other services determined by the commission not to be integral to the performance of corrective action. [unless demonstrated to be integral to the performance of corrective action;]

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan;

(i) Aesthetic improvements to the facility;

(j) Interest on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

(n) Any costs associated with releases from aboveground tanks or aboveground piping;

(o) Contractor markup expenses for in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) Rush laboratory fees unless directed by the cabinet;

(r) Costs and cost recovery for governmental emergency services.

(s) Preparation and implementation of corrective action plans when a written notice of termination is issued by the cabinet.

Section 9. Delegation to Executive Director. The commission may delegate responsibility for the approval of a claim, an assistance agreement, or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the

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commission shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the commission for the performance of corrective action from the person responsible or liable for the release.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1994, at 1 p.m. at the Petroleum Storage Tank Commission, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1994, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: Stephen W. Atwood, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Stephen Atwood

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 94 administrative budget was 639,500.

2. Continuing costs or savings: The commission anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives

were rejected: House Bill 402, codified at KRS 224.60-120 imposed new entry level payment requirements on the owner or operator of petroleum storage tanks.

Alternative: 1. Less stringent: The cannot be less stringent than statute allows.

2. More stringent: The commission be more stringent than statute allows.

3. Present proposal: The amended regulation contains the claims procedures to be followed by owners or operators eligible to participate in the fund.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates a underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will imposes no different claim procedure from that imposed on a nongovernmental entity.



**PETROLEUM STORAGE TANK  
ENVIRONMENTAL ASSURANCE FUND COMMISSION  
(Proposed Amendment)**

**415 KAR 1:090. Ranking system.**

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly require the commission to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the commission shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Applicability. An owner or operator of petroleum storage tanks eligible to participate in the petroleum storage tank account, 415 KAR 1:070, shall not be classified pursuant to this administrative regulation for reimbursement if:

(1) The owner or operator, an individual, with a interest in only one (1) facility, or has five (5) or fewer tanks, whose average net income for the five (5) year period, prior to application for assistance from the fund, is less than \$50,000; or

(2) The owner or operator abandoned or permanently closed the tanks prior to December 22, 1988 and the facility was not under the direction of the implementing agency pursuant to 40 CFR 280.73 at the time the release is detected.

Section 2. [4-] Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the Petroleum Underground Storage Tank System Facility Classification Outline (1994) incorporated by reference pursuant to 401 KAR 42:080E, the study to be completed [performed] for the commission pursuant to KRS 224.60-137 and the administrative regulations [to be] adopted by the cabinet [to] establishing standards for corrective action for release into the environment from a petroleum storage tank.

(2) [Until the study is completed and the administrative regulations establishing standards for corrective action required by KRS 224.60-137 have been adopted by the cabinet.] Priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a domestic use well, domestic use spring or domestic use well head protection area, as defined in 401 KAR 12:080, or a drinking water supply in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level, or the facility has been determined to be the source of fumes in an occupied building;

(b) Second, where the facility has encountered groundwater and is required to meet the levels specified in Groundwater Table 2 of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080, for releases of petroleum which pose a direct threat of contamination to a domestic use well, domestic use spring, domestic use well head protection area, or a drinking water supply; or [release of petroleum poses a direct threat of contamination to a drinking water supply due to the hydrogeologic

characteristics of the facility and the surrounding area, the proximity, quality and current or future uses of nearby surface and groundwater, and the potential for migration of the petroleum constituents, and contamination of the drinking water supply is very likely to occur unless corrective action is immediately undertaken;]

(c) Third, where areas outside the facility's property boundary have been impacted by a release and the facility is required to close under Class V of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080E or its superseding administrative regulation, but has not contaminated a domestic use well, spring or well head protection area, does not pose a threat to a domestic use well, domestic use spring, domestic use well head protection area or drinking water supply and has not been determined to be a source of fumes in occupied buildings. [the release of petroleum has contaminated off-site property and poses a threat to human health or the environment.]

(3) The owner or operator of the facility shall submit information to the commission to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the classification guide contained in the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080E or its superseding administrative regulation, (January 1994). [Environmental Harm Ranking Information form dated October 1992, hereby incorporated by reference, and shall be certified by a registered professional geologist or a registered professional engineer. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 50 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.-]

Section 3. [2-] Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the commission shall consider the following factors:

(a) Whether the facility is owned by a public or private person;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability. Each individual shall certify that they do not have an ownership or operating interest in another facility;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility; and

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 4. [3-] Demonstration of Financial Ability [to Pay Entry

Level]. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit to the commission the last five (5) years of income tax returns and a financial statement for the person, partnership or corporation. (2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to:

(a) First, a [an individual,] partnership or corporation whose average net income for the five (5) year period is less than \$50,000, [or] a public entity with an annual revenue and income of less than \$100,000, or an entity registered and recognized by the federal government as a tax exempt nonprofit organization;

(b) Second, an individual, partnership, or a corporation whose average net income for the five (5) year period is less than \$100,000 but more than \$50,000 or a public entity with annual revenue or income of less than \$250,000 but more than \$100,000;

(c) Third, an individual, partnership or a corporation whose average net income for the five (5) year period is more than \$100,000 or a public entity with an annual revenue and income of more than \$250,000.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Subchapter S or closely held C Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) A public entity who is an applicant for consideration as to financial ability shall submit its annual budget for the last five (5) years to demonstrate financial ability.

(6) The commission may require that additional information be submitted to determine the financial ability of an applicant.

Section 5. The commission shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the commission is inaccurate or misrepresented.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(1) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2) of this administrative regulation shall have their claims paid second;

(3) [(+)] An owner or operator of a facility that meets the conditions of Section 2 [(+)](2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(a) of this administrative regulation shall have their claims paid third [first];

(4) [(2)] An owner or operator of a facility that meets the conditions of Section 2 [(+)](2)(b) [(a)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(a) [(b)] of this administrative regulation shall have their claims paid fourth [second];

(5) [(3)] An owner or operator of a facility that meets the conditions of Section 2 [(+)](2)(c) [(a)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(a) [(c)] of this administrative regulation shall have their claims paid fifth [third];

(6) [(4)] An owner or operator of a facility that meets the conditions of Section 2 [(+)](2)(a) [(b)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(b) [(a)] of this administrative regulation shall have their claims paid sixth [fourth];

(7) [(5)] An owner or operator of a facility that meets the condi-

tions of Section 2 [(+)](2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(b) of this administrative regulation shall have their claims paid seventh [fifth];

(8) [(6)] An owner or operator of a facility that meets the conditions of Section 2 [(+)](2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(b) [(a)] of this administrative regulation shall have their claims paid eighth [sixth];

(9) [(7)] An owner or operator of a facility that meets the conditions of Section 2 [(+)](2)(a) [(c)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [(3)](2)(c) [(b)] of this administrative regulation shall have their claims paid ninth [seventh];

(10) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid tenth;

(11) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid eleventh;

(12) [(8)] Claims in categories (1) through (11) of this section [(7)] shall be paid in order of the date of receipt of the claim;

(13) [(9)](a) All other claims of private persons for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 4 [(3)] of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net income more than \$100,000 is not required to submit income tax returns and shall be paid after the claims addressed by subsections (1) through (13)(a) of this section in order of receipt of the claim;

(14) [(4)](a) Claims from organizational units of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have their claims paid last in order of the date of receipt of the claim.

(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be paid based upon financial ability as determined in Section 4 [(3)](2) of this administrative regulation, in order of receipt of the claim, and shall be ranked in the same manner as a claim from a private person.

Section 7. Payment of Certain Classes of Claims. The commission may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1994, at 1 p.m. at the Petroleum Storage Tank Commission, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1994, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: Stephen W. Atwood, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood

Drive, Frankfort, Kentucky 40601, (502) 564-5981.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Stephen Atwood

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$10,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 94 administrative budget was 639,500.

2. Continuing costs or savings: The commission anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The adoption of regulation by the Underground Storage Tank Branch (USTB) of the Natural Resources and Environmental Protection Cabinet based on the risk assessment study conducted by the University of Kentucky necessitated the amendment of the criteria used to rank sites in the petroleum storage tank account. The amended regulation relies on the site classification criteria implemented by the USTB for the determination of environmental harm and permits the cessation of requiring the owner or operator to complete the commission's Environmental Harm Form.

Alternative: 1. Less stringent: The commission cannot be less stringent than statute allows.

2. More stringent: The commission cannot be more stringent than statute allows.

3. Present proposal: The amended regulation delineate the method by which sites will be ranked and the order in which claims will be paid.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

## FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates a underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will delineate the priority of reimbursement of local government from the petroleum storage tank account.

## PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Proposed Amendment)

### 415 KAR 1:100. Third party claims.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to receive reimbursement or payment for third-party claims. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. Owners or operators are eligible to receive reimbursement or payment for third-party claims if they have been issued a certificate of eligibility pursuant to the provisions of 415 KAR 1:060 (1994) [or received a certificate of eligibility pursuant to 415 KAR 1:020 (1991) prior to the effective date of this administrative regulation.] and have maintained compliance with the eligibility requirements of 415 KAR 1:060. This administrative regulation applies only to third-party claims, including claims for bodily injury, [and] property damage and damage to natural resources, which are asserted against an owner or operator as a result of release into the environment from a petroleum storage tank at a facility eligible for participation in the financial responsibility account. Claims for property damage shall only be paid to the extent that the damages are not addressed by the performance of corrective action. Third-party claims shall be paid only to the extent specified in 401 KAR 42:090.

Section 2. Notice to the Commission. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall notify the commission of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(2) Third-party claims shall only be paid on the basis of a final and enforceable judgment, or pursuant to an agreement reviewed and

approved by the commission.

(3) Settlement of claims.

(a) No settlement of a third-party claim shall be made by an owner or operator without the prior approval of the commission; and

(b) The fund shall not pay a final and enforceable third-party judgment or reimburse an owner or operator for payment of the judgment in any amount exceeding a settlement offer rejected by the owner or operator which was not submitted to the commission for consideration or after approval by the commission.

Section 3. Payment of Claims. (1) Payment of claims shall be limited to actual damages caused by the release of petroleum.

(2) Payment shall be made to the third party after approval of payment by the commission.

(3) The amount of payment of all third-party claims caused by a release shall not exceed \$1,000,000.

(4) The commission shall acquire by subrogation the right of the third party to recover the amount of damages paid to the third party from the person responsible or liable for the release.

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1994, at 1 p.m. at the Petroleum Storage Tank Commission, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1994, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: Stephen W. Atwood, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Stephen Atwood

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 94

administrative budget was 639,500.

2. Continuing costs or savings: The commission anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The commission contends that third party liability could potentially dwarf the expenditures for corrective action and amended this regulation to insure the commission is fully informed of the status of potential third party liability.

Alternative: 1. Less stringent: The commission could allow the owner or operator to settle or litigate the claim with no oversight and reimburse the final judgment or settlement of the claim. This could result in the rejection of an acceptable settlement of the claim that could potentially result in a substantial final judgment.

2. More stringent: The commission could defend against the third party claim as would a commercial insurer. This alternative would result in increase commission legal fees.

3. Present proposal: The amended regulation contains definitions for terms used in 415 KAR Chapter 1.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

# FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

# FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates an underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government third party damages in the same manner as nongovernmental entities.

**PETROLEUM STORAGE TANK  
ENVIRONMENTAL ASSURANCE FUND COMMISSION  
(Proposed Amendment)**

**415 KAR 1:120. Hearings.**

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130(2)(f) requires the commission to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Requests for Hearing. (1) Any person aggrieved by a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or other competent evidence related to the disputed issue that was not previously considered by the commission staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice of the commission's action. The commission staff shall evaluate the documents and other competent evidence after receipt of the request. The commission staff shall resubmit the claim to the commission if the documentation or evidence, accompanying the request for reconsideration, warrants reconsideration of a prior recommendation on the issue. If the reconsideration, by the commission staff or the commission, fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to subsection (2) of this section.

(2) Any person aggrieved by a determination or the reconsideration of a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim may request in writing that a hearing be conducted by the commission. The writing shall set forth the grounds for the request and the relief sought. The commission, the executive director or a person designated by the commission shall be the hearing officer. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had notice. Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after receipt of the request.

(3) [(2)] The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.

(4) Upon receipt of notice of hearing, by the commission, summons shall issue upon petition directing the commission to send all pertinent portions of the commission file related to the determination before the hearing officer, properly bound to the clerk of the

administrative hearing office after certifying that such record is the total content of commission file documents pertaining to the issue before the hearing officer and that said record is the basis for the commission's determination. The hearing officer shall review the commission record, the commission's determination.

Section 2. The Burden of Persuasion. The person requesting the hearing shall have the burden of persuasion to establish a case for the relief sought.

(1) The standard to meet the burden is a preponderance of the evidence.

(2) Documentary evidence which is existing or obtained by any party during the time a claim is pending before the commission, and which is withheld by such party until the claim is forwarded to the Office of Administrative Hearings shall not be admitted into the hearing record in the absence of extraordinary circumstances, unless such admission is requested by the commission.

Section 3. Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation, agreed settlement, consent order, or default for nonappearance.

Section 4. Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(3) The hearing officer shall provide for the hearing to be stenographically, mechanically or electronically recorded. It is within the hearing officer's discretion to require official transcripts. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210 or 224.10-212, and 400 KAR 1:060. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The order shall contain the appropriate findings of fact

and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The commission may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or issue its own written order based on the report and recommended order.

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extension.

(6) The commission shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(7) A final order of the commission shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the commission and the facts and law upon which the decision is based.

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may have recourse to the Franklin Circuit Court [courts-of-jurisdiction].

JACK B. HALL, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 13, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1994, at 1 p.m. at the Petroleum Storage Tank Commission, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1994, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: Stephen W. Atwood, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Stephen Atwood

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing

or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 94 administrative budget was 639,500.

2. Continuing costs or savings: The commission anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The hearing process is a review of an determination by the commission. This regulation provides additional guidance to the hearing officer to ensure consistent hearing results.

Alternative: 1. Less stringent: The commission could allow complete discretion as to the review process and provide no procedural guidance.

2. More stringent: The commission cannot adopt regulation that would deprive the petitioner's due process rights.

3. Present proposal: The amended regulation requires the hearing officer to review the determination of the commission based of the information supplied by the petitioner. This requirement insure that the commission will be provided with accurate information upon which it may rely in making its determination. This will reduce repetitive claim review and reduce litigation expenses.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No



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5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

## FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates a underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will allow local government to pursue erroneous determinations by the commission.

