

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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TUESDAY, OCTOBER 1, 1996

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on October 7, 1996. See **tentative agenda** beginning on page 1514 of this Administrative Register.

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ADMINISTRATIVE REGISTER - 1513

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ADMINISTRATIVE REGISTER - 1514

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - October 7, 1996, 10 a.m.
Room 149, Capitol Annex**

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

GENERAL ASSEMBLY

Legislative Ethics Commission

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

TREASURY

State Treasury

20 KAR 1:081E. Repeal of 20 KAR 1:080. (Deferred from September)

STATE BOARD OF ELECTIONS

Forms and Procedures

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

Voting

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

DEPARTMENT OF LAW

Attorney General (Deferred from August)

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

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

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

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

PERSONNEL

Department of Personnel; Classified

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

Department of Personnel; Unclassified

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

FINANCE AND ADMINISTRATION CABINET

Purchasing

200 KAR 5:011E. Repeal of 200 KAR 5:010. (Deferred from September)

200 KAR 5:021. Manual of Policies and Procedures.

200 KAR 5:025. Memoranda of agreement and memoranda of understanding by state agencies.

200 KAR 5:302 & E. Delegation of authority.

200 KAR 5:304. Application to be placed on source list.

200 KAR 5:306. Competitive sealed bidding.

200 KAR 5:325. Consideration to be given to use of Kentucky-made wood products.

Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010. Formula for allocation of private bonds. (Deferred from September)

GENERAL GOVERNMENT CABINET

Board of Hairdressers and Cosmetologists

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

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

TOURISM DEVELOPMENT CABINET

Department of Fish and Wildlife Resources

Fish

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

Hunting and Fishing

301 KAR 3:028. Applying for disability hunting and fishing licenses. (Deferred from September)

Wildlife

301 KAR 4:200. Cyprus AMAX Robinson Forest Wildlife Management Areas use requirements and restrictions. (Deferred from September)

DEPARTMENT OF AGRICULTURE

Linked Deposits

302 KAR 3:010E. Linked Deposit Investment Program for agribusiness. (Deferred from September)

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Tobacco Sales

302 KAR 78:020 (& E). Use, sale and distribution of tobacco products.

ECONOMIC DEVELOPMENT CABINET

Linked Deposit Investment Program

307 KAR 5:010E. Linked Deposit Investment Program. (Agency Requests Deferral)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Air Quality - General Administrative Procedures

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

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank Environmental Assurance Fund

Petroleum Storage Tank Environmental Assurance Fund (Deferred from September)

415 KAR 1:050E. Definitions.

415 KAR 1:060E. Financial responsibility account.

415 KAR 1:070E. Petroleum storage tank account.

415 KAR 1:080E. Claims procedures.

415 KAR 1:090E. Ranking system.

415 KAR 1:100E. Third party claims.

415 KAR 1:110E. Contractor costs.

415 KAR 1:114E. Contractor certification.

415 KAR 1:120E. Hearings.

415 KAR 1:125E. Discovery procedure.

JUSTICE CABINET

Charitable Gaming

500 KAR 11:001 & E. Definitions. (Deferred from September)

500 KAR 11:010. Temporary licensure.

500 KAR 11:015. Permanent licensure.

500 KAR 11:025. Quarterly reports.

500 KAR 11:030. Charity game ticket standards. (Deferred from September)

500 KAR 11:060. Tipping prohibited.

500 KAR 11:070. Exempt activities.

500 KAR 11:080. Special charity fundraising event.

500 KAR 11:090. Special limited charitable games.

500 KAR 11:110 & E. Keno. (Deferred from September)

500 KAR 11:120. Other allowable expenses. (Deferred from September)

Department of Corrections

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:130. Western Kentucky Correctional Complex. (Deferred from September)

Jail Standards for Counties Not Housing Class D Felons

501 KAR 13:010. Life safety issues.

Department of State Police

Candidate Selection

502 KAR 45:005E. Definitions.

502 KAR 45:035E. Application.

502 KAR 45:045E. Written examination.

502 KAR 45:075E. Register.

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

Department of Training

Concealed Deadly Weapon Licensing

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

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

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

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

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

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

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

503 KAR 6:080E. Applicant and sheriff notification processes and procedures.

503 KAR 6:090E. The license denial process.

503 KAR 6:100E. The license suspension/ reinstatement process.

503 KAR 6:110E. The license revocation/reinstatement process.

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TRANSPORTATION CABINET

Traffic

603 KAR 5:230. The extended weight coal or coal by-products haul system and associated bridge weight limits.
603 KAR 5:330E. Annual overweight permits for nondivisible loads. (Deferred from September)

EDUCATION, ARTS, AND HUMANITIES

Kentucky Board of Education Department of Education

Office of Chief State School Officer

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

701 KAR 5:051 (& E). Repeal of 701 KAR 5:050, Summary hearing procedures.

701 KAR 5:055 (& E). Removal hearing procedures.

701 KAR 5:086 (& E). Repeal of 701 KAR 5:085; Hearing process for school-based decision making complaints.

701 KAR 5:090 (& E). Teacher disciplinary hearings.

Office of District Support Services

General Administration

702 KAR 1:080 (& E). Transfer of annexed property; hearing.

School Administration and Finance

702 KAR 3:100. Data form; professional staff.

702 KAR 3:270. SEEK Funding Formula.

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

Pupil Transportation

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

School Terms, Attendance and Operation

702 KAR 7:055E. Repeal of 702 KAR 7:010, 7:020, and 7:050.

702 KAR 7:065 (& E). Designation of agent to manage high school interscholastic athletics.

702 KAR 7:125E. Pupil attendance.

Bureau of Learning Results Services

Assistance and Intervention Services

703 KAR 3:060E. Procedures for determining rewards and sanctions.

703 KAR 3:205 (& E). Management Improvement Program.

Learning Results Services

703 KAR 4:010E. The formula for determining successful schools.

703 KAR 4:090E. Statewide Assessment and Accountability Program; school building and local district appeal of performance judgements.

EDUCATION PROFESSIONAL STANDARDS BOARD

Education Professional Standards Board

704 KAR 20:305E. Written examination prerequisites for teacher certification. (Deferred from September)

704 KAR 20:475E. Probationary certificate for teachers of technology education. (Deferred from September)

Office of Special Instructional Services

Exceptional and Handicapped Programs

707 KAR 1:180 (& E). Due process procedures.

COMMISSION ON THE DEAF AND HARD OF HEARING

Telecommunication devices for the Deaf

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard-of-hearing and speech-impaired.

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

WORKFORCE DEVELOPMENT CABINET

Department for Employment Services

Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate. (Deferred from September)

LABOR CABINET

Department of Workers' Claims

803 KAR 25:012. Resolution of medical fee disputes.

803 KAR 25:015. Procedure in Workers' Compensation enforcement hearings

803 KAR 25:035. Computation of life expectancies for purposes including apportionment and attorney's fees.

803 KAR 25:089E. Workers' compensation medical fee schedule for physicians. (Deferred from September)

803 KAR 25:096. Selection of physicians and treatment plans.

803 KAR 25:190. Utilization review and medical bill audit.

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PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control

Malt Beverage Equipment, Supplies and Service

804 KAR 11:010. Equipment and supplies.

Tobacco Enforcement

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

Department for Mines and Minerals

Division of Mining

805 KAR 5:070. Minimum requirements for roof support and the roof control plan approval process. (Repeals 805 KAR 5:020)

Miner Training, Education and Certification

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians. (Deferred from September)

Department of Insurance

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060E. Registration of service contracts for consumer products. (Deferred from September)

Health Insurance Contracts

806 KAR 17:100E. Certificate of filing for provider-sponsored networks. (Deferred from September)

806 KAR 17:120E. Accountable health plan certification. (Deferred from September)

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

Group and Blanket Health Insurance

806 KAR 18:060E. Filing requirements for associations. (Deferred from September)

Kentucky Racing Commission

Thoroughbred Racing

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

CABINET FOR HEALTH SERVICES

Certificate of Need (Deferred from September)

900 KAR 6:010E. Certificate of need process.

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

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

900 KAR 6:040E. Licensure hearings.

Department for Public Health

Communicable Diseases

902 KAR 2:090. Tuberculosis detection, prevention, and control.

Emergency Medical Services and Ambulance Service Providers (Deferred from September)

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

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

State Health Plan (Deferred from September)