## DEPARTMENT OF CORRECTIONS (Proposed Amendment)

### 501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised September [May] 12, 1994, are incorporated by reference and shall be referred to as Kentucky State Reformatory 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.

KSR 01-00-09 Public Information and News Media Relations  
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution  
KSR 01-00-15 Cooperation and Coordination with Oldham County Court  
KSR 01-00-19 Personal Service Contract Personnel  
KSR 01-00-20 Consent Decree Notification to Inmates  
KSR 02-00-01 Inmate Canteen  
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts  
KSR 02-00-11 Inmate Personal Accounts  
KSR 02-00-12 Institutional Funds and Issuance of Checks  
KSR 04-00-02 Staff Training and Development  
KSR 05-00-01 Officers' Daily Housing Security and Safety Log  
KSR 05-00-02 Research Activities  
KSR 05-00-03 Management Information Systems  
KSR 06-00-01 Inmate Master File  
KSR 06-00-02 Records Audit  
KSR 06-00-03 Kentucky Open Records Law and Release of Psychological/ Psychiatric Information

KSR 07-00-02 Institutional Tower Room Regulations  
KSR 07-00-04 Handling of PCB Articles and Containers  
KSR 07-00-05 Proper Removal of Transformers  
KSR 07-00-06 Asbestos Abatement  
KSR 07-00-07 Discharge Monitoring Report (DMR)  
KSR 07-00-08 Control of Hazardous Energy (Lockout or Tagout)  
KSR 07-00-09 Inventory Control of Underground Storage Tanks  
KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family  
KSR 08-00-08 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery or Death  
KSR 08-00-10 Hazardous Chemicals and Material Safety Data Sheet  
KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit Procedure  
KSR 09-00-05 Gate I Entrance and Exit Procedure Limited Issue  
KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy  
KSR 09-00-21 Crime Scene Camera  
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence  
KSR 09-00-23 Drug Abuse Testing [(Amended 5/12/94)]  
KSR 09-00-25 Inmate Motor Vehicle Operator's License  
KSR 09-00-26 Contraband Outside Institutional Perimeter  
KSR 09-00-27 Construction Crew Entry/Exit  
KSR 09-00-28 Restricted Areas  
KSR 09-00-29 Transportation of Inmates  
KSR 09-00-30 Parole Board  
KSR 09-00-31 Forced Cell Move in Medium or Maximum Area  
KSR 10-00-10 Segregation [Unit D—and Unit E] - Special Management Inmate Legal Access (Amended 9/12/94)  
KSR 10-00-11 Segregation Unit [D] - Behavior Problem Control (Amended 9/12/94)  
KSR 10-00-13 Segregation Unit [D] - Property Room Access (Amended 9/12/94)  
KSR 10-01-01 Segregation Unit [D] - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation (Amended 9/12/94 [~~Time and Attendance, and Unit Personnel Records~~])  
KSR 10-01-02 Segregation [Unit D] - General Operational Procedures (Amended 9/12/94)  
KSR 10-01-03 Segregation [Unit D] - Inmate Tracking System and Records System (Amended 9/12/94)  
KSR 10-01-04 Segregation [Unit D] - Administrative Segregation (Amended 9/12/94)  
KSR 10-01-05 Segregation [Unit D] - Disciplinary Segregation (Amended 9/12/94)  
KSR 10-01-06 Segregation [Unit D] - Protective Custody (Amended 9/12/94)  
KSR 10-01-07 Segregation - Convalescent Care Unit (Amended 9/12/94) [~~D—Geriatrics~~]  
KSR 10-01-08 Unit D - Safekeepers and Pretrial Contract Hold Status Inmates  
KSR 10-01-09 Unit D - Hold Ticket Residents  
KSR 10-02-01 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training, Time and Attendance  
KSR 10-02-02 Unit E Designated Staff Visits  
KSR 10-02-03 Unit E-1 Convalescent Care  
KRS 10-02-04 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: General Operating Procedures  
KSR 11-00-01 Meal Planning for the General Population  
KSR 11-00-02 Special Diets  
KSR 11-00-03 Food Service Inspections  
KSR 11-00-04 Dining Room Rules and Dress Code for Inmates

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KSR 11-00-06	Health Standards/Regulations for Food Service Employees	KSR 18-00-04	Returns from Other Institutions
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates	KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 12-00-01	Inmate Summer Dress Regulations	KSR 18-00-06	Classification and Special Notice Form
KSR 12-00-03	State Items Issued to Inmates	KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 12-00-07	Regulations for Inmate Barbershop	KSR 19-00-01	Inmate Work Incentives
KSR 12-00-09	Treatment of Inmates with Body Lice	KSR 19-00-02	On-the-job Training Program <del>(Amended 5/12/94)</del>
KSR 13-00-02	Hospital Operations, Rules and Regulations	KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds	KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 13-00-04	Medical and Dental Care	KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 13-00-05	Medical Records	KSR 20-00-04	Criteria for Participation in A College Program
KSR 13-00-08	Institutional Laboratory Procedures	KSR 20-00-06	English as a Second Language
KSR 13-00-09	Institutional Pharmacy Procedures	KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 13-00-10	Requirements for Medical Personnel	KSR 21-00-02	Inmate Library Services
KSR 13-00-11	Health Evaluation	KSR 21-00-03	Library Services for Unit D
KSR 13-00-12	Vision Care/Optomety Services	KSR 22-00-03	Inmate Organizations
KSR 13-00-14	Periodic Health Examinations for Inmates	KSR 22-00-07	Inmate Magazine
KSR 13-00-15	Medical Alert System	KSR 22-00-08	Privilege Trips
KSR 13-00-16	Suicide Prevention and Intervention Program	KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 13-00-17	Special Care	KSR 23-00-03	Religious Programming
KSR 13-02-01	Mental Health Services	KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 13-02-02	Mentally Retarded Inmates	KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 13-02-03	Suicide Prevention and Intervention Program	KSR 25-00-03	Preparole Progress Report
KSR 13-02-04	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Program Description		
KSR 13-02-05	Access to Intensive Services Programs Operated at Kentucky State Reformatory by the Division of Mental Health		
KSR 14-00-01	Inmate Rights		
KSR 14-00-04	Inmate Grievance Procedure		
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)		
KSR 15-00-05	Differential Status for SU (QUIT) Inmates		
KSR 15-00-06	Inmate I.D. Cards		
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures		
KSR 15-00-08	Firehouse Living Area		
KSR 15-00-09	Smoking and No Smoking Areas for Inmates and Staff		
KSR 15-00-10	Program Services for Special Housing Placement		
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel <u>(Amended 9/12/94)</u>		
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures		
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations		
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application		
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services		
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations		
KSR 16-00-02	Inmate Correspondence and Mailroom Operations		
KSR 16-00-03	Inmate Access to Telephones		
KSR 16-01-01	Visiting Regulations		
KSR 16-01-02	Lawn Visit Procedure and Regulations		
KSR 16-01-03	Night Visit Regulations		
KSR 17-00-05	Dormitory 10 Operations		
KSR 17-00-06	Identification Department Admission and Discharge Procedures		
KSR 17-00-07	Inmate Personal Property		
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers		

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 12, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 24, 1994 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 537 employees of the correctional institutions, 1260 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

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(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## DEPARTMENT OF CORRECTIONS (Proposed Amendment)

### 501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. 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 September 12 [June 14], 1994 are incorporated by reference and shall be referred to as Bell County Forestry Camp 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.

BCFC 01-02-01 Organization and Assignment of Responsibility (Amended 9/12/94)

[BCFC 01-04-02 Extraordinary Occurrence Procedure (Deleted 9/12/94)]

BCFC 01-05-01 Monitoring of Operations, Policies and Procedures (Amended 9/12/94) [Procedures Office: Duties and Responsibilities]

BCFC 01-08-01 Public Information and [Inmate Access to] News Media Access (Amended 9/12/94)

[BCFC 01-09-01 Staff Participation in Professional Organization and Conferences; Provision for Leave and Reim-

bursement for Expenses (Deleted 9/12/94)]  
BCFC 01-11-01 Institutional Duty Officer (Amended 9/12/94) [Responsibilities]  
BCFC 01-13-01 Annual Planning Document (Added 9/12/94)  
BCFC 02-01-02 Fiscal Management: Accounting Procedures  
BCFC 02-01-03 Fiscal Management: Agency Funds  
BCFC 02-01-04 Fiscal Management: Insurance  
BCFC 02-01-05 Fiscal Management: Budget  
BCFC 02-01-06 Fiscal Management: Audit  
BCFC 02-02-01 Inmate Accounts  
BCFC 02-02-02 Inmate Control of Personal Funds  
BCFC 02-02-03 Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays  
BCFC 02-03-01 Purchase Orders  
BCFC 02-04-01 Processing of Invoices  
BCFC 02-05-01 BCFC Materials Receiving Procedure  
BCFC 02-06-01 Property Inventory  
BCFC 04-01-01 Employee Training and Development  
BCFC 05-01-01 Information System (Amended 9/12/94)  
BCFC 06-01-01 Offender Records (Amended 9/12/94)  
BCFC 06-02-01 Storage of Expunged Records (Amended 9/12/94)  
BCFC 06-03-01 Court Trips (Amended 9/12/94)  
BCFC 06-03-02 Receipt of Order of Appearance (Amended 9/12/94)  
BCFC 07-04-01 Smoking Control  
BCFC 07-05-01 Permit Required Confined Space (Added 9/12/94)  
BCFC 07-06-01 Control of Hazardous Energy (Lockout or Tagout) (Added 9/12/94)  
BCFC 08-02-01 Fire Prevention  
BCFC 08-03-01 Fire Procedures  
BCFC 08-03-02 Fire Extinguishers and Their Use  
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances  
BCFC 08-09-02 OSHA Hazard Communication Program  
BCFC 08-10-01 Bell County Forestry Camp Emergency Response Team  
BCFC 09-06-01 Search Policy/Disposition of Contraband  
BCFC 09-14-01 Bell County Forestry Camp - Restricted Area  
BCFC 10-01-01 Special Management Inmates  
BCFC 11-01-01 Food Services: General Guidelines (Amended 9/12/94)  
BCFC 11-02-01 Food Service[: Security (Amended 9/12/94)  
BCFC 11-03-01 Dining Room Guidelines (Amended 9/12/94)  
BCFC 11-04-01 Food Service: Meals (Amended 9/12/94)  
BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 9/12/94)  
BCFC 11-05-02 Health Requirements of Food Handlers (Amended 9/12/94)  
BCFC 11-06-01 Food Service: Inspection and Sanitation (Amended 9/12/94)  
BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 9/12/94)  
[BCFC 11-08-01 Staff/Visitor Meals (Deleted 9/12/94)]  
BCFC 12-01-01 Sanitation, Living Conditions Standards, and Clothing Issues  
BCFC 12-01-02 Bed Areas, Assignments/Conditions Standards  
BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry  
BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule  
BCFC 12-03-02 Barbershop Services and Equipment Control  
BCFC 12-04-01 Institutional Inspections  
BCFC 12-05-01 Fire Safety and Use of Noncombustible Receptacles  
BCFC 12-06-01 Pest Control  
BCFC 13-01-01 Organization of Health Services

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BCFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call

BCFC 13-03-01 Dental Policy/Sick Call

BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations

BCFC 13-05-01 Licensure and Training Standards

BCFC 13-06-01 Suicide Prevention and Intervention Program

BCFC 13-06-02 First Aid/CPR Training Program

BCFC 13-06-03 Emergency Medical/Dental Care Services

BCFC 13-07-01 Health Records

BCFC 13-08-01 Special Diets

BCFC 13-09-01 Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death

BCFC 13-10-01 Health Education/Special Health Programs

BCFC 13-11-01 Informed Consent

BCFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC

BCFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)

BCFC 13-13-01 Identification of Special Needs Inmates

BCFC 13-14-01 Use of Pharmaceutical Products

BCFC 13-15-01 Medical Restraints

BCFC 13-16-01 Specialized Health Services

BCFC 13-17-01 Vision Care/Optomety Services

BCFC 13-18-01 Infection Control

BCFC 13-19-01 Exposure Control Plan

BCFC 14-01-01 Inmate Rights and Responsibilities

BCFC 14-02-01 Legal Services Program

BCFC 14-03-01 Inmate Grievance Procedure

BCFC 15-01-01 Due Process/Disciplinary Procedures [(Amended 6/14/94)]

BCFC 16-01-01 Inmate Visiting [(Amended 6/14/94)]

BCFC 16-02-01 Telephone Communications [(Amended 6/14/94)]

BCFC 16-03-01 Mail Regulations [(Amended 6/14/94)]

BCFC 16-03-02 Inmate Packages [(Amended 6/14/94)]

BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process

BCFC 17-03-01 Inmate Personal Property

BCFC 17-04-01 BCFC Inmate Property Control

BCFC 17-05-01 Inmate Canteen

BCFC 18-01-01 Institutional Classification Committee (Amended 9/12/94)

~~BCFC 18-02-01 Classification Document (Deleted 9/12/94)~~

~~BCFC 18-03-01 Classification Process (Deleted 9/12/94)~~

~~BCFC 18-03-02 Classification Program Planning (Deleted 9/12/94)~~

~~BCFC 18-03-03 Population Category Status (Deleted 9/12/94)~~

~~BCFC 18-04-01 Instructions for Six Month Review (Deleted 9/12/94)~~

~~BCFC 18-05-01 Transfers to Other Minimum Security Institutions (Deleted 9/12/94)~~

BCFC 19-01-01 Job and Vocational Program Assignments

BCFC 19-02-01 Government Service Details

BCFC 20-01-01 Academic School [(Amended 6/14/94)]

BCFC 20-02-01 Educational Program Planning [(Amended 6/14/94)]

BCFC 20-03-01 Academic Curriculum [(Amended 6/14/94)]

BCFC 21-01-01 Library Services [(Amended 6/14/94)]

BCFC 22-01-01 Recreation and Inmate Activities (Amended 9/12/94)

BCFC 22-02-01 Inmate Clubs and Organizations (Amended 9/12/94)

~~[BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs (Deleted 9/12/94)]~~

BCFC 22-03-01 Privilege Trips [(Amended 6/14/94)]

BCFC 23-01-01 Religious Service (Amended 9/12/94)

~~[BCFC 23-02-01 Visitors for Religious Programs (Deleted 9/12/94)]~~

~~BCFC 23-03-01 Marriage of Inmates (Amended 6/14/94) (Deleted 9/12/94)]~~

BCFC 24-01-01 Social Services and Counseling Program (Amended 9/12/94)

BCFC 24-01-02 Casework Services [(Amended 6/14/94)]

BCFC 25-01-01 Prerelease [Preparation] Program (Amended 9/12/94 [Description])

BCFC 25-02-01 [Temporary Release/Community Center Program (Amended 9/12/94) [Release]]

BCFC 25-02-02 Inmate Furloughs (Amended 9/12/94)

~~[BCFC 25-03-01 Prepare Progress Report (Deleted 9/12/94)]~~

~~BCFC 25-03-02 Parole Eligibility Dates (Deleted 9/12/94)]~~

BCFC 25-04-01 Inmate Discharge Procedure (Amended 9/12/94)

BCFC 26-01-01 Citizen Involvement and Volunteer Services Program [(Amended 6/14/94)]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 12, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 24, 1994 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 43 employees of the correctional institutions, 200 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**TRANSPORTATION CABINET**  
**Department of Vehicle Regulation**  
**Division of Motor Carriers**  
**Division of Motor Vehicle Enforcement**  
**(Proposed Amendment)**

**601 KAR 1:025. Transporting hazardous materials by air or highway[~~-permit~~].**

RELATES TO: KRS 174.400 through 174.435, 49 CFR 107, 130, 171-180

STATUTORY AUTHORITY: KRS 174.410(2), 174.430(1), 49 CFR Parts 130, 171-180

NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435 relating to the transportation of hazardous materials by air or highway. House Bill 448 passed by the 1994 General Assembly repealed the requirement for a permit for transporters of hazardous material in Kentucky. [KRS 174.430(1) provides that the Secretary of the Transportation Cabinet is authorized to fix a reasonable fee, by administrative regulation, to be paid by applicants for a general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit.] This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) Title 49, Code of Federal Regulations, Part 107, effective July 1, 1994. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) Title 49, Code of Federal Regulations, Part 130 effective June 16, 1993. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;

(3) [(2)] Title 49, Code of Federal Regulations, Part 171 effective September 30, 1994 [October 1, 1993]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) [(3)] Title 49, Code of Federal Regulations, Part 172 effective September 30, 1994 [October 1, 1993]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

- (a) Shipping papers;
- (b) Package marking; and
- (c) Labeling and transport vehicle placarding applicable to the

shipment and transportation of those hazardous materials;

(5) [(4)] Title 49, Code of Federal Regulations, Part 173 effective September 30, 1994 [October 1, 1993]. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) [(5)] Title 49, Code of Federal Regulations, Part 175 effective October 1, 1993. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(7) [(6)] Title 49, Code of Federal Regulations, Part 177, effective October 1, 1993. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(8) [(7)] Title 49, Code of Federal Regulations, Part 178 effective September 30, 1994 [October 1, 1993]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) [(8)] Title 49, Code of Federal Regulations, Part 180, effective September 30, 1994 [October 1, 1993]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

~~[Section 2. (1) Applicants for an annual general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of this permit, shall pay to the Transportation Cabinet a fee of twenty five (25) dollars.~~

~~(2) The applicant for a general permit shall submit his application to the Department of Vehicle Regulation in the form prescribed in subsection (3) of this section by the department. The department shall make the forms available to any applicant.~~

~~(3) The front page of the form shall read as follows:~~

TC-95-4  
Kentucky Transportation Cabinet  
Department of Vehicle Regulation  
Division of Motor Carriers  
P. O. Box 2007  
Frankfort, Kentucky 40602

~~Application For Permit For The Transportation of Hazardous Materials And/Or Radioactive Materials (This application shall be accompanied by a \$25 filing fee)~~

~~CARRIER NAME:  
STREET:  
CITY:STATE:ZIP:~~

~~1. Type of Carrier: Private: For Hire:~~

~~2. Classification of Hazardous or Radioactive Materials Transported:~~

INTERSTATE _____	INTRASTATE _____
Radioactive Material _____	Hazardous Material _____
Radioactive Waste _____	Hazardous Waste _____
_____	Radioactive Material _____
_____	Radioactive Waste _____

~~3. Individual associated with carrier who is designated to be contacted in event of emergency:~~

NAME: _____	PHONE NUMBERS:
	During Business Hours (+)
	After Business Hours (-)

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TITLE:

ADDRESS (if different from above):

4. Description of emergency procedures which the carriers shall follow in the event of an emergency:

I, the undersigned official of the above company, state that the above information is true and correct.

NAME \_\_\_\_\_ OFFICIAL TITLE \_\_\_\_\_

(4) The back page of the form shall inform the applicant of the basic requirements for application for a permit and shall contain the following:

TC-95-4

## GENERAL INFORMATION REGARDING KENTUCKY'S HAZARDOUS/RADIOACTIVE MATERIAL Transportation Permit

The following information generally outlines the regulations of the Division of Motor Carrier's hazardous radioactive materials transportation requirements. If you have specific questions, contact the Division of Motor Carriers at the address or the telephone number below.

A general permit may be issued to any carrier who transports radioactive materials, either interstate or intrastate, and any carrier who transports hazardous materials intrastate in Kentucky. Needed definition follow:

"CARRIER" means a person engaged in the commercial transportation of passenger or property by land as a common, contract or private carrier or civil aircraft, except for those transporting passengers or property by pipelines, railways, or waterways.

"HAZARDOUS MATERIAL" means a substance designed as hazardous by the "Federal Hazardous Materials Transportation Act (49 U.S.C. 1801, et seq.) or the federal regulations adopted pursuant thereto.

Exception: Hazardous material shall not include agricultural wastes, coal mining wastes (as defined in 401 KAR 30:010, Section 1), utility waste (fly ash, bottom ash, scrubber sludge), sludge from water treatment and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, oil production brines or waste oil.

"RADIOACTIVE MATERIAL" means any material or combination of materials which spontaneously emit ionizing radiation.

The provisions of this permit do not apply to hazardous materials shipped by or for the U.S. government for military or national security purposes.

Vehicles used in the transportation of fuels to end users are also exempt from these requirements.

TO OBTAIN THIS PERMIT, THE FOLLOWING PROCEDURE SHALL BE FOLLOWED:

(1) Complete and return the application (TC-95-1) to the Kentucky Transportation Cabinet, Division of Motor Carriers, with the required \$25 yearly fee. A COPY OF THIS APPLICATION IS ON THE REVERSE SIDE.

(2) Applicant shall have on file with the Division an approved certificate of public liability and property damage insurance in the minimum amounts set forth in KRS 284.655. These minimum limits are:

(a) Petroleum or Petroleum Products Less than 10,000 lbs. — \$100,000/300,000/50,000

(b) All other hazardous/radioactive material as defined in KRS 174.405 — \$1,000,000 SINGLE LIMIT COVERAGE

\*The cabinet has adopted, by reference, the federal hazardous materials transportation regulations, 49 CFR (1078), as amended, in their entirety. These parts pertaining to railways, pipeline and waterways are specifically excluded.

The cabinet may issue a permit based upon the information contained in the application. A COPY OF THIS PERMIT SHALL BE CARRIED IN THE TRANSPORTING VEHICLE WHILE IN THE COMMONWEALTH OF KENTUCKY. Each carrier shall be assigned only one permit, and you are given permission to photostat a copy for each vehicle operating under your authority and your permit. The general permit shall be renewed annually.

This permit does not preclude or encompass any other document required by Kentucky law. A carrier shall comply with all other applicable requirements for the transportation of hazardous materials within the Commonwealth.

PLEASE ADDRESS ALL MAIL TO:

KENTUCKY DEPARTMENT OF VEHICLE REGULATION  
DIVISION OF MOTOR CARRIERS  
QUALIFICATIONS/PERMITS BRANCH  
POST OFFICE BOX 2007  
FRANKFORT, KENTUCKY 40602  
Phone: (502) 564-4540

NORRIS BECKLEY, Commissioner  
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: August 15, 1994

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

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 21, 1994 at 10 a.m. local prevailing time in the Transportation Cabinet, Room 1003, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by October 16, 1994, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by October 16, 1994. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on October 21, 1994. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

## REGULATORY IMPACT ANALYSIS

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: All transporters of hazardous materials by highway or air in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing was not requested. However, there is no known cost of living or employ-



ment impact expected in Kentucky as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing was not requested. However, there is no known cost of doing business impact expected in Kentucky as a result of the changes to this administrative regulation.

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

1. First year following implementation: \$70,000 savings on the cost of purchasing state permits for the transportation of hazardous materials. However, this change is a result of the legislative change, not the administrative regulation change.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Highway Administration funding through the Motor Carrier Safety Assistance Program Grant.

(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: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by US DOT. A motor carrier should not be cited for complying with the new federal requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There should be an added measure of safety in the transportation of hazardous materials, particularly on public highways.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Possibly, since the list of hazardous materials covered under this administrative regulation has been revised to include several additional materials, they will now have to be packaged, labeled, shipped and placarded in accordance with the safety procedures established in this administrative regulation. There should be fewer air or highway problems with the transportation of these hazardous materials if the administrative regulation is promulgated.

(c) If detrimental effect would result, explain detrimental effect: Without the safest and most up-to-date shipping and transportation procedures being implemented and enforced, it is possible that highway crashes could cause more environmental problems due to spills, leakage, or explosions.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This change

implements the provisions of House Bill 448 passed by the 1994 General Assembly, i.e., repeal of the requirement for a state permit to transport hazardous materials. In addition, the proposed amendment adopts changes to the 49 CFR Parts which govern the transportation of hazardous materials by air or highway and are included in this administrative regulation. These changes were published in the "Federal Register" during the last nine months. The changes of significance are as follows:

1.) The inclusion of requirements for the construction, maintenance and use of intermediate bulk containers for intermediate bulk containers for the transportation of hazardous materials. The amendments are based on standards contained in the United Nations Recommendations on the Transport of Dangerous Goods and the commodity assignments set forth in the International Maritime Dangerous Goods Code.

2.) Granting an extension for the continued construction of certain cargo tank motor vehicles from April 21, 1994 to August 31, 1995. This allows cargo tank manufacturers additional time to implement engineering procedures required for manufacture of cargo tank motor vehicles to the new specifications and to implement design modifications as a result of changes to the structural integrity calculations in certain tank specifications.

3.) Amendment of the "List of Hazardous Substances and Reportable Quantities". This was done to comply with the Superfund Amendments and Reauthorization Act of 1986 which mandated that the federal regulations which regulate all hazardous substances designated by the EPA be placed in the federal regulations which govern this administrative regulation. The remainder of the changes are technical or clarifying in nature.

(11) TIERING: Is tiering applied? Yes. The adopted federal regulations are tiered based on the amount and type of hazardous material being transported.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 107, 130, 171 - 173, 177 and 178.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 130, 171 - 173, 177, 178, and 180. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 107 relating to the Federal Highway Administration program procedures.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards: a.) The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material; b.) Establishes the emergency response information requirements for each transporter of a hazardous material; c.) Defines the general requirements for shipping and packaging of each type of hazardous material; d.) Defines the unacceptable hazardous material shipments on a highway; e.) Establishes requirements for the transportation of hazardous materials that are unique to highway transportation; f.) Establishes shipping container specifications for the transportation of hazardous materials; g.) Establishes the qualification and maintenance

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nance requirements for cargo tanks which are used in the transportation of hazardous materials; and h.) Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations. Therefore 49 CFR Part 175 relating to the carriage of hazardous materials by aircraft has also been adopted even though the federal incentive program does not include this part.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 15, 1994

KENTUCKY REVENUE CABINET  
Office of General Counsel

103 KAR 8:041. Repeal of 103 KAR 8:040, 8:050, and 8:060.

RELATES TO: KRS 12.080, 12.140, 131.130, 393.090, 393.095, 393.110, 393.280

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: 103 KAR 8:040, 8:050, and 8:060 are no longer required because on March 10, 1994 the administration of the abandoned property law was transferred by the 1994 General Assembly from the Revenue Cabinet to the Department of the Treasury (House Bill 85). The Department of the Treasury has promulgated necessary administrative regulations and has requested that the Revenue Cabinet repeal its administrative regulations relating to abandoned property.

Section 1. 103 KAR 8:040 - Abandoned property, escheating; 103 KAR 8:050 - Escheated property, records; and 103 KAR 8:060 - Unclaimed pari-mutuel tickets, records, redemption are hereby repealed.

KIM BURSE, Secretary

ALEX W. ROSE, Executive Director

APPROVED BY AGENCY: September 12, 1994

FILED WITH LRC: September 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1994 at 9 a.m. in Conference Room, Third Floor, 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Joseph G. Hall, Kentucky Revenue Cabinet, Office of General Counsel, Division of Tax Policy and Research, 200 Fair Oaks Drive, Frankfort, Kentucky 40620, (502) 564-6843.

REGULATORY IMPACT ANALYSIS

Contact person: Joseph G. Hall

(1) Type and number of entities affected: None, the abandoned property program is no longer administered by the Revenue Cabinet, therefore, the regulations to cabinet proposes to repeal are no longer necessary or enforceable.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits: N/A

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This regulation will apply equally to all affected parties.

TRANSPORTATION CABINET  
Department of Highways  
Division of Traffic

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

RELATES TO: KRS 189.337

STATUTORY AUTHORITY: KRS 189.337

NECESSITY AND FUNCTION: KRS 189.337 requires the Department of Highways to establish standards for the placement of signs within highway right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdiction to establish policies for those areas not covered in the manual. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of TODS.

Section 1. Definitions. (1) "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road but thirty (30) feet (9.12 meters) away from the road.

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 1:101 to administer the tourist oriented directional signs program in Kentucky.

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The activities of the contractor shall include but not be limited to marketing, determination of business eligibility, maintenance, erection and removal of the information panels and TODS.

(3) "Cover" means a protective shield over a TODS sign which prohibits viewing of the sign.

(4) "Department" means the Kentucky Department of Highways.

(5) "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the business.

(5) "Illegal sign" means an advertising device which has been determined to be illegal according to the provisions of 603 KAR 3:080.

(6) "Information panel" means an official sign placed within the highway right-of-way with the legend "TOURIST ACTIVITIES" and space for one (1) or more individual TODS to be attached to it.

(7) "Interstate or parkway" means a highway that has fully-controlled access as defined in 603 KAR 5:025.

(8) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(9) "MUTCD" means the Federal Highway Administration's Manual On Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.

(10) "Public road" means all state-maintained roads other than interstate or parkway highways.

(11) "Tourist activity" means a public or private activity which provides a tourist attraction or motorist service to the traveling public.

(12) "Tourist attraction" means:

(a) A cultural, historical, recreational, agricultural, educational or entertainment activity; or

(b) A commercial activity which is unique and local or indigenous in nature.