902 KAR 17:030E. State Health Plan.

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

Health Services and Facilities

902 KAR 20:275E. Mobil health services.

902 KAR 20:320E. Psychiatric treatment facility operation and services. (Deferred from September)

Radiation Operators Certification

902 KAR 105:070E. Violations and enforcement. (Deferred from August)

Water Fluoridation

902 KAR 115:020E. Enforcement of water fluoridation program. (Deferred from August)

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Public Assistance

904 KAR 2:470E. Disability Determinations Program. (Deferred from September)

Department for Social Services

Child Welfare

905 KAR 1:320E. Fair hearings. (Deferred from September)

905 KAR 1:360 & E. Private child care levels of care.

Day Care

905 KAR 2:100E. Certification of family child care homes. (Deferred from September)

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services. (Deferred from July)

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

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

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

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

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

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

Payment and Services

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

Department for Mental Health and Mental Retardation Services

Substance Abuse

908 KAR 1:360. Licensing procedures and standards for agencies operating alcohol and other drug abuse treatment and education programs.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE (See KRS Chapter 13A for Specific Details)

Notice of Intent

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

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

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

CAPITAL PLANNING ADVISORY BOARD

September 11, 1996

Capital Planning Advisory Board

- (1) **1 KAR 6:020**. Policies and procedures.
- (2) The Capital Planning Advisory Board (CPAB) 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 29, 1996 at 9 a.m. at Room 111 of the Capitol Annex in Frankfort.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 29, 1996 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Planning Advisory Board, Room 102 Capitol Annex, 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 Capital Planning Advisory Board at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the Capital Planning Advisory Board is KRS 7A.140.
- (b) The administrative regulation that the Capital Planning Advisory Board intends to promulgate will amend 1 KAR 6:020. It will correct the address of the CPAB office, change references to the Kentucky Information Systems Commission to the Kentucky Information Resources Management Commission, and make changes in the items required from the Kentucky Information Resources Management Commission and the Council on Higher Education for the board's review and preparation of the biennial capital improvements plan.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 7A.120 directs that every two years, CPAB shall prepare a state capital improvement plan containing its proposal for state spending for capital projects based on plans submitted by state agencies and universities containing proposed capital projects and equipment items and systems acquisitions.
- (d) The benefit expected from the administrative regulation is that by using the expertise of the Kentucky Information Resources Management Commission and the Council on Higher Education, CPAB will be able to make more informed recommendations on computing and communications equipment and university projects, respectively.
- (e) The administrative regulation will be implemented as follows: These requirements will be included in the guidelines which are approved by CPAB for the submission of agency and university capital plans.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

June 25, 1996

Kentucky Higher Education Assistance Authority (KHEAA)

- (1) The subject matter of the proposed administrative regulation is **11 KAR 13:010**, the Kentucky National Guard Tuition Award Program.
- (2) Kentucky Higher Education Assistance Authority 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 is scheduled for October 30, 1996 at 10 a.m. in the conference room at 1050 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held, if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to October 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing or submit written comments should mail their written request or comments to the following address: KHEAA, attn: Paul P. Borden, 1050 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On the request for public hearing, a person shall state:
 1. "I will 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 KHEAA at the address stated above.

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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is 1996 Ky. Acts ch. 220.

(b) The administrative regulation that KHEAA intends to promulgate will not amend an existing administrative regulation. It will establish the criteria for the administration of the National Guard Tuition Award Program which replaced KRS 38.500 (The Kentucky National Guard Educational Encouragement Fund), repealed by 1996 Ky. Acts ch. 220. This administrative regulation provides for the policy and procedures necessary to administer the financial management of the tuition program.

(c) The necessity and function of the proposed administrative regulation is as follows: The 1996 General Assembly enacted a new statute establishing the National Guard Tuition Program. The proposed regulation is necessary to implement the program.

(d) The benefits expected from the proposed administrative regulation are simplified procedures to effectively manage the disbursement and refund of funds awarded under the program.

(e) The proposed administrative regulation will direct the Department of Military Affairs to provide to KHEAA a roster, certified by the financial aid officer of the student's school, identifying students that the department has certified as eligible to receive an award. It will also set forth the procedures for the return of funds transferred to an educational institution if a student is no longer entitled to receive an award under this program.

KENTUCKY PERSONNEL BOARD

September 13, 1996

Kentucky Personnel Board

(1) Regulation Number and Title: **101 KAR 1:365** - Appeal and hearing procedures.

(2) The Kentucky Personnel 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 October 21, 1996, 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 10 days prior to October 21, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 appeal and hearing procedures is KRS Chapter 13A and KRS 18A.0751.

(b) The administrative regulation that the Kentucky Personnel Board intends to promulgate will amend 101 KAR 1:365, Appeal and hearing procedures. KRS Chapter 13B, Administrative Hearing Procedures Act, was enacted during the 1996 legislative session and applies to all administrative hearings conducted by an agency, with the exception of those specifically exempted. The provisions of KRS Chapter 13B are to supersede any other provisions of the Kentucky Revised Statutes and administrative regulations. As several sections of 101 KAR 1:365 are duplicative and in conflict with KRS Chapter 13B, it is necessary that they be repealed.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This amendment is to delete duplication of KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: There are no benefits other than the avoidance of duplication.

(e) The administrative regulation will be implemented as follows: No new provisions have been added to this regulation.

REVENUE CABINET

Office of General Counsel

Division of Tax Policy and Research

September 12, 1996

Revenue Cabinet

Office of General Counsel

Division of Tax Policy and Research

(1) **103 KAR 16:200** - Consolidated Kentucky corporation income tax return.

(2) The 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 October 30, 1996, at 10 a.m., at Room 129, Capitol Annex, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative 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

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at least 10 days prior to October 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jennifer C. Hays, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy & Research, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, Telephone: (502) 564-6843, Fax: (502) 564-9565.

(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 consolidated Kentucky income tax returns 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 explain the methods and conditions for an affiliated group to elect to file a consolidated Kentucky income tax return, define which corporations should be included in a consolidated income tax return after the affiliated group has submitted the election, and provide transition rules for calculating items of income and deduction between unitary combined and consolidated return years and separate entity and consolidated return years.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation explains and clarifies certain provisions of the income tax law pertaining to KRS 141.200 and a consolidated Kentucky corporation income tax return.

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

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

(e) The administrative regulation will be implemented as follows: The provisions of this administrative regulation will be incorporated into the instructions of Revenue Form 720, Kentucky Corporation Income and License Tax Return, and other publications issued by the Revenue Cabinet.

KENTUCKY RETIREMENT SYSTEMS

August 15, 1996

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 21, 1996, 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 10 days prior to October 21, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 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)(f).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:200. It will create a program that requires new retirees of the Kentucky Retirement Systems to have retirement benefits electronically transferred to their bank account unless the requirement would place a hardship on the recipient. It will specify that a school record may be accepted as an official record of date of birth where a birth certificate does not exist. It will amend forms to conform to a format suitable for electronic imaging for storage on computer.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Annual postage costs for monthly checks exceeds \$60,000. A mandatory program of electronic transfer of funds, similar to the Social Security Administration program, would reduce the administrative expenses of the retirement systems.

(d) The benefits expected from the administrative regulation are: Electronic transfer of funds is more reliable than mailing and will result in fewer checks being lost or stolen. More than 800 checks were returned by the Post Office or reported as lost or stolen in fiscal year 1995-96. In addition, the program would reduce the postage costs of the systems.

(e) The administrative regulation will be implemented as follows: New retirees will be informed of the requirements and provided an opportunity to seek an exception as provided in the regulations.

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DEPARTMENT OF MILITARY AFFAIRS

August 22, 1996

Department of Military Affairs

- (1) **106 KAR 3:010**, the Kentucky National Guard Tuition Award Program.
- (2) Department of Military Affairs intends to promulgate an administrative regulation governing the Kentucky National Guard Tuition Award Program established by House Bill 137, enacted during the 1996 Regular Session of the General Assembly.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation is scheduled for October 30, 1996 at 1 p.m. in the conference room at the EOC Building, Boone National Guard Center, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held, if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
 - (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
 - (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to October 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing or submit written comments should mail their written request or comments to the following address: Department of Military Affairs, Attn: LTC Donald C. Storm, Boone National Guard Center, EOC Building, Frankfort, Kentucky 40601-6168.
 - (b) On the request for public hearing, a person shall state:
 1. "I will 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 Military Affairs at the address stated above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation is House Bill 137, 1996 Ky. Acts ch. 220.
 - (b) The administrative regulation that the Department of Military Affairs intends to promulgate will not amend an existing administrative regulation. It will establish the criteria for eligibility for a National Guard Tuition Award and the administration of the National Guard Tuition Award Program.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The 1996 General Assembly enacted House Bill 137 that repealed KRS 38.5000, and established the Kentucky National Guard Tuition Award Program. The proposed administrative regulation is necessary to implement the program.
 - (d) The benefit expected from the proposed administrative regulation is the award of tuition grants to members of the Kentucky National Guard to enable them to attend a state-supported educational institution.
 - (e) The administrative regulation will be implemented as follows:
 - (a) Members of the Kentucky National Guard who meet eligibility requirements established by this administrative regulation will be approved for tuition awards. The Department of Military Affairs will certify eligibility of members to the appropriate educational institutions and to the Kentucky Higher Education Assistance Authority.
 - (b) Members who apply for benefits under this administrative regulation shall use the prescribed forms, meet established deadlines, and be admitted to state-supported educational institutions.