(13) "Tourist oriented directional sign" or "TODS" means an individual tourist information sign located on an information panel on the right-of-way of a public road. The TODS may provide the official name, directional information, and distance to a specific tourist activity.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of information panels and TODS in accordance with the MUTCD and the provisions of this administrative regulation.

Section 3. Applications and Contracts for TODS. (1) An application for an activity or business to place a TODS sign on an information panel shall be made on "Application for Highway Tourist Oriented Directional Signing (TODS)" forms prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. This form is incorporated by reference as a part of this administrative regulation.

(2) The notice by an activity or business to the Department of Highways' contractor of the number, type, and placement of each TODS shall be on "TODS Program Billing Information" forms prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. This form is incorporated by reference as a part of this administrative regulation.

(3) The contract to be entered into between the participating activity or business and the Department of Highways' contractor shall be the "Highway TODS Program Agreement" form prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. Addenda to this form may be included in the contract where appropriate. This form is incorporated by reference as a part of this administrative regulation.

(4) All forms incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646. The forms may also be viewed, copied, or obtained from the Division of Traffic, 501 High Street, Mail code 1-3, Frankfort, Kentucky 40622. The telephone number is (502) 564-

3020 and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

Section 4. Information Panels for TODS. (1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;

2. Have the least impact on the scenic environment; and

3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for TODS shall not be erected:

1. On interstates or parkways;

2. On the on/off ramps of interstates or parkways;

3. At a grade-separated juncture of two (2) highways or on public roads with a grade separation;

4. Where there is insufficient space to locate both other traffic control devices and the information panels; and

5. On those sections of public road with a speed limit of forty-five (45) miles (seventy-two and four-tenths (72.4) kilometers) per hour or less.

(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(2) Intersection approach information panels.

(a) Information panels may be erected at the approach of an intersection on a public road.

(b) Each intersection approach information panel shall be located at least 200 feet (sixty and eight-tenths (60.8) meters) from the intersection.

(c) An intersection approach information panel shall be spaced at least 200 feet (sixty and eight-tenths (60.8) meters) from any other traffic control device including another intersection approach information panel.

(d)1. More than three (3) information panels shall not be installed on an approach to an intersection.

2. Separate information panels may be installed for identification of tourist activities which involve a right turn, a left turn, or no turn, i.e., the activity or business is located ahead if allowed by the provisions set forth in Section 6 of this administrative regulation.

3. In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.

4. If the AHEAD sign is used, an attempt shall be made to locate it to the far right corner of the intersection but it shall not obstruct the driver's critical viewing of other traffic control devices.

(e) Intersection approach information panels shall not be installed at an intersection if advance information panels have been installed.

(3) Advance information panels.

(a) Advance information panels may be installed only in situations where sight distance, intersection vehicle maneuvers or other vehicle operation characteristics require advance notification of the service to reduce vehicle conflicts and improve highway safety;

(b) The last of the advance information panels to be driven past shall be located at least one-half (1/2) mile (eight-tenths (0.8) kilometers) from the intersection.

(c) Advance information panels shall have a minimum of 800 feet (243.2 meters) between the panels.

(d)1. More than three (3) advance information panels shall not be installed prior to the approach to an intersection.

2. Separate advance information panels may be installed for identification of tourist activities which involve a right turn, a left turn, or no turn, i.e., the activity or business is located ahead if allowed by the provisions set forth in Section 6 of this administrative regulation.

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3. In the direction of traffic, the order of placement for separate advance information panels shall be for facilities to the left, to the right and straight ahead.

4. If the AHEAD sign is used, an attempt shall be made to locate it to the far right corner of the intersection and it shall not obstruct the driver's critical viewing of other traffic control devices.

(e) Advance information panels shall not be installed at an intersection if intersection approach information panels have been installed.

Section 5. TODS Design and Composition. (1) Each TODS shall:

- (a) Be rectangular in shape;
- (b) Have a white legend and border on a blue background;
- (c) Have reflective legends, arrows, backgrounds and borders;
- (d) Contain the name of the business in not more than two (2) lines of legend which shall not include promotional advertising.

(2) Each TODS on an intersection approach information panel shall have:

(a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;

(b) The distance to the activity or business shown beneath the arrow;

(c) Arrows pointing to the right at the extreme right of the TODS; and

(d) Arrows pointing to the left or up at the extreme left of the TODS.

(3)(a) The arrangement of the tourist oriented directional signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(b) The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same sign legends should be placed on the information panels above the TODS.

(c) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used when there are intervening minor roads.

(4) More than four (4) TODS shall not be installed on a single information panel.

(5) TODS shall be arranged vertically on an information panel when appropriate located so that the right turn signs are closer to the intersection. When not more than four (4) TODS are to be installed on an approach to an intersection, the TODS may be combined on the same information panel with the TODS for left turns placed above the TODS for right turns.

(6) The standard lettering for tourist oriented directional signs shall be in upper case letters of the type provided in the "Standard Alphabets for Highway Signs and Pavement Markings" book. Capital letters shall be six (6) inches (152.4 millimeters) in height. Spacing between characters shall conform to the tables in the metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published in 1977 by the U.S. Department of Transportation. This document is incorporated by reference as a part of this administrative regulation.

(7)(a) A TODS sign shall not exceed seventy-two (72) inches (1828.8 millimeters) wide and eighteen (18) inches (457.2 millimeters) tall.

(b) The TODS signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or business underneath shall not exceed sixteen (16) inches (406.4 millimeters) wide and sixteen (16) inches (406.4 millimeters) tall.

(d) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) spacing between the border and legend and two (2) inch (fifty and eight-tenths (50.8) millimeters) spacing between

lines of legend.

(f) The maximum length of the legend shall be five feet four inches (5'4") (1.64 meters) per line.

(8) Clearance of panels should be governed by Sections 2A and 2D of the MUTCD.

(9) The document incorporated by reference as a part of this administrative regulation may be viewed or copied at the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646. The document may also be viewed or copied from the Division of Traffic, 501 High Street, Mail code 1-3, Frankfort, Kentucky 40622. The telephone number is (502) 564-3020 and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. The document may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. by referring to document number 620-809/71.

Section 6. AHEAD Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow set forth in Section 5(2)(d) of this administrative regulation.

(2) Signing for tourist activities in the AHEAD direction shall be considered only under the following circumstances:

(a) There is signing for a similar facility in either the right or left direction;

(b) Through traffic is not the normal traffic pattern; or

(c) The visibility of the establishment is obscured until a motorist is within 800 feet (243.2 meters) of the entrance.

Section 7. Tourist Activity Eligibility. A tourist activity shall meet the following requirements to qualify for tourist oriented directional signing. A TODS sign shall not be erected until the tourist activity or site has been approved in accordance with this administrative regulation.

(1) A tourist activity shall be of significant interest to the traveling public. The types of activities or sites which are of significant interest to the traveling public are gas, food, lodging, camping, and tourist attractions, if at least one-third (1/3) of the income or visitors at the tourist activity are derived during the normal business season from visitors not residing within twenty (20) miles (32.18 kilometers) of the activity.

(2) The tourist activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Approval shall not be granted if the tourist activity is using an illegal sign any place in the Commonwealth of Kentucky.

(4) Each tourist activity shall comply with all applicable local, state, and federal statutes and regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each tourist activity identified on a tourist oriented directional sign shall provide assurance of its conformance with all applicable federal, state or local laws and regulations. If a tourist activity is in noncompliance of any of these laws or regulations, it may be considered ineligible for participation in this program and its signs may be removed, with no return of any fees.

(5) The tourist activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the tourist activity is a bed and breakfast lodging. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(6) Any tourist activity which operates on a seasonal basis shall make provisions for removing or covering its TODS sign during the off season with the contractor. The tourist activity shall notify the department's contractor at least thirty (30) days before the opening or closing occurs.

(7) A TODS shall not be displayed which would misinform the

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traveling public or is unsightly, badly faded, or in a state of dilapidation. In these instances the business shall make arrangements for a new TODS.

(8) The department shall have no responsibility for business lost due to TODS or information panels becoming temporarily out of service.

(9) The display of the tourist activity sign on the department's TODS structure shall not be considered an endorsement or recommendation by the State of Kentucky on behalf of the tourist activity.

(10) To qualify for a "GAS" TODS sign, a business shall:

(a) Be in continuous operation at least twelve (12) hours per day, six (6) days a week, twelve (12) months a year;

(b) Provide regular and unleaded fuel, oil, air and water;

(c) Have restroom facilities, drinking water, and telephone available to the traveling public;

(d) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(11) To qualify for a "FOOD" TODS sign, a business shall:

(a) Be in continuous operation to serve two (2) meals a day, twelve (12) hours a day, six (6) days a week, and twelve (12) months a year;

(b) Provide a telephone and restroom facilities for the traveling public; and

(c) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(12) To qualify for a "LODGING" TODS sign, a business shall:

(a) Have off-street parking and at least two (2) rooms for sleeping accommodations;

(b) Be in continuous operation year round;

(c) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less; and

(d) Have a private bathroom for each sleeping room with the exception of bed and breakfast establishments.

(13) To qualify for a "CAMPING" TODS sign, a business shall:

(a) Have a minimum of ten (10) individual campsites and parking space for each;

(b) Have modern sanitary facilities and telephone available to its guests;

(c) Be in continuous operation for the time the sign is displayed; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

(14) To qualify for a "TOURIST ATTRACTION" TODS sign, a business or activity shall:

(a) Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the TODS sign is displayed;

(b) Have adequate parking for the facility with a minimum of fifteen (15) spaces;

(c) Be listed on the state or national Register of Historic Sites if the tourist attraction is a historic site; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

**Section 8. Bumping.** If a nonparticipating tourist activity becomes qualified nearer the intersection than one which already has a tourist activity sign displayed on a fully utilized information panel, the new tourist activity may apply to have its sign displayed at the beginning of the next contract year. The tourist activity farther from the intersection shall have its TODS removed at the end of the contract year if the closer tourist activity has applied to have its sign displayed and has been approved for the program, except under the following circumstances:

(1) A tourist attraction shall not be replaced by a motorist service; and

(2) A year-round activity shall not be replaced by a seasonal activity.

**Section 9. Changes.** (1) When a participation business changes ownership, a new contract shall be signed at no additional cost to the business for the remainder of the contract year.

(2) When a participating business is sold and the new owner changes its name, if the new owner wants to continue on the program, a new application and contract shall be completed. This is considered a new business and the applicant shall pay the annual fee, prorated according to time remaining in the contract year.

(3) If a participating business changes its name, a new application and contract shall be completed. A reinstallation fee shall be charged for the placement of the new TODS.

**Section 10. Fees.** (1) The qualifying business shall pay to the department's contractor an annual fee of \$150, in advance, for each TODS placed on the right-of-way.

(2) The annual fee for the first year shall accompany the initial application.

(3) The first year's annual fee may be prorated on a monthly basis with each portion of a month the TODS is in place on the information panel requiring payment of one-twelfth (1/12) of the fee.

(4) The yearly renewal fee shall be due forty-five (45) days prior to the annual renewal date.

(5) The payment of the initial or renewal fee guarantees that the TODS will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor and is approved by the Transportation Cabinet.

(6) If the signs for a tourist activity are removed from an intersection for any reason, a fee of \$100 shall be charged for the reinstallation of all of the TODS at that intersection for the specific business.

(7) The tourist activity shall be responsible for damages to TODS signs caused by acts of vandalism or natural causes which require repair or replacement of the TODS.

**Section 11. Revocation or Suspension.** The contract between the department's contractor and the tourist activity may be revoked or suspended if:

(1) The activity no longer meets the eligibility requirements set forth in this administrative regulation;

(2) The owner or responsible operator of the activity willfully makes a false, deceptive, or fraudulent statement in its application or in other information submitted for review;

(3) The owner or responsible operator of the activity or an agent thereof revises or modifies a TODS sign erected by the department or its agents;

(4) The owner or responsible operator of the business or activity has engaged in a deceptive or fraudulent business practice;

(5) An illegal billboard advertising device advertising the business is located in the state of Kentucky; or

(6) Payment is not received on time or otherwise delinquent.

**Section 12. Measurements.** (1) Measurements taken to determine the qualifications or priority of tourist activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route on which the sign is to be placed and the center line of the crossroad.

(2) Measurements for the qualification of tourist activities for display of TODS shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad to the particular tourist activity.

**Section 13. TODS Contract.** (1)(a) A TODS contract between a particular tourist activity and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of the TODS.

(b) Each TODS and contract shall be subject to review by the Transportation Cabinet at any time.



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(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating tourist activity shall be cause for the revocation of the TODS contract.

(d) If the contract is revoked for cause, the prepaid fees for the contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a tourist activity does not comply with the requirement of this administrative regulation, the Department of Highways' contractor shall notify the tourist activity in writing of the violations.

(3) If the tourist activity fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the TODS.

Section 14. Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new information panel proposed to be erected or removed from the state-owned right-of-way.

Section 15. Appeal of the Department of Highways Action. (1) Any business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner of the Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

(3) Upon request of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(4) The hearing examiner shall schedule a date for the hearing as soon as the schedules of the parties needed at the hearing allow provided that the time shall not exceed sixty (60) days after receipt of the request for hearing.

(5) The hearing shall be recorded.

(6) The rules of evidence shall not apply.

(7)(a) The hearing examiner shall prepare and submit his report with a recommendation within sixty (60) days of the hearing.

(b) The report and recommendations shall be submitted to the commissioner of highways with copies served to the party which requested the hearing.

(8) Any party to the hearing may within twenty (20) days file with the Commissioner of Highways his exceptions to the report and recommendation of the hearing examiner.

(9) The commissioner shall within ten (10) days of receiving the exceptions and within thirty (30) days of receiving the report and recommendation of the hearing examiner issue an Official Order setting forth the final action of the Department of Highways.

J.M. YOWELL, P.E., State Highway Engineer

JERRY ANGLIN, Deputy Secretary, Commissioner of Highways

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: September 8, 1994

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

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on October 21, 1994 at 1:30 p.m., local prevailing time in Room 1003 of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by October 16, 1994 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a

written request for a transcript is made. The party requesting the transcript will be responsible for paying the cost of its preparation. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on October 21, 1994. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All travelers using Kentucky's noninterstate highways and nonparkway as well as the businesses which are eligible to and choose to purchase a TODS sign.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Even though no comments were received at the public comment hearing, earlier comments made to the Transportation Cabinet indicate that the cost of living will not be affected anywhere in the state as a result of this administrative regulation. If there is an impact at all on employment, it will be to slightly increase employment in those areas where signage to tourist-oriented businesses may make the hard-to-locate ones more accessible.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Even though no comments were received at the public comment hearing, the cost to a business choosing to participate in the TODS program will be just under \$250 per year/per signed intersection.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

The tourism industry has contended for some time that better highway signage for tourist-related businesses would increase the number of tourists who stop in Kentucky. The impact on state and local revenues while minuscule, would be positive.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The tourist-oriented businesses which choose to participate in the TODS program will pay annual fees which will be used to implement the administrative regulation. Enforcement of the administrative regulation will be by the Department of Highways using Road Fund receipts.

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

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: The concept of placing pictorial logos on the TODS was rejected because most of the businesses likely to use the TODS

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don't have nationally recognized logos. It was felt that as small as the TODS signs are, it would not be safe to have a picture and writing on the sign for a motorist traveling at 55 m.p.h. to try and comprehend. The do-nothing alternative was rejected because the Governor's Highway Signage and Tourism Task Force strongly recommended that TODS program be implemented.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments:

(11) Tiering: Is tiering applied? Yes. Tiering was applied by allowing different eligibility criteria between the extremely rural areas and the more populous areas.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no true federal mandate. However, the Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the Manual on Uniform Traffic Control Devices. TODS signs are included in the Manual. However, the primary requirement beyond limiting the placement, size, color and services listed, is that each state choosing to have a logo sign program, have its policies approved by the Federal Highway Administration.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. They are no more stringent.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

### Minutes of the September 7, 1994 Meeting

The September meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, September 7, 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 August 10, 1994 meeting were approved.

**Present were:**

**Members:** Representative Tom Kerr, Chairman; Senators John David Preston, Tom Smith, Representatives Woody Aillen, Jim Bruce and proposed member Representative Tommy Lee.

**Guests:** Paul P. Borden, Richard Casey, KHEAA; David Terry, Wilbur W. Frye, University of Kentucky; George Russell, Registry of Election Finance; Wilburn DeBruler, Personnel Board; Frank Willey, Department of Personnel; Eddie Mattingly, Revenue Cabinet; Pat Molloy, Warren Nash, Pamela Burns, M. K. Abbott, Terry Parker, Robert W. Schade, Joe Meyer, Marc Avery, Clark Beauchamp, Mike Abell, Pat Perry, Finance and Administration Cabinet; Bill Schmidt, Wes Faulkner, Board of Medical Licensure; Paul Stone, Bernadette M. Sutherland, Board of Nursing; Tom Bennett, Pete Pfeiffer, Department of Fish and Wildlife Resources; Hank Wiseman, Marjorie Mullen, Ralph Schiefferle, Martha Hall, John T. Smither, Millie Ellis, Gerry Ennis, Kenneth Hines, John E. Hornback, Natural Resources and Environmental Protection Cabinet; Louis Smith, Brenda Priestly, Department of Corrections; Louis F. Mathias, Jr., Gary Brunner, Bryan Armstrong, Kentucky Department of State Police; Doris Davis Goldstein, Department of Education; Akeel Zaheer, Education Professional Standards Board; George Parsons, Department of Vocational Rehabilitation; Sue G. Simon, Department for the Blind; Barbara New, Dennis J. Langford, Rex Hunt, Kembra Taylor, William L. Ralston, Labor Cabinet; Valerie Salven, Oscar Morgan, Jr., Department of Workers' Claims; Eugene D. Attkisson, Department of Mines and Minerals; Sharron S. Burton, Carla H. Montgomery, Department of Insurance; Jack M. Rhody, Thomas C. Barnes, Jr., Department of Housing, Buildings and Construction; Dee Maynard, Gregory Lee Williamson, Anne Hager, Michael Littlefield, Karen Doyle, Ked Fitzpatrick, Richard Newman, Joel T. Griffith, Dennis Corrigan, Michael Cheek, Paul Doyle, Jeanne Southworth, Dr. Robert Fowler, Jr., Larry Taylor, Ed Flint, Virginia K. Smith, Brooke Thomas, Mark Cornett, Cookie Whitehouse, Eric Friedlander, Mark Hooks, Kenneth W. Wade, Linda Graves, Tom Johnson, J. Scott Jones, Joyce Bothe, Cecil H. Webb, Vicki D. Jeffs, Robert Nelson, Jennifer M. Bryson, Beth Harp, Beth Jurck, Cabinet for Human Resources; Sharon Roark, WKED Radio; John Brazel, Kentucky Chamber of Commerce; Bill Cayler, Kentucky Coal Association; Charlie Vice, KEA; Carl Breeding, Westvaco; John F. Nichols, Jr., Associated Industries of Kentucky; James H. Baker, Baker Engineers Unlimited, Inc.; John Hinkle, Kentucky Retail Federation; Mike Porter, Kentucky Dental Association; Barbara Dermody, Kentucky Nurses Association; Ted Bradshaw, Mark Lynn, Dr. Joe E. Ellis, Kentucky Optometric Association; James Carlross, Jr., Physical Therapist; Connie Hauser, Holly Johnson, Kentucky Physical Therapy Association; Judith Taylor, KAEPs; Don Walker, KCSA; Greg Brotzge, Kentucky Society of Architects.

**LRC Staff:** Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines.

**The Subcommittee determined that the following administrative regulation did not comply with statutory requirements:**

**Department of Mines and Minerals: Division of Mining**

805 KAR 5:050. Performance bond for wages due from licensee. Eugene Attkisson, Counsel, appeared before the Subcommittee representing the Department. Also appearing was Rex Hunt, Counsel

for the Labor Cabinet. Bill Cayler, Vice President and General Counsel for the Kentucky Coal Association, spoke against the administrative regulation.

Mr. Cayler stated that he had three primary objections plus some other secondary objections. Mr. Cayler stated that his three primary objections are: (1) The Department of Mines and Minerals does not have the statutory authority to promulgate this administrative regulation. (2) The requirement to post a performance bond for wages is not a statutory condition for obtaining a mine license. (3) The statutory authority to require a performance bond for wages is contained under the general statutes governing the Labor Cabinet.

Mr. Attkisson stated that KRS 352.540 requires that miners are to be paid on the 15th and 30th of each month and that KRS 337.200 requires a performance bond for wages due from certain employers engaged in the severance of minerals. Mr. Attkisson stated that Southeast Coal went under and many miners were not paid. He further stated that many miners working for smaller operations are not being paid. He cited the situation of miners working for small new operations working four to six weeks, and then finding out that the operation has no ability to pay. He stated that it is the position of the Department that public policy forge an administrative link between KRS 352.540 and KRS 337.200.

Senator Preston stated that there is no link between the bond and a license. Mr. Attkisson said that a bond is required and a license is required.

Senator Smith said that he thinks this administrative regulation discriminates against coal mining. Mr. Attkisson said that there are representatives from the Labor Cabinet present who support this administrative regulation.

Representative Bruce asked how prevalent is this loss of wages. Mr. Attkisson responded that it is not uncommon, it is not everybody, but it is not uncommon. Representative Bruce then asked why the Department of Mines and Minerals wants to administer this administrative regulation, to which Mr. Attkisson responded, "to protect people". At this point, Rex Hunt, Counsel to the Labor Cabinet, stated that the Labor Cabinet does support this. It was pointed out that it only applies to companies that have not been operating in the state for five consecutive years, and that new companies do have a higher rate of failure.

Chairman Kerr asked if the Labor Cabinet had a penalty provision for violation of the performance bond provision. Mr. Hunt said "yes". Chairman Kerr asked if there was any tie to a license. Mr. Hunt said "no".

Representative Lee stated that what the Cabinet needs to do is prepare legislation rather than exceed it.

Senator Smith questioned why letters of credit, CDs or other methods other than bonds were not available, and then questioned the fate of other creditors. He then made a motion to find the administrative regulation deficient due to the lack of statutory authority to tie the license to the bond. Representative Bruce seconded the motion and the motion passed.

**The Subcommittee determined that the following administrative regulations, as amended, complied with statutory requirements:**

**Agricultural Experiment Station: Fertilizer**

12 KAR 4:100. Slowly released nutrients. Wilbur Frye and David Terry appeared before the Subcommittee representing the Agricultural Experiment Station. This administrative regulation was amended to change "must" to "shall" and to specify and incorporate by reference the methods required to be used, AOAC International Methods 970.04 and 945.01, Official Methods of Analysis (1st edition) 1990, to comply

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with the drafting provisions of KRS Chapter 13A.

12 KAR 4:110. Terms and definitions. This administrative regulation was amended to list the definitions in alphabetical order.

12 KAR 4:130. Investigational allowances. This administrative regulation was amended to change "must" to "shall" and to specify the edition and incorporate by reference Official Methods of Analysis of the AOAC International, to comply with the drafting provisions of KRS Chapter 13A.

### **Finance and Administration Cabinet: Purchasing**

200 KAR 5:021. Manual of Policies and Procedures. Subcommittee staff stated that the Manual of Policies and Procedures incorporated by reference in this administrative regulation would be reviewed as part of the Subcommittee's review of policies and procedures implemented by state administrative bodies, and that the issues raised today would be considered in this review.

The Office of Engineering had submitted comments related to the requirement that the work sheets of the selection committee be signed by committee members. Terry Parker spoke against this requirement, and stated that: (1) it violated an individual's right to privacy; (2) it would subject the members of the committee to undue political and economic pressure; (3) applicable statutes did not require that the work sheets, individual score sheets, be signed; (4) the administrative regulation exceeded statutory authority and legislative intent by requiring signatures in addition to those specified by applicable statute; (5) the work sheets are not, and should not be construed to be, open records; (6) if they were open records, they would subject committee members to potential law suits, and it is unclear whether immunity to suit of the state would apply to committee members; and (7) signed work sheets could be inappropriately used to solicit contract or work from various governmental bodies.

Secretary Molloy stated that: (1) an audit by the State Auditor of the Transportation Cabinet found that some engineers may or may not have received benefits, some of minimal value, from private architects, engineers, and their firms, which raised issues this administrative regulation was designed to address; (2) this administrative regulation will ensure accountability, by requiring individual score sheets to be signed, and extend this requirement to the only state government employees in the procurement process to whom this requirement does not apply; (3) in all other procurements, score sheets are open records that may be, and in fact are, reviewed by competitors; (4) the sponsor of applicable legislation stated that this requirement comports with legislative intent; (5) the State Auditor will not certify unless work sheets are signed; and (6) signed work sheets will ensure against those with conflicts of interest serving on a particular committee.

In response to a question by Chairman Kerr, Secretary Molloy stated that while the manual did not establish when recusal was required, the Cabinet did implement a policy on recusal. Chairman Kerr stated that perhaps the policy should be contained in the manual, and that this issue also would be reviewed when Subcommittee staff conducted its review of the manual. Cabinet personnel stated that KRS Chapter 11A establishes a process for documenting a conflict.

Policies in the manual incorporated by reference in this administrative regulation were amended to require the signing of individual project evaluation sheets by members of an architectural/engineering services selection committee, to establish submission deadlines, and to make various other changes to the manual.

### **Board of Medical Licensure**

The STATUTORY AUTHORITY and RELATES TO paragraphs of the following two administrative regulations were amended to cite the specific statutes and sections that related to or authorized the promulgation of these administrative regulations.

201 KAR 9:041. Fee schedule.

201 KAR 9:084. Fee schedule.

### **Board of Nursing**

201 KAR 20:390. Nursing incentive scholarship fund. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to cite the specific statute and section authorizing the promulgation of this administrative regulation; (2) Section 1, Definitions, was amended to place the definitions in alphabetical order and to cross-reference applicable definitions in other administrative regulations; (3) other sections were amended to comply with the drafting and format requirements of KRS 13A.220(4) and 13A.222(4); and (4) various sections were amended or added to comply with KRS 13A.224, requirements for incorporation by reference, by specifying the names of forms and their edition dates.

### **Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: General Administrative Procedures**

401 KAR 50:035. Permits. This administrative regulation was amended to: (1) add 40 CFR Parts "51" to the RELATES TO Section; (2) clarify that industrial groupings are to utilize the same two digit codes found in the 1987 Standard Industrial Classification Manual; (3) delete "401 KAR 50:010" and insert "401 KAR 53:010" in Section 2(5)(a); (4) Renumber Section 5(1)(a)3. through 5. as Section 5(1)(a)4. through 6; and (5) Renumber Section 10(a) through (c) as Section 10(1) through (3).

An additional document was submitted in support of this administrative regulation which clarified that the phrase, "401 KAR 50:055 can only apply to applicable requirements that are not federally enforceable" in comment 85 of the Statement of Consideration should have been deleted.

### **Department of Corrections: Office of the Secretary**

501 KAR 6:050. Luther Lockett Correctional Complex. Louis Smith appeared before the Subcommittee representing the Cabinet. This administrative regulation was amended to make several grammatical corrections.

501 KAR 6:130. Western Kentucky Correctional Complex. This administrative regulation was amended to make several grammatical corrections.

### **Labor Cabinet: Labor Standards; Wages and Hours**

803 KAR 1:035. Hearing procedure. Rex Hunt, Counsel, appeared before the Subcommittee representing the Labor Cabinet. Section 1(3) was amended to correct a spelling error. It was further amended in the last sentence of that Subsection to insert after the word "sought" the words "or granted". In Section 1(6) the word "transcript" was deleted, and the word "record" was inserted in lieu thereof.

### **Department of Insurance: Kinds of Insurance; Limits of Risk; Reinsurance**

806 KAR 5:050. Motor vehicle warranties. Sharron Burton, Counsel, appeared before the Subcommittee representing the Cabinet. Section 7 was deleted as being unnecessary.

### **Liability Self-Insurance Groups**

806 KAR 46:020. Liability self-insurance group agent license. This administrative regulation was amended to specify the name of the form required and to incorporate it by reference, to comply with the drafting requirements of KRS Chapter 13A.

### **Cabinet for Human Resources: Department for Health Services: Local Health Departments**

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky. This administrative regulation was amended by deleting superfluous language in Section 1(1) and inserting "as specified in subsection 2 of this section" in lieu thereof.

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees. Section 3(1) of this administrative regulation was amended to correct punctuation, pursuant to KRS 13A.220(4).

902 KAR 8:120. Leave provisions applicable to employees of local health departments. Section 5(6)(c), (7)(a) and (b) of this administrative regulation were amended to correct grammatical errors, pursuant to KRS 13A.222(4).

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department. This administrative regulation was amended as follows: (1) Sections 2(4)(a) and (b); and (2): two references to "and" were deleted; and (2) House Bill 631 was cited in both the STATUTORY AUTHORITY and NECESSITY AND FUNCTION paragraphs.