DEPARTMENT FOR LOCAL GOVERNMENT

August 29, 1996

Department for Local Government

- (1) **109 KAR 7:020**. Energy conservation projects.
- (2) The Department for Local Government 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, 1996 at 10 a.m. in Conference Room A, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to October 28, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Thomas M. Troth, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, phone (502) 573-2382, fax (502) 573-2512.
 - (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the Department for Local Government at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to energy conservation projects is KRS 58.600-

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58.615 and 45A.345, 45A.351-45A.353.

(b) The administrative regulation that the Department for Local Government intends to promulgate sets forth the guidelines for the approval of energy conservation projects for local governments.

(c) The necessity, function and conformity of the proposed administrative regulation sets forth guidelines for approving energy conservation projects for local governments and establishes guidelines for the issuance of revenue bonds issued in accordance with the project.

(d) The benefit expected from the administrative regulation is to provide a uniform procedure for energy conservation projects and, where appropriate provide for the issuance of revenue bonds.

(e) The administrative regulation will be implemented as follows: This administrative regulation and other appropriate information will be provided to all 120 counties and to the various cities within the Commonwealth as well as engineering and architectural firms when requested.

GENERAL GOVERNMENT CABINET Board of Nursing

August 16, 1996

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:390**, Nursing Incentive Scholarship Fund.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 23, 1996, at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(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 is not received at least 10 days prior to October 23, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(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 General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:390. It will implement the changes to the Nursing Incentive Scholarship Fund Program enacted by the 1996 General Assembly.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The 1996 General Assembly substantially amended the statute pertaining to the Nursing Incentive Scholarship Fund Program. The amendments to the regulation implement these changes.

(d) The benefits expected from administrative regulation are: Implementation of the applicable legislation.

(e) The administrative regulation will be implemented as follows: Applications for scholarships shall be taken for the fall 1997 semester.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

August 23, 1996

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 1:016**. Use of public lands and waters at department-owned lakes.

(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 21, 1996, 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 ten days prior to October 21, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(2)(g) and 150.620.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:016 as follows: Clarify that only owners of lakefront property are eligible for boat dock permits; delete Bullock Pen Lake and add Corinth Lake to the list of lakes where boat docks are allowed; and change the fee structure from \$25 for five years to \$5 annually and allow permits to be valid for up to five years.

(c) The necessity, function, and conformity of the proposed administrative regulation is to manage the construction and use of private boat docks on departmental property. This proposed amendment will allow for staggered expiration dates on boat dock permits; clarify that only owners of lake-front property are eligible for boat dock permits, and correct an error in the list of lakes where private boat docks are permitted.

(d) The benefits expected from the administrative regulation are better management and control of department-owned lands and waters.

(e) This administrative regulation will be implemented by permits issued by the fisheries division, with enforcement of its provisions by the department's Division of Law Enforcement.

August 15, 1996

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:225**. Dove, wood duck, teal and other migratory game bird hunting.

(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, 1996 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 ten days prior to October 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: John Wilson, Assistant Director, Division of Public Affairs/Policy, The Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 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 form from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing migratory bird hunting is KRS 150.015, 150.025, 150.170, 150.320, 150.340 and 150.360.

(b) The administrative regulation that the department intends to promulgate will amend an existing administrative regulation to change opening and closing dates for dove, wood duck, teal and other early-season migratory bird hunting to reflect calendar shifts.

(c) The necessity, function, and conformity of the proposed administrative regulation is to establish hunting seasons, limits and other regulations for migratory birds within frameworks set by the United States Fish and Wildlife Service.

(d) The benefits expected from the administrative regulation are permitting the controlled harvest of renewable natural resources and conservation of migratory game bird populations.

(e) The administrative regulation will be implemented as follows: Its provisions will be communicated to the hunting public through brochures and media releases, and enforced by the Department of Fish and Wildlife Resources' Division of Law Enforcement.

JUSTICE CABINET Department of Corrections

September 12, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:060**, Northpoint Training Center.

(2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 21, 1996, at 9 a.m., in the auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 21, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:060, Northpoint Training Center, as follows:

1. Inmate self administration of medication (NTC 13-13-01) shall be added to establish guidelines for the self administration of medication.

2. Drug abuse and intoxicants testing (NTC 15-05-01) shall be added to establish guidelines for drug abuse and intoxicants testing.

3. Health standards and regulations for food service employees (NTC 11-05-02) shall be amended to correct minor word changes.

4. Purchasing and storage of food products (NTC 11-07-01) shall be amended to comply with ACA requirements.

5. Infectious disease (NTC 13-20-01) shall be amended to delete the age requirement concerning the tuberculosis preventative.

6. Infection control (NTC 13-20-02) shall be amended to ensure continued compliance with ACA.

7. Visiting (NTC 16-02-01) shall be amended to ensure continued compliance with ACA.

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

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

2. This administrative regulation updates operating procedures at the Northpoint Training Center to comply with KRS Chapter 13A and to reflect current operating procedures.

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

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

September 12, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex.

(2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 21, 1996, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 21, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:130, Western Kentucky Correctional Complex, as follows: Special management inmates (WKCC 10-02-01) shall be amended to meet requirements of the American Correctional Association (ACA) standard and to provide specific guidelines for institutional staff.

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

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

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

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

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

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TRANSPORTATION CABINET

September 15, 1996

Transportation Cabinet

(1) **601 KAR 11:020**, Commercial driving history record.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation relating to commercial driving history records.

(3) A public hearing to receive oral and written comments on these proposed administrative regulations has been scheduled for 11 a.m., local prevailing time, on October 29, 1996 at 501 High Street, 4th Floor Hearing Room, State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 29, 1996, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation 601 KAR 11:020 is KRS 281A.100.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation, 601 KAR 11:020, Commercial driving history record. The amendment proposed is the reduction of the fee charged for a commercial driving history record from \$5 to \$3.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 601 KAR 11:020 - The necessity, function, and conformity currently reads, "KRS 281A.100 allows the dissemination of commercial driving history records. It further allows the Transportation Cabinet to charge a fee and establish what shall be included in the driving history record. This administrative regulation establishes the content of a commercial driving record, the fee for purchasing a record and the procedures to be followed for purchasing a record." An amendment is needed to reduce the fee from \$5 per record to \$3 per record and eliminate the 10 cent per record reduction allowed for persons requesting commercial driving history records by data processing recording media. While KRS 281A.100 allows the Transportation Cabinet to charge up to \$5 for a commercial driving history record, HB 400 passed by the 1996 General Assembly requires in KRS 186.018 that the fee for any driving history record be \$3 and the 10 cent per record reduction be used to provide driving education for youth. Rather than have a conflict between KRS 186.018 and 281A.100, the Transportation Cabinet is proposing to reduce the fee for a commercial driving history record to match the fee for other driving history records.

(d) The benefit expected from these administrative regulations is implementation of HB 400 relating to "graduated driver's license" and the elimination of a possible conflict between statutes.

(e) The administrative regulation will be implemented by notifying the public of the change in the fee for the driving history records and reprogramming the driver licensing computer so that the invoices generated will reflect a charge of \$3 rather than \$5 or \$4.90.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by October 19, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

October 1, 1996

Transportation Cabinet

(1) **603 KAR 4:035**, relating to the logo program on Kentucky's interstate and parkway highways.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation which amends 603 KAR 4:035. The cabinet hopes to expand the fifth legend logo program from the limited number of test highways to all of Kentucky's interstate and parkway highways. In addition, the entire administrative regulation will be evaluated to determine if the program is functioning as smoothly as possible. Areas which will definitely be examined are changes in a business which has a logo, application deadlines, out-of-compliance businesses; and primary versus secondary business classification.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 29, 1996, 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 29, 1996, the public hearing will be canceled.