In response to Representative Bruce's question whether appointments were being changed, Cabinet personnel stated that: (1) no other substantive changes were being proposed; (2) a health officer or a public health director would be in the unclassified service; (3) a joint decision between the health department and the commissioner would be required before these types of individuals could be fired; and (4) there exist a right of appeal to the local board of health if the local director chooses to exercise such right.

#### **Health Services and Facilities**

902 KAR 20:145. Operations and services; rural health clinics. This administrative regulation was amended to repeat, in the RELATES TO section, the U.S. Code citation found in the Section 1. Radiology

902 KAR 100:010. Definitions. This administrative regulation was amended to comply with KRS 13A.222 drafting requirements by deleting prohibited words and phrases.

902 KAR 100:030. Quantities of radioactive material requiring labeling. Section 1 of this administrative regulation was amended to comply with KRS 13A.222 drafting requirements by deleting prohibited language in the "Notes" section following the labeling table.

#### **Department for Employment Services: Unemployment Insurance**

903 KAR 5:392. Claimant profiling. This administrative regulation was amended to include two U.S. Code citations in the STATUTORY AUTHORITY section.

#### **Department for Social Insurance: Public Assistance**

904 KAR 2:016. Standards for need and amount; AFDC. Sections 2(3)(x), 4(1)(d) and 5(2)(d) were amended to correct punctuation pursuant to KRS 13A.220(4).

Representative Bruce asked what measures the Department had taken to remove fraud and abuse.

Department personnel stated that the Cabinet has: (1) a claims process which identifies any over issuance of benefits on an AFDC case and pursues repayment of any benefits which the recipient is not entitled to; and (2) the capability to ensure that benefits are calculated correctly by checking an applicant's: (a) prior work history, (b) receipt of other statutory benefits; and (c) other sources of income.

Representative Lee asked what safeguards the Cabinet had in place to prevent issuance of two checks to the same individual who attempts to defraud the system by using two names and two social security numbers. Cabinet personnel stated that: (1) a computerized verification system is in place with the Social Security Administration to check social security numbers; (2) two types of files are used to cross check the numbers and personal data, such as the applicant's name, date of birth and sex; and (3) the Social Security Administration responds with a verification that the number given is either assigned to a different name or matches the data given.

Rep. Lee stated that: (1) although this may be the best system the Cabinet currently has in place, it still does not prevent use of a deceased person's social security number to apply for benefits; and (2) for some time, he has expressed concern and written letters to the Social Security Administration requesting that some notation should be made on a deceased person's file that cancels the social security number in order to prevent the duplicative use of such numbers.

The Cabinet agreed: (1) to check and verify whether the Adminis-

tration provides for such a notation; and (2) that this type of verification would prevent the fraudulent use of two social security numbers.

Senator Smith stated that he had a copy of a letter which he understood the Department had recently sent encouraging more people to apply for Aid to Families with Dependent Children.

Cabinet personnel stated that: (1) they were not aware of the letter; (2) the Cabinet had made some efforts in outreach with the food stamp program because of nutritional concerns with the indigent population, but not with AFDC.

Sen. Smith stated that: (1) it is not the federal or state government's place to continually assist people who should have some responsibility for their own lives; and (2) too many people are on the public dollar when the unemployment rate is so low.

Cabinet personnel stated that the Cabinet has programs in place, such as the JOBS program, that encourage and require recipients to move through the entitlement programs and integrate into the workforce.

Chairman Kerr: (1) asked if the Cabinet has a number for reporting abuses of the system, as he was made aware of a situation: (a) where an unmarried man and woman are presently living in the same household; (b) the woman claims that the father of her child is unknown; (c) she receives AFDC benefits; and (d) the man earns an unreported \$20,000 per year.

Chairman Kerr also stated that he was concerned about the: (1) way Social Security Insurance payments are calculated; and (2) the requirement that a lump sum SSI payment is required to be spent before the third month after receipt in order to continue receiving AFDC benefits. He stated that this often results in the purchase of unnecessary large items, such as large-screen television sets, and other items which recipients neither need nor want.

Cabinet personnel stated that: (1) an abuse hot line is available to report such fraud (1-800-372-2970); (2) the Cabinet's Office of Inspector General has a special unit that investigates those calls; (3) if there has been a determination that a child will receive SSI, then the child can either receive SSI or AFDC, but not both; (4) a new federal directive outlined that: (a) if a child had received a retroactive SSI payment, payable to an AFDC individual who was not eligible to continue receiving SSI, the SSI payment would be excluded as an asset for the first two months; (b) if the retroactive SSI payment was made payable to an individual who was not on the AFDC case, such as a step-parent, but the income is deemed available to the household, the Cabinet would consider the asset as income; and (5) Chairman Kerr was correct in his belief that the federal directive results in an ongoing SSI recipient being forced to spend the retroactive payment in the two month period after receipt, in order to come meet the resource limit required for eligibility for AFDC in the third month.

#### **Department for Social Services: Child Welfare**

905 KAR 1:010. Application for permission to place receive child. This administrative regulation was amended as follows: (1) a numerical error was corrected in the RELATES TO paragraph; (2) the proper section cross-reference was made in Section 15(3) and (3) to clarify language in Section 15(4).

In response to a question by Chairman Kerr, Cabinet personnel stated that: (1) the proposed amendment in Section 9 reflects language required by statute: that the circuit court would hold a hearing and make "findings" concerning the circumstances that warrant the child's temporary placement, in advance of the Cabinet secretary's written decision on the adoption application; and (2) the application process involves: (a) an application for permission to place or receive a child filed with the Cabinet; and (b) if the Cabinet has not yet rendered a decision regarding placement, a petition filed with the circuit court, by the adoptive parent, seeking the temporary custody of the child pending the Cabinet's ruling on the application; (3) new statutory provisions allow parties seeking placement of a child to retain the services of a licensed child placing agency to conduct the placement investigation for approval by the Cabinet; (4) the Cabinet

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processes most applications for placement of children within the statutory framework of sixty days, unless the placement is subject to the Interstate Compact; and (5) during the placement approval period, most children wait for permanent placement in the home of a relative or friend of the prospective adoptive parents.

Senator Preston asked the Cabinet's average approval time to process most applications. Cabinet personnel stated that: (1) it often depends on when the independent adoption application is filed, but since the application generally is filed in the last trimester of the pregnancy, there is ample time for placement within the statutory sixty day framework; (2) it usually takes less than the sixty day period if the: (a) birth mother does not make a decision for placing her child for adoption until the child is born; and (b) birth parent cooperates with the voluntary placement.

905 KAR 1:310. Standards for child placing agencies. This administrative regulation was amended to: (1) reflect the new statutory codification in the RELATES TO; and (2) delete the last sentence in the NECESSITY AND FUNCTION statement and insert language that states the function intended to be implemented.

905 KAR 1:330. Child protective services. This administrative regulation was amended to: (1) reflect the new statutory codification in the RELATES TO; and (2) delete "are to" and inserting "shall" in Section 14(9), as required by KRS 13A.222(4).

In response to Senator Smith's question, Cabinet representatives stated that the proposed amendments to this administrative regulation simply incorporate the changes implemented by House Bill 223 and House Bill 479 enacted in the 1994 General Assembly, which require: (1) investigations of allegations of child sexual abuse to be conducted jointly with law enforcement; and (2) reports of the findings of an abuse or neglect investigation to be made to local law enforcement and the county or commonwealth attorney within seventy-two hours of the receipt of the report, instead of forty-eight hours.

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

### **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 4:140. Monetary penalties.

12 KAR 4:160. Guaranteed nutrients.

### **Registry of Election Finance: Reports and Forms**

32 KAR 1:100. Slate software.

### **Personnel Board**

101 KAR 1:365. Appeal and hearing procedures.

101 KAR 1:375. Employee grievances and complaints.

101 KAR 1:400. Promotion.

### **Personnel Department: Classified**

101 KAR 2:100. Leave regulations.

### **Unclassified**

101 KAR 3:010. Leave regulations for unclassified service.

### **Finance and Administration Cabinet: Health Insurance Coverage for Nonstate Employees**

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

### **Board of Medical Licensure**

201 KAR 9:175. Physician assistants; certification and supervision.

### **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.

### **Wildlife**

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

### **Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Public Water Supply**

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

### **Division of Air Quality: New Source Standards**

401 KAR 59:101. New bulk gasoline plants.

### **Existing Source Standards**

401 KAR 61:056. Existing bulk gasoline plants.

### **Justice Cabinet: Department of State Police: Candidate Selection**

502 KAR 45:015. Qualifications.

502 KAR 45:035. Application.

502 KAR 45:055. Oral interview.

502 KAR 45:065. Background investigation.

### **Department of Education: Office of Learning Programs Development: Education Professional Standards Board**

704 KAR 20:670. Kentucky teaching certificates.

### **Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration**

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.

781 KAR 1:040. 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**

782 KAR 1:020. Definition of terms.

782 KAR 1:030. Scope and nature of services.

### **Labor Cabinet: Occupational Safety and Health**

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

### **Department of Workers' Claims: Workers' Compensation**

803 KAR 25:012. Resolution of medical fee disputes.

803 KAR 25:094. Repeal of 803 KAR 25:095.

### **Department of Insurance: Fees and Taxes**

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

### **Department of Housing, Buildings and Construction: Kentucky Building Code**

815 KAR 7:100. The Kentucky Building Code.

### **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. Definition of terms applicable for the personnel



program for local health departments.

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

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

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

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

902 KAR 8:130. Participation of local health department employees in political activities. In response to a question by Representative Bruce, Cabinet personnel: (1) outlined a few political activities prohibited to local health department classified service employees: (a) serving on a political committee or party; (b) soliciting or handling political contributions; and (c) solicitation of votes; (2) explained that the amendments to this administrative regulation did not substantively change the types of practices prohibited in the past; and (3) stated that references to House Bill 631, which requires the Cabinet to establish policies and functions for the local health department personnel program, were added to the STATUTORY AUTHORITY and NECESSITY AND FUNCTION sections.

#### **Water Fluoridation**

902 KAR 115:010. Water fluoridation for the protection of dental health. In response to a question by Representative Bruce, Dr. Robert Fowler explained that the Cabinet is using the substantive provisions of 401 KAR 8:651, which the Subcommittee repealed earlier in the meeting, as the responsibility for monitoring water fluoridation was transferred from the Natural Resources and Environmental Protection Cabinet to the Cabinet for Human Resources, Department for Health Services.

#### **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.

#### **Department for Social Insurance: Public Assistance**

904 KAR 2:006. Technical requirements; AFDC.

904 KAR 2:040. Procedures for determining initial and continuing eligibility.

904 KAR 2:361. 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: Day Care**

905 KAR 2:140. Child day care programs.

#### **Block Grants**

905 KAR 3:040. Allocation formula.

#### **Adult Services**

905 KAR 5:070. Adult protective services.

#### **Department for Medicaid Services**

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

907 KAR 1:626. Reimbursement of dental services. Mike Porter, Executive Director of the Kentucky Dental Association (KDA) testified on behalf of the 1,750 members of the association.

He stated that the KDA: (1) supports the Cabinet's efforts to better manage the Medicaid program and provide needed dental care for Kentucky's indigent citizens; (2) sees no rationale for the Cabinet's revision of dental Medicaid fees; (3) feels that the proposed administrative regulation and fee reductions will have a serious impact on the access to dental care because Medicaid patients will not be able to receive dental care if their dentist has had to terminate their Medicaid contract. He added that: (1) dentistry, unlike other Healthcare providers, have a very high overhead, averaging 70%; (2) the Cabinet's reimbursement level proposed at 78% of the 1993 fees is unreasonable; (3) dentists will not be able to continue to provide care under the proposed fee levels, and will subsequently opt out of the

program as numerous calls to the association have indicated; and (4) he is concerned that new dental graduates considering locating their practice in areas with a high Medicaid population will have little incentive, beyond a social or professional responsibility to do so, to practice in such areas.

In response to Senator Preston's questions Mr. Porter responded that: (1) he estimated that approximately 1,000 of the 1,750 association members are involved in the Medicaid program; (2) participating dentists have signed contracts with the Cabinet to be a provider with the Medicaid program, but because of geographic location may not see a great number of Medicaid patients; and (3) the average percentage of a dentist's income that is Medicaid billing, in eastern Kentucky, may be upwards of 80% of the total dental practice, particularly in those areas where there is a high Medicaid patient concentration.

Secretary Childers stated that the Cabinet: (1) reimbursed 37.8 million dollars to dentists in the Medicaid program in fiscal year 1994; (2) without the savings identified in the reimbursement rate reductions proposed in the present administrative regulation, the Cabinet would be forced to spend approximately 38.9 million in FY 1995. Secretary Childers estimated the effect of the new rates will result in an aggregate reduction in less than 10% in FY 1995, with a savings of 2.2 million.

He stated that he: (1) considers this savings, and those savings realized in the vision and other provider administrative regulations, as part of a planned 97 million dollar reimbursement rate reduction schedule which was introduced to the General Assembly as a portion of the 140 million dollar projected savings package; (2) believes these savings are consistent with the findings and recommendations of the Healthcare Reform Task Force Medicaid Finance Committee; (3) believes that reimbursing participating dentists at the dentist's usual and customary actual billed charge up to 78% of the median billed charge, using 1993 calendar year billed charges, is an equitable reimbursement rate reduction; (4) has compared reimbursement rates in comparable states and does not expect dentist to opt out of the Medicaid provider program which represents a less than 10% reduction across the board, for example: (a) for an oral examination, a dentist is paid: 1. Ohio - \$10.35; 2. West Virginia - \$20; 3. Illinois - \$10.50; 4. Indiana - \$15; 5. Virginia - \$14; 6. Tennessee - \$10; (b) the Cabinet is currently paying \$18.75 and is proposing to reduce the reimbursement rate to \$16.87; (c) teeth cleaning: 1. Ohio - \$12.42 (for kids under 16 years of age); 2. West Virginia - \$26 (children 20 and younger); 3. Illinois - \$11.55; 4. Tennessee - \$15.81; 5. Kentucky - currently \$26.56, with a proposal to lower the rate to \$23.90; (c) tooth extraction's: 1. Ohio - \$15.50; 2. West Virginia - \$40; 3. Illinois - \$40; 4. Missouri - \$8; 5. Indiana - \$18; 6. Tennessee - \$17.34; 7. Kentucky - currently \$26.56, to be lowered to \$23.90.