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

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

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

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

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

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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the logo program is KRS 177.0734 through 177.0738.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation, 603 KAR 4:035.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 177.0734 through 177.0738 require the Commissioner of Highways to prescribe by administrative regulations reasonable standards for the erection of specific information panels within highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related goods and services are available. Furthermore, as a result of a recommendation of the Governor's Highway Signage and Tourism Task Force, the Federal Highway Administration is allowing Kentucky to experiment with a fifth legend logo for tourist activity signing along specified interstate and parkway routes. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of these signs to be used as a demonstration project for the fifth legend logo signs relating to tourist activities. The demonstration project is scheduled to be evaluated in early 1997 and the Transportation Cabinet is reasonably confident that the Federal Highway Administration at that time will allow the demonstration project to be expanded to all of Kentucky's interstate and parkway highways.

(d) The benefits expected are increased signage for tourist activities.

(e) The change to the administrative regulation will be implemented by requiring the Transportation Cabinet's contractor on the logo program to accept and process applications for tourist activities logos.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than October 19, 1996.

September 15, 1996

Transportation Cabinet

(1) **603 KAR 5:320**, Highway work zone safety.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the posting of reduced speed limits and enhanced penalties in highway work zones.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 29, 1996 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622. (Fax: 502-564-4809)

(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 this administrative regulation is HB 271 as enacted by the 1996 General Assembly.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation designed to implement HB 271 as enacted by the 1996 General Assembly.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: HB 271 passed by the 1996 General Assembly required the Transportation Cabinet to promulgate administrative regulations governing the posting of signs advising motorists that penalties are increased for traffic violations occurring on state-maintained streets or state-maintained highways in a highway work zone. The administrative regulation promulgated by the cabinet shall include guidelines to determine which areas are appropriate to the posting of these signs. The guidelines may include, but are not limited to, the duration of the work on the highway; the proximity of workers to moving traffic; the existence of any unusual or hazardous conditions; the volume of traffic on the highways and other appropriate factors.

(d) The benefit expected from this administrative regulation is a reduction in the number of accidents in highway work zones.

(e) The administrative regulation will be implemented by establishing when and where work zones are to be posted for double fines. These posted work zones will be coordinated with the Kentucky State Police.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by October 19, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

August 15, 1996

Cabinet for Workforce Development

Department of Vocational Rehabilitation

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

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation intends to promulgate an administrative regulation

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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 21, 1996 at 10 a.m., in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 21, 1996 the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:030 as follows: Section 1 is being revised to expand the definition of "individual with a most severe disability" to include an individual who has serious limitations in four or more functional capacities. Section 3 is being amended to revise the priority categories in the order of selection to be consistent with changes in federal regulations that became effective June 13, 1996.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Federal regulations applicable to the vocational rehabilitation program permit states to adopt an order of selection when funds are not available to serve all eligible individuals. This amendment to the existing order of selection will satisfy federal guidelines effective June 13, 1996 and must be implemented by October 1, 1996.

(d) The benefits expected from administrative regulation are: The order of selection will allow the department to serve eligible individuals based on the severity of disability with priority consideration for individuals who have more significant restrictions in functional capacities.

(e) The administrative regulation will be implemented as follows: On implementation of the order of selection, the department shall continue to accept referrals of and applications from individuals with disabilities. All applicants will be assessed and declared eligible or ineligible as appropriate. Any individual determined eligible after implementation of the order of selection shall be assigned to a priority category. If the category is open, the individual may be served. If the category is closed the individual's case shall be held in accepted status until the priority category assigned is opened or the order of selection is lifted. Any applicant or eligible individual who is dissatisfied may request an administrative review or fair hearing pursuant to 781 KAR 1:010.

LABOR CABINET

Department of Workplace Standards

Division of Employment Standards, Apprenticeship and Training

September 13, 1996

Labor Cabinet

Department of Workplace Standards

Division of Employment Standards, Apprenticeship and Training

(1) Regulation Number and Title: **803 KAR 1:055**, Applicability of prevailing wage requirements.

(2) The Labor Cabinet, Department of Workplace Standards, Division of Employment Standards, Apprenticeship and Training 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 21, 1996, at 10 a.m., local time, in the Bay 3 Conference Room of the Kentucky Labor Cabinet, 1047 U.S. Highway 127 South, 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 five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to October 21, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Dennis Langford, Director, Division of Employment Standards, Apprenticeship and Training, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 3, 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.

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(b) Persons who wish to file this request may obtain a request form from the Labor 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 applicability of prevailing wage requirements is KRS 337.520.

(b) The administrative regulation that the Labor Cabinet intends to promulgate will amend 803 KAR 1:055 by revising "coverage criteria" and modifying the definition of the "site of the project."

(c) The necessity, function, and conformity of the proposed administrative regulation is: The promulgating agency needs to clarify or change certain definitions set forth in the current regulation regarding which employees of contractors or subcontractors shall be considered as performing work within the "site of the project." The proposed amendment will resolve conflicting interpretations of the current language.

(d) The benefits expected from the proposed administrative regulation are: The proposed amendment should provide more uniform guidelines for agencies, businesses, employees, and labor organizations to follow in anticipating the potential labor costs for public works projects. In addition, the amended regulation will better reflect legislative intent expressed in current revisions to the prevailing wage statutes.

(e) The administrative regulation will be implemented as follows: The Labor Cabinet's Division of Employment Standards, Apprenticeship and Training, in conjunction with other state government agencies, will implement the proposed amendment by applying uniform standards regarding the applicability of prevailing wage requirements.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Mines and Minerals

Division of Oil and Gas

September 12, 1996

Public Protection and Regulation Cabinet

Department of Mines and Minerals

Division of Oil and Gas

(1) Proposed Administrative Regulation Number and Title: **805 KAR 1:170**, Form and content of the operations and reclamation proposal required in a permit application on a severed mineral tract.

(2) The Department of Mines and Minerals, Division of Oil and Gas, 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, 1996, at 10 a. m. (EST), in the First Floor Conference Room of the Department of Mines and Minerals, 3572 Iron Works Road, Lexington, Kentucky 40511.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 28, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Department of Mines and Minerals, Division of Oil and Gas, Attention: Rick Bender, P.O. Box 14090, Lexington, Kentucky 40512-4090, telephone number (606) 246-2026.

(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 Mines and Minerals, Division of Oil and Gas, 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 353.5901.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will amend regulation 805 KAR 1:150 expiring for deficiency. The deficient portion will be removed.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 353.5901(1) directs that a prospective operator of a well on a tract on which "there has been a complete severance of ownership of the oil and gas from the ownership of the surface to be disturbed...shall submit to the department an operations and reclamation proposal...on forms provided by the department..."

(d) The benefit expected from this proposed administrative regulation is: It will provide a standardized form for use in filing for a permit to drill a well on a severed mineral tract.

(e) The proposed administrative regulation will be implemented as follows: Permit applications to drill, deepen or reopen a well on a tract of land where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, shall include the form which would be established by this proposed administrative regulation, the specific content of which form is described in KRS 353.5901(1)(a)-(d).

September 12, 1996

Public Protection and Regulation Cabinet

Department of Mines and Minerals

Division of Oil and Gas

(1) Proposed Administrative Regulation Number and Title: **805 KAR 1:180**, Requirements for identification of producing leases and the form and content of the reporting form.

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(2) The Department of Mines and Minerals, Division of Oil and Gas, 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, 1996, at 10 a.m. (EST), in the First Floor Conference Room of the Department of Mines and Minerals, 3572 Iron Work Road, Lexington, Kentucky 40511.

(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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 28, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Department of Mines and Minerals, Division of Oil and Gas, Attention: Rick Bender, P. O. Box 14090, Lexington, Kentucky 40512-4090, telephone number (606) 246-2026.

(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 Mines and Minerals, Division of Oil and Gas, 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 is KRS 353.550(1).

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will not amend an existing administrative regulation. It will establish the procedure whereby an operator of any oil or gas property shall identify producing leases and the forms for recording the information including the identification of the lease name and the reporting of oil and gas production information including the number of wells associated with each lease.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 353.550(1) gives the department authority to require from all operators of oil or gas property in this Commonwealth "the identification of producing leases, submitted on the form on which production is required by the department to be reported".

(d) The benefit expected from this proposed administrative regulation is: It will provide production information to the public and industry allowing better decisions to be made concerning future development and investment.