Secretary Childers stated that the trusts that there is a general sense of responsibility felt by the members of the dental community that the profit margin is going to be reduced somewhat, and did not agree that dentists will leave those practices, especially in those areas where there are large concentrations of Medicaid patients. He drew parallels to the medical rates where physicians are being paid one-quarter billion dollars per year in Kentucky to take care of 500,000 Kentuckians in the Medicaid program, and stated that these physicians cannot afford to walk away from a one-quarter billion dollar a year pot. He added that he is concerned that everyone is interested in stating that they want to save Medicaid dollars, but that no one is willing to be subject to the proposed cuts.

Senator Smith asked Secretary Childers if the Cabinet is adding any more recipients to the Medicaid program. Secretary Childers responded that while Medicaid has not expanded the qualifications for eligibility, because language in the appropriations bill, House Bill 2, stated that the Cabinet could not expand the qualifications, there will be thousands of more people in Medicaid in 1994 than in 1993.

Senator Smith: (1) expressed concerns similar to those expressed by dentists concerning rate cuts; and (2) stated that many people are

quitting jobs and signing up for the Medicaid program, because they cannot afford to buy their own insurance. He added that of the 100 Medicaid reimbursable procedures, out of 400 dental procedures recognized by the American Dental Association, Medicaid should only reimburse the basic dental needs and not all the frills of expensive and elaborate procedures for which taxpayers must foot the bill.

Secretary Childers again stated that many of the basic procedures found in comparable states pay well under what the Cabinet is proposing for most services.

Chairman Kerr asked if the Cabinet's implementation of the provisions of the Health Care Reform Act's Discount Option Plan (DOP) (which allows persons within 200% of poverty to go to Medicaid providers and only be charged the prevailing Medicaid rate), would be implemented by administrative regulation. Secretary Childers stated that: (1) draft administrative regulations are in place; (2) the Cabinet is meeting with representatives of the Kentucky Medical Association and other association provider groups to review the provisions of the plan; and (3) until the proposed administrative regulations are effective, the Cabinet is only accepting applications.

In response to Chairman Kerr's question concerning estimates on how many people will be able to qualify for the plan, Secretary Childers stated that: (1) there are between 79,000 and 150,000 households, which might be eligible, which translates to between 400 to 500,000 people; (2) some of these estimates would include private pay insurance; (3) language in House Bill 250 mandated that the DOP be utilized as a method of last resort; therefore, if an individual has Blue Cross, those rates would prevail; and (4) perhaps the greatest amount of people this plan would benefit are those who cannot even afford Medicaid rates.

Secretary Childers gave an example of the very type of situation the Cabinet is seeking to avoid because it represents fraud and abuse of the program and is typical of what happens when people cannot buy into the dental program, through the DOP. He described a woman who came to a hospital emergency room seeking outpatient services for a simple tooth extraction of two teeth. The reimbursement rate for extracting two teeth would be \$23 per extraction. The wasteful results in her situation, he stressed, was that the hospital gave her a blood test, chest examination, urinalysis and a pregnancy test and she had a tubule legation a year earlier, and was charged almost \$3,000 to have her teeth pulled.

Senator Smith: (1) asked if the Cabinet has directed its employees, in all divisions to begin accepting applications for the DOP, to which Secretary Childers agreed; (2) stated that he understood that a family of four drawing \$30,000 income would qualify for the plan; (3) state that he was concerned that the Cabinet insure sufficient background checks and verification of income before approving families for this plan; (4) said it is hard for the average taxpayer to feel confident that people are not abusing the Medicaid system.

Secretary Childers assured the Senator that the Cabinet is: (1) simply taking applications and not permitting automatic eligibility for the plan; (2) being very careful about screening applicants; and (3) building safeguards into the eligibility process to prevent fraud, insuring that income criteria are in existence before persons are approved.

In response to Representative Allen's question as to how the average person can report fraud or abuse of the Medicaid program, the Secretary stated that: (1) this is both a provider and a recipient problem; (2) Kentucky has one of the lowest fraud rates for food stamps and AFDC in the country; and (3) a 1-800 Hot Line is available to report such abuse.

Representative Lee asked: (1) Mr. Porter the costs of an average tooth extraction for private pay, to which he responded approximately \$40. with the state reimbursement of \$26.56 under the existing administrative regulation and \$23.90 under the proposed change; and (2) the Secretary how many people does the Cabinet suspect may be drawing more than one check under different names. The Secretary stated that the Cabinet does not presently have this information, and

has prepared a draft proposal for discussions with the Governor to develop an identification system through which to eliminate fraud and abuse in the program.

In response to Chairman Kerr's concerns relating to Medicaid provider letters, specifically those involving the DOP, Secretary Childers stated that the program will be implemented through proposed administrative regulations.

907 KAR 1:631. Reimbursement of vision care services. Dr. Joe Eillis, President of the Kentucky Optometric Association stated that: (1) contrary to the impression given in some recent newspaper articles, optometry does not receive the lion's share of the Medicaid dollars; (2) for the last year, a total of \$8.8 million dollars was paid to all optometrists and opticians by the Medicaid program; (3) the cost for vision care was less than 1/2 of 1% of the money spent on Medicaid last year; (4) this includes the cost of all the glasses for children under 21; (5) 18% of the total vision expenditure was a pass through for the wholesale costs of the frames and lenses; (6) eye care is not what is driving up the costs of health care, as shown by the decrease of \$400,000 last year from the previous year's payment for vision care by Kentucky Medicaid; (6) data shows that the top billing: (a) optometrist was paid \$284,215; (b) dentist was paid \$672,316; and (c) physician was paid \$884,003; (7) there are only 467 providers (including opticians) in the vision program to serve 528,000 recipients compared to 1,345 dentists and 7,013 physicians; (8) it is surprising that with so few providers, only 18 dentists actually received over \$100,000 from Medicaid last year; (9) in contrast, the: (a) 150th ranked MD received over \$228,000; and (b) 50th ranked dentist was paid over \$132,000; (10) for years, optometrists have been paid on a much lower fee schedule than physicians performing the same service: (a) for a comprehensive eye exam for a new patient, an ophthalmic surgeon is paid \$54 while an optometrist is paid \$35.; (b) under the new proposed fees, optometrists are paid only \$29.64.; (c) other programs, like Medicare and Worker's Comp, pay the same fees for the same services without discriminating against any type of provider; and (d) the new eye exam fees are less than Medicaid was paying optometry in 1981; (11) contrary to the Secretary's data: (a) optometry fees are not out of line with surrounding states; and (b) Tennessee and Ohio fees are not what was reported in the papers; TennCare pays \$38, not the reported \$26 for an eye exam; (12) the only notice given optometrists of the proposed fee cuts, which were already in effect through an emergency regulation effective June 1, 1994, was in the classification ads of 4 state newspapers on May 31, 1994; (13)(a) Cabinet officials have more than once referenced the fact that optometry and dentistry are not paying the provider tax as the reason for the proposed cuts; (b) federal regulations governing the use of the provider tax by states to raise monies for state Medicaid programs prohibits tying payment to providers in any way to the payment or nonpayment of the provider tax; (14) according to department officials: (a) the General Assembly mandated a \$140 million savings in the Medicaid budget; (b) optometrists understood that there were several means the Cabinet would pursue to account for the projected \$140 million shortfall, which included: 1. recouping payments from third party payers; 2. back payments owed by providers; and 3. stricter utilization review; (15) of the target \$140 million, the optometry share was proportionately twice as much as the dental care proportion of the entire budget; (16) while every provider group has an official technical advisory committee that is supposed to work with the Department on issues impacting that group, the Optometric Technical Advisory Committee was never consulted prior to the cuts; and (17) while association members want to work out a fair and equitable solution to this situation, if there is no change in the proposed fees, coupled with the implementation of the Discount Option Plan, the association is confident that significant numbers of optometrists will be forced to resign from the program.

In response to Senator Preston's inquiry, Dr. Eillis stated that: (1) he does not have the exact numbers of optometrists who have dropped or who intend to opt out of the Medicaid program, but his

informal survey of eastern Kentucky practices indicate a real concern for the proposed reimbursement rates since: (a) most of the population of patient base in these areas are: 1. Medicaid; 2. in some cases may be 80 to 90%; and 3. would be eligible under the Discount Option Plan; (2) while dentistry overall reduction in rates averaged only 10%, the optometrists will be subject to a 20% cut in reimbursement; and (3) optometry constitutes only one-half of one percent of the total Medicaid budget and is being asked by the Cabinet to take one percent of the total cut.

Secretary Childers stated that: (1) although Dr. Ellis questioned the data used to derive the 1993 median fees billed, the cabinet: (a) reevaluated the data and found that it was inaccurate; and (b) readjusted the schedule fee which is reflected in the proposed administrative regulation; (2) the total cut for optometry will be approximately 1.3 million to the entire program; (3) reduction of reimbursement rates and overall revisions in the Medicaid program are required immediately to remove providers or recipients who abuse the program; (4) these cuts were discussed before the Appropriations and Revenue Committee in February of this year for all providers; (5) the Cabinet is willing to discuss suggestions made by the Optometrists association so long as proposals: (a) result in the same projected \$140 million savings necessary in cuts; and (b) do not compromise the quality of care.

The Secretary agreed with Chairman Kerr's request to: (1) look at the issue of Medicaid reimbursement for two pairs of glasses for children, when one pair may be covered under a warranty by the manufacturer; and (2) report to the Subcommittee in two months concerning recommendations made by the association which the Cabinet has considered or adopted by administrative regulation that achieve the same savings but perhaps in a different way.

Dr. Eillis stressed that the Cabinet: (1) should communicate more with optometrists who can be an effective part of the process and offer suggestions on better utilization of Medicaid dollars; (2) had utilized optometric codes which had not be updated in years, which resulted in reimbursement rates being out of proportion to what the private industry charges; and (3) calculated inaccurate codes to determine the median fees.

In response to a question by Representative Allen, Dr. Eillis stated that: (1) under the vision program there is no Medicaid patient co-payment required; and (2) most private insurance companies that have vision plans cover one pair of glasses per year.

Rep. Allen suggested that such a co-payment might encourage people to take better care of their glasses while saving Medicaid dollars. Secretary Childers stated that the Cabinet, pursuant to the mandate in HB 250, will be developing a co-pay program which will be discussed with General Assembly members before the administrative regulation is filed.

Rep. Allen: (1) expressed concern that there will always be abuses in government entitlement programs unless specific measures are taken to remove such abuse; and (2) asked if the Cabinet could: (a) develop a type of program to give Medicaid recipients an identifiable, single amount of money each year for healthcare to be used, such as a \$400 voucher; (b) provide that: 1. healthcare costs above this amount would have to be met by the recipient; and 2. the amount remaining could be pocketed by the recipient. He state that this would give some incentive to recipients to use Medicaid dollars wisely.

Secretary Childers stated that: (1) the Cabinet has looked at this type of plan and similar scenarios which all have been discussed and debated during the last two sessions of the General Assembly; and (2) some states are going to a system which would be similar to a voucher program.

Chairman Kerr agreed that this was a good concept and stated that: (1) earlier discussions about the voucher type of system revealed that some people might not use the voucher amount for medical needs; and (2) voucher recipients would be better served if they were required to have, for example, physical examinations and

other medical services each year.

In response to a question by Senator Preston, Dr. Ellis stated that: (1) the percentage of persons who go to optometrists as Medicaid recipients is, in some areas such as eastern Kentucky, up to 90% of the practice; (2) approximately 500,000 people in Kentucky are under Medicare which is a third party payor, and 500,000 would be Medicaid; and (3) most health insurance does not cover vision care unless it has to do with a disease process.

Senator Smith informed Dr. Ellis that the Subcommittee has the authority under KRS Chapter 13A to review this administrative regulation at any time, and will continue to monitor the Cabinet's success in implementation of the new reimbursement rates.

**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.

**The Subcommittee had no objections to emergency administrative regulations which had been filed.**

**The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:**

**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 Law: Division of Consumer Protection**

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

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

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

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

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

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

40 KAR 2:120. Disclosure document forms.

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

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

40 KAR 2:150. Cremation authorization forms.

40 KAR 2:160. Crematory annual report form.

40 KAR 2:170. Preneed cremation authorization forms.

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

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

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

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

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

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40 KAR 2:230. 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. Hearing for denial of application for more than two (2) going-out-of-business sales during a four (4) year period.

### **Board of Medical Licensure**

201 KAR 9:005. Ethical conduct.

### **Board of Ophthalmic Dispensers**

201 KAR 13:050. Apprentices.

### **Board of Respiratory Care**

201 KAR 29:070. Scope of practice.

### **Natural Resources and Environmental Protection Cabinet: Administration**

400 KAR 1:001. Definitions for 400 KAR Chapter 1.

400 KAR 1:090. Administrative hearings practice provisions.

#### **Division of Air Quality: 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.

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.

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 on-shore natural gas processing plants.

401 KAR 60:640. Standards of performance for on-shore natural gas processing: SO<sub>2</sub> 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

#### **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. National perchloroethylene air emission standards for dry cleaning facilities.

#### **Department of Education: Office of Learning Programs Development: 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.

#### **Office of Instruction**

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

#### **Labor Cabinet: Department of Workers' Claims: Workers' Compensation**

803 KAR 25:101. Provision of Workers' Compensation Rehabilitation Services. Valerie Salven and Oscar Morgan appeared before the Subcommittee representing the Department. Connie Hauser and Hollie Johnson, representing the Kentucky Physical Therapy Association, spoke against the administrative regulation. Ms. Hauser and Ms. Johnson stated that this new administrative regulation repeals the old 803 KAR 25:100. They requested that Section 8 of the old administrative regulation dealing with the work hardening program and the functional capacity evaluation be retained in the new administrative regulation. They stressed that the guidelines in this Section 8 of the old administrative regulation provided a chronological listing of the proper order of services for quality of care and treatment. Ms. Johnson added that leaving this out was probably an oversight. She explained that work hardening is a goal oriented process simulating an injured worker's work situation. She added that it requires a large amount of high level activity developing a job description and looking at the level of performance of that injured employee. She stressed that it is important to take a functional capacity evaluation (FCE) test prior to beginning a work hardening program. She said that the purpose of this procedure (the test) is to save money, decrease fraud,

and provide quality of care. Ms. Johnson added that the physical therapists have guidelines, based on the old administrative regulation and they help enforce it through peer review. She said that if the old section is not in the new administrative regulation they will not have a legal leg to stand on to enforce those guidelines to get the quality of care they want physical therapists to provide.

Representative Bruce asked if they basically wanted the guidelines from 803 KAR 25:100 to be in 803 KAR 25:101, to which they responded "yes".

Senator Smith stated that he would like to hear the Cabinet's response.