(e) The proposed administrative regulation will be implemented as follows: It will require an operator of any oil or gas property to identify producing leases on the forms established by this regulation and the recording of information to identify the lease name and the reporting of oil and gas production information including the number of wells associated with each lease.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

August 23, 1996

Public Protection and Regulation Cabinet

Department of Insurance

(1) **806 KAR 17:140**, Health insurance rate filing procedures.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 21, 1996, at 10 a.m. (ET) at the Department of Insurance, 215 West Main Street, 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 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 21, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Carla H. Montgomery, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40601, (502) 564-6032, fax number (502) 564-1456.

(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 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 1996 Ky. Acts ch. 371, sec. 16(7).

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will set forth procedural and substantive requirements for the filing of health insurance rates with the Commissioner of Insurance.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The administrative regulation is necessary to clarify those components of a rate filing which are reviewed by the commissioner or his designees for approval or disapproval.

(d) The benefits expected from the administrative regulation are: The administrative regulation will provide consistency, uniformity,

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and information needed for the process of approving or disapproving health insurance rate filings.

(e) The administrative regulation will be implemented as follows: The administrative regulation will set forth specific filing requirements regarding health insurance rates. The insurer or HMO filing health insurance rates will gather the required information and submit it to the commissioner. Once the commissioner obtains the required filing, then the commissioner and his staff can make an informed decision to approve or disapprove the health insurance rate filing pursuant to 1996 Ky. Acts ch. 371, sec. 16.

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

September 11, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 7:101**. Repeal of 815 KAR 7:100.

(2) The Board of Housing, Buildings and Construction intends to promulgate an administrative regulation to repeal 815 KAR 7:100 with the promulgation of 815 KAR 7:105, Kentucky Building Code/1997 to replace the 1994 Edition of the Code.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, October 22, 1996, at 10 a.m., local time, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to October 22, 1996, the public hearing will be cancelled.

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

(b) On a request for public hearing, a 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.050.

(b) The department intends to promulgate 815 KAR 7:101, a repealer administrative regulation.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: It is necessary to promulgate the intended administrative regulation in order to repeal 815 KAR 7:100 which will be replaced with a new administrative regulation to reflect a new edition date.

(d) The benefits expected from this administrative regulation are: To allow the department to put into place a new Kentucky Building Code, 1997 Edition, 815 KAR 7:100 must be repealed.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

September 11, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 7:105**. Kentucky Building Code/1997.

(2) The Board of Housing, Buildings and Construction intends to promulgate an administrative regulation to update the Kentucky Building Code to a 1997 Edition and replace the current 1994 Edition.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, October 22, 1996, at 10 a.m., local time, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to October 22, 1996, the public hearing will be cancelled.

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

(b) On a request for public hearing, a 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:

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

(b) The department intends to promulgate 815 KAR 7:105, Kentucky Building Code/1997.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: It is necessary to promulgate the intended administrative regulation in order to put into place an updated edition of the Kentucky Building Code.

(d) The benefits expected from this administrative regulation are: The implementation of a newer edition of the Kentucky Building Code allows the adoption and inclusion of updated codes and standards since the 1994 Edition.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

September 11, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:090**, Soil, waste and vent systems.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, October 22, 1996, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to October 22, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The department intends to amend Section 6(1) to allow a previously approved material that meets a different but appropriate standard to be used. This amendment has been approved by the Plumbing Code Committee and the Board of Housing, Buildings and Construction.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in all types of plumbing systems.

(d) The benefits expected from this administrative regulation are: Allow an additional choice of material.

(e) This administrative regulation will be implemented by department's plumbing inspectors.

September 11, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:130**. House sewers and storm water piping; methods of installation.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, October 22, 1996, 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 ten (10) days prior to October 22, 1996, the public hearing will be canceled.

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

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is KRS 318.130.

(b) The department intends to amend 815 KAR 20:130, House sewers and storm water piping; methods of installation by amending Sections 7 and 8 to allow a previously approved material that meets a different but appropriate standard to be used. This amendment has been approved by the Plumbing Code Committee and the Board of Housing, Buildings and Construction.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation identifies the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation.

(d) The benefits expected from administrative regulation are: The approval of new standards for use in house sewers and storm sewers allows additional choices of material.

(e) This administrative regulation will be implemented by the Division of Plumbing through each county area inspector.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Epidemiology

September 15, 1996

Cabinet for Health Services

Department for Public Health

Division of Epidemiology

(1) Regulation number and title: **902 KAR 2:020**, Reportable diseases.

(2) The Cabinet for Health Services, Department for Public Health, Division of Epidemiology, intends to amend an administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 31, 1996 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for public hearing, and agreement to attend the public hearing, are not received by the required number of people at least 10 days prior to October 31, 1996, the public hearing will be canceled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to reportable diseases is KRS 194.050 and 211.090.

(b) The administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate will amend 902 KAR 2:020, Reportable diseases. It will bring the Department for Public Health's disease reporting system up to date with what is currently recommended by the Centers for Disease Control and Prevention and will allow the department to respond in a more timely manner to disease threats to the population.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Because of the changing epidemiology of diseases and the emergence of new or reappearing infections, it is necessary to periodically review and make changes to disease surveillance systems. This administrative regulation will add certain diseases to the list of those to be reported, delete others for which there is no longer a need to monitor, and define the method by which each disease shall be surveilled.

(d) The benefits expected from the administrative regulation are a more sensitive and effective disease surveillance system and, in many instances, a less cumbersome reporting mechanism to be followed by health care providers.

(e) The administrative regulation will be implemented as follows: The Division of Epidemiology, Department for Public Health.

September 13, 1996

Cabinet for Health Services

Department for Public Health

Division of Epidemiology

(1) Regulation number and title: **902 KAR 2:060**, Immunization schedule.

(2) The Cabinet for Health Services, Department for Public Health, Division of Epidemiology, intends to amend an administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 31, 1996 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for public hearing, and agreement to attend the public hearing, are not received by the required number of people at least 10 days prior to October 31, 1996, the public hearing will be canceled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to immunization schedules is given in KRS 194.050, 211.090, and 214.034.

(b) The administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate will amend 902 KAR 2:060, Immunization schedules. It will bring the Department for Public Health's immunization schedule into alignment with the recommendations of the Centers for Disease Control and Prevention and the American Academy of Pediatrics.

(c) The Necessity, function and conformity of the proposed administrative regulation is as follows: The department is promulgating this administrative regulation to implement legislation enacted by the 1996 General Assembly which added mumps, Hepatitis B and haemophilus influenza to the schedule of immunizations for Kentucky children. This is the second Notice of Intent to Promulgate this administrative regulation. The first was filed on May 15, 1996, the amended regulation was filed on July 15, 1996, the public hearing was held on August 21, 1996; however, due to an internal delay, the Statement of Consideration and the Amended After Hearing Administrative Regulation were not filed by the cabinet within the statutory time frame for filing with the Legislative Research Commission. Consequently, it is necessary to initiate the process anew.

(d) The benefits expected from the administrative regulation are greater protection from vaccine preventable diseases for Kentucky children and the decreased cost of treatment for these diseases and their sequelae.

(e) The administrative regulation will be implemented as follows: The Division of Epidemiology, Department for Public Health, will be responsible for the implementation of the amended administrative regulation.

Office of Inspector General

September 3, 1996

Cabinet for Health Services

Office of Inspector General

(1) **902 KAR 20:018** - Operation and services; renal dialysis facilities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 31, 1996, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 31, 1996, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to renal dialysis facilities is KRS 216B.042. The prescription of drugs and medicine by advanced registered nurse practitioners is pursuant to KRS 314.011.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:018 to address the prescriptive authority of advanced registered nurse practitioners.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation provides for the licensure requirements for the operation and services of renal dialysis facilities.

(d) The benefits expected from this proposed administrative regulation is that the amendments will permit other categories of health professionals to perform tasks presently restricted to physicians and dentists by the existing regulations.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

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CABINET FOR FAMILIES AND CHILDREN Department for Social Services

September 15, 1996

Cabinet for Families and Children

Department for Social Services

(1) **905 KAR 1:180**, DSS policies and procedures manual.

(2) The Department for Social Services intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 31, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 31, 1996, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 905 KAR 1:180, DSS policy and procedures manual, is KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250 and EO 96-862, and the requirements of a consent decree entered December 4, 1995, in United States of America v. Commonwealth of Kentucky et.al., Civil Action No. 3:95 CV-757-S (W.D.Ky.1995).