Valerie Salven responded that the General Assembly cut out legislation that required regulation and oversight in this area. She said that they added legislation that KRS 342.710 not be interpreted to require mandatory evaluation based on length of disability. Ms. Salven said they also added legislation that any administrative regulation promulgated under this section of the statute requiring mandatory referral expire effective when the new legislation (HB 928) takes effect. She concluded by saying that there has been a major change and that we maintain a directory (of providers) but not approval, since the General Assembly deleted legislation dealing with approval (of providers).

Oscar Morgan, Head of the Rehabilitation Branch, reiterated that the workers' compensation law had been amended by the 1994 Kentucky General Assembly, these services were no longer mandated, and thus the guidelines were being deleted. He explained that the old administrative regulation, 803 KAR 25:100, required mandatory referral of thousands of cases, and it required a directory. He said in an effort to reduce the cost of workers' compensation, statutory changes were made by the 1994 General Assembly. He said a functional capacity evaluation test can add several hundred dollars to the cost of a claim. He stressed that there was no unanimity that the functional capacity evaluation is medically required prior to a work hardening program. He added that perhaps it is desirable to the physical therapist who is to design the program, but there is no unanimity in the medical community that it is medically necessary.

Chairman Kerr asked Ms. Johnson how this affects physical therapists. She responded that to give a high level quality of care they want to give the test before putting them in that high level program. She added that they don't want them to get hurt, there is a liability, and that they have advised other medical personnel of that liability.

Chairman Kerr asked if liability was their primary concern. Ms. Johnson responded that it was not only liability, but quality care. She added that there are so many types of occupational groups that it is difficult to correlate an individual's work requirements and the specific injury to an individual program. She concluded by saying that it (FCE) was pretty much a national standard (line of thought) in continuing education courses and that it is cost effective.

At this point the discussion centered on whether any reference should be made to the work hardening program and functional capacity evaluation guidelines.

Senator Smith asked what is the cost of a functional capacity evaluation. Ms. Johnson stated that it cost between one hundred and four hundred dollars and could take from four hours to two days to complete the test. Senator Smith questioned what assurance there would be if there was still doubt and there would still be problems of fraud. He said he tended to agree with the Cabinet and with their interpretation of the new legislation. He further stated that if the designated doctor feels the need for this the doctor will order it, and the employer can ask for it also.

Ms. Johnson replied that the FCE test has a standard baseline validity criterion check that looks for an employee that is not putting forth consistent effort or is symptomagnifying, so that is a concern of ours when we do the test.

Representative Bruce requested that this administrative regulation be deferred for one month for further study, and made a motion to that effect. Chairman Kerr added that this would give a chance for

everybody to look at it further, but that the agency would have to agree to the deferral. The agency then agreed to the deferral, and the motion was seconded and passed.

**Cabinet for Human Resources: Department for Health Services: 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.

**OTHER BUSINESS:**

**Cabinet for Human Resources: Department for Social Services: Child Welfare**

905 KAR 1:300. Standards for child caring facilities. In response to Chairman Kerr's inquiry, Mike Cheek, with the Cabinet for Human Resources, Department of Social Services, stated that the Cabinet has agreed to respond formally, at the ARRS October meeting, to the Subcommittee Staff's legal Memorandum relating to: (1) licensing of child caring facilities; and (2) the statutory exemption permitting the use of corporal punishment for church related, privately operated child caring facilities found in KRS 199.640(3).

**The Subcommittee adjourned at 2:30 p.m. until October 5, 1994 at 10 a.m. in Room 131 of the Capitol Annex.**

## **ADMINISTRATIVE REGISTER - 1210**

### **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 BUSINESS ORGANIZATIONS AND PROFESSIONS Meeting of September 9, 1994**

The following regulations were reviewed and approved by the Interim Joint Committee on Business Organizations and Professions on Friday, September 9, 1994:

201 KAR 30:020  
201 KAR 30:140

The meeting adjourned at 10:55 a.m.

#### **INTERIM JOINT COMMITTEE ON STATE GOVERNMENT Meeting of September 14, 1994**

This date, the Interim Joint Committee on State Government reviewed the following administrative regulations that were assigned to the Committee September 9, 1994:

##### **Personnel Board**

101 KAR 1:365 - Appeal and hearing procedures  
101 KAR 1:375 - Employee grievances and complaints  
101 KAR 1:400 - Promotion

##### **Department of Personnel**

101 KAR 2:100 & E - Leave regulations (classified service)  
101 KAR 3:010 & E - Leave regulations (unclassified service)

##### **Finance and Administration Cabinet**

200 KAR 5:021 - Manual of policies and procedures  
200 KAR 20:010 & E - Health insurance coverage for nonstate employees

The Committee determined that the regulations comply with statutory requirements.



## ADMINISTRATIVE REGISTER - D1

### CUMULATIVE SUPPLEMENT

#### Locator Index - Effective Dates ..... D2

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 ..... D9

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 ..... D17

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 - D2

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	21 Ky.R Page No.	Effective Date	Regulation Number	21 Ky.R Page No.	Effective Date
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### VOLUME 20

**EMERGENCY REGULATIONS:** (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

12 KAR 1:115E	3166	5-13-94
Replaced	3322	8-24-94
12 KAR 1:120E	3166	5-13-94
Replaced	3323	8-24-94
12 KAR 1:125E	3166	5-13-94
Replaced	3324	8-24-94
12 KAR 1:130E	3167	5-13-94
Replaced	3324	8-24-94
12 KAR 1:135E	3167	5-13-94
Replaced	3325	8-24-94
12 KAR 1:140E	3168	5-13-94
Replaced	3326	8-24-94
12 KAR 1:145E	3169	5-13-94
Replaced	3327	8-24-94
12 KAR 1:150E	3169	5-13-94
Replaced	3328	8-24-94
12 KAR 1:155E	3170	5-13-94
Replaced	3329	8-24-94
12 KAR 1:160E	3170	5-13-94
Replaced	3330	8-24-94
12 KAR 1:165E	3171	5-13-94
Replaced	3331	8-24-94
12 KAR 1:170E	3171	5-13-94
Replaced	3332	8-24-94
12 KAR 1:175E	3173	5-13-94
Replaced	3334	8-24-94
12 KAR 6:010E	3174	5-13-94
Replaced	3335	8-24-94
12 KAR 6:015E	3174	5-13-94
Replaced	3336	8-24-94
12 KAR 6:020E	3175	5-13-94
Replaced	3337	8-24-94
12 KAR 6:025E	3175	5-13-94
Replaced	3338	8-24-94
401 KAR 42:060E	2530	2-15-94
401 KAR 42:070E	2530	2-15-94
401 KAR 42:080E	2531	2-15-94
907 KAR 1:023E	3185	4-29-94
Replaced	3395	8-17-94

### ORDINARY REGULATIONS:

12 KAR 1:111	3322	8-24-94
12 KAR 1:115	3322	8-24-94
12 KAR 1:120	3323	8-24-94
12 KAR 1:125	3324	8-24-94
12 KAR 1:130	3324	8-24-94
12 KAR 1:135	3325	8-24-94
12 KAR 1:140	3326	8-24-94
12 KAR 1:145	3327	8-24-94
12 KAR 1:150	3328	8-24-94
12 KAR 1:155	3329	8-24-94
12 KAR 1:160	3330	8-24-94
12 KAR 1:165	3331	8-24-94
12 KAR 1:170	3332	8-24-94
12 KAR 1:175	3334	8-24-94

12 KAR 6:010	3335	8-24-94
12 KAR 6:015	3336	8-24-94
12 KAR 6:020	3337	8-24-94
12 KAR 6:025	3338	8-24-94
30 KAR 3:010	3339	(See Volume 21)
30 KAR 3:020	3340	(See Volume 21)
103 KAR 18:120		
Amended	2879	(See Volume 21)
201 KAR 1:081	3343	(See Volume 21)
301 KAR 1:085		
Amended	3223	(See Volume 21)
401 KAR 5:001	3348	(See Volume 21)
401 KAR 5:037	3128	(See Volume 21)
401 KAR 5:050		
Amended	3228	(See Volume 21)
401 KAR 5:055		
Amended	3231	(See Volume 21)
401 KAR 5:057	3358	(See Volume 21)
401 KAR 5:060		
Amended	3246	(See Volume 21)
401 KAR 5:065		
Amended	3272	(See Volume 21)
401 KAR 5:070		
Amended	3282	(See Volume 21)
401 KAR 5:075		
Amended	3285	(See Volume 21)
401 KAR 5:080		
Amended	3290	(See Volume 21)
401 KAR 8:010		
Amended	3010	(See Volume 21)
401 KAR 8:020		
Amended	3015	(See Volume 21)
401 KAR 8:100		
Amended	3037	(See Volume 21)
401 KAR 8:150		
Amended	3041	(See Volume 21)
401 KAR 8:200		
Amended	3045	(See Volume 21)
401 KAR 8:250		
Amended	3051	(See Volume 21)
401 KAR 8:500		
Amended	3088	(See Volume 21)
600 KAR 1:101	3142	(See Volume 21)
603 KAR 4:035		
Amended	3104	(See Volume 21)
702 KAR 3:270	3378	(See Volume 21)
704 KAR 3:401	3382	(See Volume 21)
704 KAR 3:406	3384	(See Volume 21)
705 KAR 4:231	3391	(See Volume 21)
803 KAR 1:085		
Amended	3110	(See Volume 21)
815 KAR 45:025	3155	(See Volume 21)
900 KAR 1:070	2941	
Amended	3203	(See Volume 21)
904 KAR 3:041	3392	(See Volume 21)
907 KAR 1:013		
Amended	2740	(See Volume 21)



# ADMINISTRATIVE REGISTER - D3

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	21 Ky.R Page No.	Effective Date	Regulation Number	21 Ky.R Page No.	Effective Date
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### VOLUME 21

**EMERGENCY REGULATIONS:** (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

9 KAR 1:050E	879	8-15-94
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
40 KAR 2:110E	247	7-14-94
40 KAR 2:120E	247	7-14-94
40 KAR 2:130E	247	7-14-94
40 KAR 2:140E	249	7-14-94
40 KAR 2:150E	250	7-14-94
40 KAR 2:160E	251	7-14-94
40 KAR 2:170E	251	7-14-94
40 KAR 2:180E	251	7-14-94
40 KAR 2:190E	251	7-14-94
40 KAR 2:200E	252	7-14-94
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40 KAR 2:220E	252	7-14-94
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12 KAR 1:035			101 KAR 1:400		
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12 KAR 1:040			101 KAR 2:100		
Repealed	143	8-24-94	Amended	465	
12 KAR 1:050			101 KAR 3:010		
Repealed	143	8-24-94	Amended	470	
12 KAR 1:070			103 KAR 8:041	1195	
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12 KAR 4:090			103 KAR 18:141		
Amended	451		Repealed	912	9-12-94
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201 KAR 30:140			Amended	501	
Amended	71	9-9-94	401 KAR 48:090		
301 KAR 1:015			Amended	503	
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301 KAR 1:115			Amended	1104	
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405 KAR 5:025	743		Amended	97	9-12-94
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405 KAR 5:030	744		Amended	98	9-12-94
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Amended	1129		Amended	99	9-12-94
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Amended	1136		502 KAR 45:035		
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415 KAR 1:060			Amended	562	
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415 KAR 1:080			Amended	565	
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Amended	112	9-12-94	902 KAR 8:070		
803 KAR 2:317			Amended	584	
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\*Statement of Consideration not filed by deadline (KRS 13A.280)



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151.182	400 KAR 1:001		600 KAR 4:020E
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	400 KAR 1:090		600 KAR 4:020E
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151.990	400 KAR 1:030	Chapter 196	501 KAR 6:020
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	781 KAR 1:040		501 KAR 6:080
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158.037	902 KAR 2:090		501 KAR 6:030
160.345	704 KAR 3:455		501 KAR 6:040
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161.020	704 KAR 20:670		501 KAR 6:070
161.028	704 KAR 20:670		501 KAR 6:080
161.030	704 KAR 20:670		501 KAR 6:090
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164.753	11 KAR 3:100	199.650	905 KAR 1:310
	11 KAR 5:034	199.660	905 KAR 1:310
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205.210	904 KAR 2:016	214.034	902 KAR 2:090
205.211	904 KAR 2:016	214.155	902 KAR 4:030
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205.245	904 KAR 2:040	215.520	902 KAR 2:090
205.510-205.990	900 KAR 1:090	Chapter 216	909 KAR 1:010E
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205.520	907 KAR 1:009	216B.010-216B.130	902 KAR 20:016
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209.010-209.160	905 KAR 5:070	223.200	400 KAR 1:001
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211.170	902 KAR 8:040	223.991	400 KAR 1:001
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211.970-211.982	902 KAR 10:150		401 KAR 60:110
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211.990	902 KAR 100:010		401 KAR 60:160
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212.170	902 KAR 8:040		401 KAR 60:180
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	902 KAR 8:060		401 KAR 60:250
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	902 KAR 8:100		401 KAR 60:370
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	902 KAR 8:060		401 KAR 60:460
	902 KAR 8:070		401 KAR 60:470
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	902 KAR 8:100		401 KAR 60:500
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## KRS SECTION

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	401 KAR	60:110
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	401 KAR	60:160
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	401 KAR	60:260
	401 KAR	60:330
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	401 KAR	60:400
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224.40	401 KAR 48:005	311.565	201 KAR 9:175
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224.50	401 KAR 48:005	314A.100	201 KAR 29:070
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	415 KAR 1:060		201 KAR 30:140
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	415 KAR 1:060		201 KAR 22:135
	415 KAR 1:070	327.060	201 KAR 22:031
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	401 KAR 48:090	334A.130	201 KAR 17:010
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238.565	500 KAR 11:020E	335.100	201 KAR 23:070
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## KRS SECTION

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350.095

350.100

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350.130

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405 KAR 10:010  
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350.064

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350.410	405 KAR 16:010		20 KAR 1:050
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	405 KAR 18:010	393.020	20 KAR 1:060
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350.420	405 KAR 16:200	393.050	20 KAR 1:060
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350.435	405 KAR 16:020	393.062	20 KAR 1:060
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350.445	405 KAR 16:010	393.095	103 KAR 8:041
350.450	405 KAR 16:010	393.110	20 KAR 1:030
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350.465	400 KAR 1:001		20 KAR 1:050
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	405 KAR 16:010	393.150	20 KAR 1:040
	405 KAR 16:020	393.160	20 KAR 1:050
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351.175	805 KAR 5:050		501 KAR 6:080
352.220	805 KAR 5:060		501 KAR 6:090
352.230	805 KAR 5:060		501 KAR 6:130
352.540	805 KAR 5:050		501 KAR 6:140
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