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 1:180. It will establish the current policies and procedures of the Department for Social Services and will implement some of the provisions of the voluntary consent decree entered into with the Department of Justice to improve conditions for youth housed in 13 residential treatment facilities operated or contracted by the cabinet.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 194.050 authorizes the Cabinet for Families and Children to adopt regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the implementation of a statewide social service program. Additionally it will comply with the mandates of the juvenile services consent decree relating to isolation and time out, abuse and neglect, fire safety, suicide screening, and maintenance and sanitation.

(d) The benefits expected from this administrative regulation are: The benefits expected are that the department will have established regulatory authority for the current policies and procedures relating to management procedures, support services, family and children's benefits and youth services. Another benefit for the Cabinet for Family and Children is compliance with some of the provisions of the voluntary consent decree entered into with the United States Department of Justice in December 1995 to improve conditions for youth housed in thirteen residential treatment facilities operated or contracted by the cabinet.

CABINET FOR HEALTH SERVICES Department for Medicaid Services

September 13, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:423**, Repeal of 907 KAR 1:422.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 31, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to October 31, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation to repeal another administrative regulations are KRS 194.050 and 13A.310.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:422, Incorporation by reference of the Early and Periodic Screening, Diagnosis and Treatment Services Manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation acts specifically to repeal 907 KAR 1:422 which is no longer needed because an updated edition of the Early and Periodic Screening, Diagnosis and Treatment Services Manual is incorporated by reference in 907 KAR 1:034.

(d) The benefits expected from administrative regulation are: To eliminate any possible policy conflicts and to comply with KRS Chapter 13A.

Department for Mental Health and Mental Retardation Services

September 15, 1996

Cabinet for Health Services

Department for Mental Health and Mental Retardation Services

(1) **908 KAR 2:100**, Kentucky Early Intervention Program definitions; **908 KAR 2:110**, Kentucky Early Intervention Program point of entry; **908 KAR 2:120**, Kentucky early intervention evaluation and eligibility policies; **908 KAR 2:130**, Kentucky Early Intervention Assessment Program and service planning; **908 KAR 2:140**, Kentucky Early Intervention Program primary service coordination; **908 KAR 2:150**, Kentucky Early Intervention Program personnel qualifications; **908 KAR 2:160**, Kentucky Early Intervention Program covered services; **908 KAR 2:170**, Notice of action and administrative appeal; **908 KAR 2:180**, Kentucky Early Intervention Program mediation.

(2) The Department for Mental Health and Mental Retardation Services intends to promulgate administrative regulations 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, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to October 31, 1996, the public hearing will be canceled.

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health and Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for promulgation of administrative regulations relating to the Kentucky Early Intervention System is KRS 200.650 - 200.676.

(b) The administrative regulations will not amend an existing administrative regulation. They will implement the provisions of KRS 200.650 - 200.676 including the development of a comprehensive, coordinated, statewide interagency system of early intervention services.

(c) The necessity, function, and conformity of the proposed administrative regulations is as follows: To implement a comprehensive, coordinated statewide interagency system of early intervention services by setting forth definitions, clarifying the lead agency's responsibilities, and establishing eligibility criteria, personnel requirements, and procedural safeguards in order to enhance the capacity of families to meet the needs of children with disabilities.

(d) The benefits expected from the administrative regulations are: To enhance the development of all infants and toddlers with disabilities in the Commonwealth of Kentucky in order to minimize developmental delay and to maximize individual potential for adult independence.

(e) The administrative regulations will be implemented by the Department for Mental Health and Mental Retardation Services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

Statement of Emergency
11 KAR 13:010E

House Bill 137 (1996 Ky. Acts ch. 220) establishes the Kentucky National Guard Tuition Award Program. The program grants funds to eligible members of the Kentucky National Guard to attend Kentucky state-supported postsecondary educational institutions. The Kentucky Higher Education Assistance Authority (KHEAA) has been given the authority pursuant to this statute to promulgate administrative regulations necessary for the financial management of the tuition award program. The effective date of this statute is July 15, 1996. It is necessary to promulgate this administrative regulation as an emergency administrative regulation to permit the awarding of funds and notifications to recipients in a timely manner to permit students and their families to adequately plan for attendance at Kentucky state-supported educational institutions in the fall semester of 1996. Delay of awards and notifications pending the effective date of proposed ordinary administrative regulations would not afford adequate time for those individuals to plan appropriately. In addition, delay of awards and notifications will similarly not afford Kentucky state-supported postsecondary educational institutions sufficient time to decide on the particular appropriate financial aid package for those students enrolling in the fall semester of 1996. The procedures for the management of the program need to be in place before participants under the program begin school, in early August, 1996. Therefore, due to the time constraints, an ordinary administrative regulation is not sufficient. The emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
 MARY JO YOUNG, Chairman

**KENTUCKY HIGHER EDUCATION
 ASSISTANCE AUTHORITY**

11 KAR 13:010E. National Guard Tuition Award Program.

RELATES TO: 1996 Ky. Acts ch. 220

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 1996 Ky. Acts ch. 220

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The 1996 regular session of the General Assembly enacted the Kentucky National Guard Tuition Award Program, and directed that the Kentucky Higher Educational Assistance Authority adopt administrative regulations pertaining to the financial management of the program, including the disbursement of funds. This administrative regulation is necessary to prescribe procedures for the disbursement of funds. The administrative regulation provides that the authority shall transfer funds to educational institutions upon receipt of an enrollment verification roster provided by the Department of Military Affairs identifying eligible participants and the amounts to be awarded.

Section 1. Definitions. The terms listed below shall have the following meanings:

(1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(2) The definition of "authority" is governed by KRS 164.740(1).

(3) The definition of "educational institution" is governed by 1996 Ky. Acts ch. 220, sec. 1(1).

(4) "Overaward" means receipt of student financial assistance from all sources in excess of a student's need.

(5) "Participating educational institution" means an educational institution that has a contract in force with the authority on such terms as the authority may deem necessary or appropriate to the administration of the Kentucky National Guard Tuition Award Program and other programs administered by the authority.

(6) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating educational institution's academic year.

(7) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester.

Section 2. Prior to the beginning of each semester and summer session, the Department of Military Affairs shall prepare enrollment verification rosters which identify the participating educational institution, the names and Social Security numbers of eligible students planning to attend each participating educational institution, the award amount for each eligible student to be disbursed by the authority, the period of enrollment for each eligible student, the academic year, and the total number of eligible students and total amount of awards. The enrollment verification rosters shall be transmitted by the Department of Military Affairs to the financial aid director at each participating educational institution.

Section 3. Following enrollment of students listed on the enrollment verification roster, the financial aid director or his designee at each participating educational institution that receives an enrollment verification roster shall verify each student's enrollment status and return the properly certified enrollment verification roster to the Department of Military Affairs.

Section 4. The Department of Military Affairs shall transmit the certified enrollment verification rosters to the authority with a request to transfer funds to the participating educational institutions. Upon receipt, the authority shall begin the necessary procedures to disburse funds to the appropriate educational institution.

Section 5. (1) A student who withdraws, changes enrollment status, or for any other reason is charged less than the amount certified on the enrollment verification roster may be due a refund of monies paid to the institution or owe a repayment to one (1) or more student financial assistance programs. If the student received student financial assistance, a portion of any refund shall be due to the student financial assistance programs. The amount of any refund or repayment shall be determined in accordance with the participating educational institution's refund and repayment policies relative to student financial assistance funds, except that if a Kentucky National Guard Tuition Award Program recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be cancelled as an overaward and a full refund or repayment of the Kentucky National Guard Tuition Award shall be required, notwithstanding any institutional policy to the contrary. These policies shall be consistently administered and published or otherwise made publicly available by the participating educational institution. The authority shall be notified in

writing of any changes in such policies.

(2) In cases of unofficial withdrawal, the institution shall use the last recorded date of class attendance by the student as the end of the student's enrollment. If the institution is unable to document the student's last date of attendance, any Kentucky National Guard Tuition Award Program disbursement for that award period shall be subject to full refund and repayment. If, at any time, a Kentucky National Guard Tuition Award Program recipient's enrollment is terminated with no assessment of tuition and fees by the institution, then the full Kentucky National Guard Tuition Award shall be subject to cancellation, if not yet disbursed, or refund and repayment if the award has already been disbursed.

(3) Any refunds or repayments due on funds disbursed as Kentucky National Guard Tuition Award Program funds shall be paid to the authority. The authority shall deposit the refunds and repayments to an account to be used for other awards made pursuant to the program.

(4) Refunds by institutions and notifications of student repayments due transmitted to the authority shall be accompanied by the student's name and Social Security number, the reason for the refund or repayment, date of enrollment status change, the semester and year, and the calculation used for determining each refund or repayment.

Section 6. All documentation and correspondence relating to the cancellation, disbursement, and refund of awards shall be retained by the authority for audit purposes for a period of five (5) years from the date that the award was certified. Documentation may be retained in any format used by the authority for storage of its records in the normal course of business.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: June 25, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: It is anticipated that up to 1,000 students will receive awards to attend 8 state universities, 14 community colleges, and 81 Kentucky Technical Regional Centers and Kentucky Area Vocational/Technical Schools.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in the state. The program however, will reduce the direct out-of-pocket expenditure by members of the Kentucky National Guard for tuition at state supported postsecondary educational institutions to the extent of awards of funds to pay those educational expenses.

(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 only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

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

1. First year following implementation There is no anticipated impact upon competition among any of the postsecondary institutions.

Compliance with this administrative regulation and reporting requirements are intended to follow established practices for other student financial assistance programs. Therefore, there is minimal increase in paperwork requirements. On the other hand, to the extent that a single disbursement of funds is made by the authority to a particular institution for several recipients of awards under this program, the paperwork involved in billing several students is reduced for the institution.

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

(3) Effects on the promulgating body: This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds, and sets forth requirements already applicable to other programs of student financial assistance, such as state grants. Therefore, the impact on the promulgating body is anticipated to be minimal.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds, and sets forth requirements already applicable to other programs of student financial assistance, such as state grants. Therefore, the impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be borne out of agency receipts.

2. Continuing costs or savings: Same as first year above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The only additional paperwork required of the authority is the processing of payment vouchers and disbursement of funds, which is anticipated to be minimal additional activity.

(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: Awards for the first year of the biennium will be disbursed from \$250,000 appropriated from the General Fund and \$500,000 of agency receipts. Awards for the second year of the biennium will be disbursed from \$1,000,000 appropriated from the General Fund and \$500,000 of agency receipts. Administrative expenses will be borne entirely from agency receipts.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received. This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, however, is anticipated to have a positive, but unquantified, economic impact upon the particular communities where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet educational costs at the educational institution.

(b) Kentucky: No public comments have been received. This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, however, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting from a flow of funds disbursed to the recipients to meet educational costs at the educational institution. Enrollment at state supported postsecondary institutions may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for disbursement were considered. The requirements outlined in the administrative regulation are consistent with procedures familiar to both the participating institutions and the authority for administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(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 only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect: There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(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: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

STATEMENT OF EMERGENCY 106 KAR 3:010E

House Bill 137 established the Kentucky National Guard Tuition Award Program to grant enlisted members who meet the minimum requirements for satisfactory membership in the Kentucky National Guard awards for tuition in order to provide them the opportunity to attend a state educational institution. House Bill 137 became effective July 15, 1996. In order to provide tuition awards for the fall educational terms, to provide sufficient time for processing by educational institutions, and to prevent the loss of federal funds for tuition assistance that would be available for members who do not receive state tuition awards, this administrative regulation must be implemented immediately. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JOHN R. GROVES, JR., Brigadier General, KYNG

DEPARTMENT OF MILITARY AFFAIRS

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

RELATES TO: 1996 Ky. Acts ch. 220

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 1996 Ky. Acts ch. 220

EFFECTIVE: August 28, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The 1996 Regular Session of the General Assembly established the Kentucky National Guard Tuition Award Program and directed that the Department of Military Affairs promulgate administrative regulations to establish the eligibility of National Guard members to participate in the program. This administrative regulation establishes: (1) eligibility requirements; (2) the application process; (3) individual and educational institution notification; (4) educational institution verification; and (5) referral for payment through the Kentucky Higher Education Assistance Authority.

Section 1. Definitions. (1) "Award period" means the division of the year established by the educational institution, such as a quarter, semester, trimester, or summer session or other academic term.

(2) "Education office" means the Kentucky National Guard Education Office.

(3) "Educational institution" is defined by Section 1(1), 1996 Ky. Acts ch. 220.

(4) "Kentucky National Guard" is defined by Section 1(2), 1996 Ky. Acts ch. 220.

(5) "Member" is defined by Section 1(3), 1996 Ky. Acts ch. 220.

(6) "Participant" means a member whose application for tuition under the Kentucky National Guard Tuition Award Program has been approved and for whom funds have been disbursed by the Kentucky Higher Education Assistance Authority to the appropriate educational institution.

(7) "Program" means the Kentucky National Guard Tuition Award Program established by 1996 Ky. Acts ch. 220.

(8) "ROTC" means the Reserve Officer Training Corps.

(9) "Simultaneous membership participant" or "SMP" means a person who is simultaneously:

(a) Enrolled in the Reserve Officer Training Corps; and

(b) A member of the Kentucky National Guard.

(10) "Undergraduate degree" means:

(a) A bachelor's degree; or

(b) An associate degree for completion of a course of study in a technical field, such as but not limited to registered nurse, dental hygienist, physical therapy assistant, engineering technology, or business technology.

(11) "Satisfactory membership" means the member has:

(a) Not failed the most recent physical fitness test;

(b) Met the height-weight standard;

(c) Met attendance standards for the past twelve (12) months from the date of application, to include:

1. No unsatisfactory performance; and

2. No absences-without-leave.

(d) No restrictions on his personnel file that prevent positive personnel actions.

Section 2. Eligibility. (1) A member shall not be eligible for a tuition award if it has been determined that he has failed to meet the minimum requirements for satisfactory membership in the Kentucky National Guard.

(2)(a) Except as provided by paragraph (b) of this subsection, a member shall be eligible for a tuition award for an award period that will end before the expiration of his term of service.

(b) A member shall be eligible for a tuition award for an award period that will end after the expiration of his term of service if the

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member has submitted his signed application which states his intent to extend his term of service beyond the end of the award period.

(3) Unless he is a simultaneous membership participant, a member who has not completed basic training shall not be eligible for the program.

Section 3. Loss of Eligibility. (1) A participant shall not be eligible to reapply for a tuition award if:

(a) The educational institution for which he received a tuition award has determined that he has been:

1. Placed on academic suspension; or
2. Expelled for a violation of the educational institution's policies or regulations; or

(b) Kentucky National Guard has determined that he has failed to meet the minimum requirements for satisfactory membership in the Kentucky National Guard.

(2) A member who has been determined to be ineligible pursuant to subsection (1) of this section shall remain ineligible to reapply for a tuition award until:

(a) The educational institution permits his reenrollment; and

(b) The Kentucky National Guard has determined that he meets the minimum requirements for satisfactory membership in the Kentucky National Guard.

Section 4. Priority of Applicants. In the selection of participants, priority shall be:

(1) Given to a member who has not:

(a) Earned an undergraduate degree; or

(b) Received a certificate or diploma from a vocational education program; and

(2) Determined by date of receipt of application at the education office.

Section 5. Application. (1) An application for a tuition award shall be submitted for each award period.

(2) Except for fall 1996, an application shall be filed on or before:

(a) April 1, for an award period beginning:

1. May through July; and

2. August through December; and

(b) October 1, for an award period beginning January through April.

(3) The member shall:

(a) Complete a "Kentucky National Guard Tuition Award Program Application" for the educational institution the member plans to attend; and

(b) Forward the completed form to the member's unit commander.

(4) A unit commander shall:

(a) Verify an applicant's eligibility; and

(b) Transmit the application and verification of eligibility to the education office.

(5) The education services officer shall:

(a) Review the application;

(b) Determine the priority of the application;

(c) Assign a control number to each application;

(d) Mail a written notification to the applicant stating:

1. That his application has been approved, or disapproved; and

2. If disapproved, the reasons therefore; and

(e) Transmit a copy of the "Kentucky National Guard Tuition Award Roster" to the appropriate educational institution.

(6) The "Kentucky National Guard Tuition Award Roster" shall contain:

(a) Name and federal I.D. code of educational institution;

(b) Names of approved applicants;

(c) Social Security number of each applicant;

(d) The amount of the tuition award granted each applicant;

(e) Control number for each applicant;

(f) Date of award roster;

(g) Signature and date signed by education services officer;

(h) Educational institution certification statement, signature, and date signed;

(i) Educational institution fund transfer account entry line, if applicable;

(j) Adjusted amount of tuition entry line;

(k) Period of enrollment for each roster;

(l) Academic year;

(m) Total number of eligible students; and

(n) Total amount of awards.

(7) The education officer shall request the educational institution to:

(a) Verify enrollment; and

(b) State in the adjusted amount entry line the exact amount of tuition charged the participant.

Section 6. The Kentucky Higher Education Assistance Authority shall, to the extent that funds have been appropriated and are available to the Kentucky National Guard Tuition Award Program, disburse funds pursuant to 11 KAR 13:010.

Section 7. Tuition Award Period. (1) A tuition award shall be granted for an award period.

(2)(a) A participant's award shall not exceed the amount of the tuition charged by the educational institution minus the amount received by the applicant that is restricted to the payment of tuition from:

1. A government agency;

2. An educational institution;

3. Charity;

4. Public educational trust; or

5. Any other entity.

(b) The provisions of paragraph (a) of this subsection shall not apply to an amount received by an applicant:

1. Pursuant to 10 USC 1606 (Montgomery G.I. Bill, Reserve Components);

2. Pursuant to 38 USC 30 (New G.I. Bill, Active Duty);

3. Pursuant to 38 USC 32 (G.I. Bill, Vietnam Era);

4. Pursuant to 20 USC 1070A (Federal Pell Grant Program);

5. From a loan obtained by an applicant; and

6. From scholarships that are not restricted to the payment of tuition.

Section 8. Appeals. A member whose application has been disapproved, or whose application has been approved for an amount disputed by the member, may request reconsideration, in writing with supporting documents, through command channels to the Adjutant General.

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

(a) "Kentucky National Guard Tuition Award Program, Application AGO KyForm 18-7 (15 August 1996)"; and

(b) "Kentucky National Guard Tuition Award Roster AGO KyForm 18-9 (1 August 1996)".

(2)(a) These forms may be copied or obtained at Kentucky National Guard, The Adjutant General, Publications Officer, Vets Building, Boone National Guard Center, Frankfort Kentucky 40601-6168, Monday through Friday, 7:30 a.m. to 5 p.m.

(b) The office is closed alternate Mondays, and open only until 4 p.m. alternate Fridays. It is suggested that a call be made to the office to determine actual hours, (502) 564-8437.

(c) Total number of pages incorporated by reference: three(3).

JOHN R. GROVES, JR., Brigadier General, KYNG, The Adjutant General

APPROVED BY AGENCY: August 22, 1996

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FILED WITH LRC: August 28, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Major John P. Roth

(1) Type and number of entities affected: State supported vocational-technical schools (81), community colleges (14), universities (8); and National Guard members (5,900).

(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: Educational expenses of members who receive a tuition award will be reduced by the amount of the award. Because a tuition award will be granted for the tuition charged by the educational institution a member will attend, the amount of savings cannot be determined because it will depend on the specific tuition and tuition award.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None. Forms are provided by the Kentucky National Guard. The roster established by this administrative regulation will relieve educational institutions from a number of billings and processing procedures.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of tuition awards for qualified members of the Kentucky National Guard: \$750,000 available for the first year, appropriated by General Assembly. Approximately \$1,000 for administrative costs, such as labels, required notifications, printing. No additional personnel costs: existing National Guard personnel will administer the program.

2. Continuing costs or savings: Cost of tuition and fees for qualified members of the Kentucky National Guard: \$1,500,000 available for the second year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: If costs of paper and mailing increase, additional costs could be incurred. Statewide implementation of electronic mail for communication could decrease cost of application and certification process.

(4) Assessment of anticipated effect on state and local revenues: State supported educational institutions may receive additional income from students who, without the program, might not have been able to attend. Amount is indeterminable, and will depend on number of awards and specific institutions attended by National Guard members.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Fund Appropriation.

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

(a) Geographical area in which administrative regulation will be implemented: Implemented statewide. May cause increase in enrollment in state supported postsecondary institutions due to enrollment of Kentucky National Guard members who receive tuition award and who might otherwise not have attended.

(b) Kentucky: May cause increase in enrollment in state supported postsecondary institutions due to enrollment of Kentucky National Guard members who receive tuition award and who might otherwise not have attended.

(7) Assessment of alternative methods; reasons why alternatives were rejected: HB 137 requires granting tuition awards to eligible members of the National Guard. Uniform procedures and standards

are required by Kentucky and U.S. constitutions. No other method, except granting tuition award to eligible applicant to the extent of available funds, is possible.

(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: The environment and public health will not be affected.

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

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

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

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

(10) And additional information or comments: None

(11) TIERING: Is tiering applied? No. HB 137 requires the National Guard to establish eligibility criteria for tuition awards for all enlisted National Guard members. Constitutional requirements mandate that the criteria be uniform unless there is a rational basis for disparate treatment. There is only one class of persons affected by this administrative regulation, enlisted members of the National Guard, and each member must be treated equally.

STATEMENT OF EMERGENCY 201 KAR 20:390E

This emergency administrative regulation implements the changes to the Nursing Incentive Scholarship Program enacted by the 1996 General Assembly. By filing this as an emergency the board will be able to award new scholarships for the spring 1997 semester instead of having to wait until the fall 1997 semester. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 201 KAR 20:390 was filed with the Regulations Compiler on August 16, 1996.

PAUL E. PATTON, Governor
LINDA THOMAS, Governor

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing

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

RELATES TO: KRS 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131

EFFECTIVE: August 16, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The nursing incentive scholarship fund program was created by the General Assembly. This administrative 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) "Board" means the Kentucky Board of Nursing.

(3) "Committee" means the Nursing Incentive Scholarship Fund Committee.

(4) ~~["Health facility" as used in this regulation shall have the same meaning as "health facility" as defined at KRS 216B.015(12).~~

~~(6) "Program of nursing" means either a prelicensure or graduate nursing program.~~

~~(5) [(6)] "Resident" is defined by 13 KAR 2:045, Section 1(13).~~

~~(7) "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;]~~

(6) ~~[(4)]~~ "Successful academic progression" means:

(a) For prelicensure and BSN completion 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) Be a Kentucky resident; and

(b) Have been accepted ~~[applied]~~ for admission to a ~~[an educational institution with an approved]~~ program of nursing ~~[in Kentucky;]~~

(c) Have declared nursing as the major course of study; and

(d) Have obtained a Kentucky health facility or Kentucky educational institution as a sponsor.

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

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

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

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

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

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

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

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

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

(1) Preference categories as specified in KRS 314.025(1) - licensed practical nurses, twenty-five (25) points; registered nurses pursuing graduate nursing education, twenty-five (25) points; financially needy residents, thirty (30) points maximum, determined as follows: FAFSA index (or equivalent) under 1000 = thirty (30) points, FAFSA index (or equivalent) between 1001 and 2000 = twenty-five (25) points, FAFSA index (or equivalent) between 2000 and 3000 = fifteen (15) points, FAFSA index (or equivalent) over 3000 = ten (10) points. [Prior health care work experience or education;]

(2) Potential for academic success, as follows:

(a) High school, vocational school, college or university grade point average of 3.5 to 4.0 = twenty-five (25) points; 3.0 to 3.4 = twenty (20) points; and 2.5 to 2.9 = fifteen (15) points.

(b) Successful progression in a program of nursing shall be equal to five (5) points for each semester or quarter, to a maximum of ten (10) points. [Previous academic achievement as indicated by tran-

scripts;]

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of ten (10) points. [Current acceptance as a declared nursing major in an educational institution with an approved program of nursing;

(4) Current admission or enrollment in an approved program of nursing;]

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

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

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

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

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

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

1. ~~Highest annual tuition rate charged by a practical nursing program in a public institution in Kentucky;~~

2. ~~Highest annual tuition rate charged by an associate degree registered nursing program in a public institution in Kentucky; and~~

3. ~~Highest annual tuition rate charged by a prelicensure baccalaureate degree registered nursing program in a public institution in Kentucky; and~~

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

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

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

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

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

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

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

(a) Verification of successful academic progression from the

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academic advisor of record on a "Nursing Incentive Scholarship Fund Verification of Academic Progression" form;

(b) A "Nursing Incentive Scholarship Fund Request for Continuance" form;

(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.

Section 8. Disbursement Contract. Prior to disbursement of initial funds ~~for a particular year~~, the recipient shall sign a "Nursing Incentive Scholarship Fund Contract". The recipient shall sign ~~and~~ a "Nursing Incentive Scholarship Fund Promissory Note" for each year in which funds are disbursed.

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 a ~~an~~ approved program of nursing or being employed as a nurse in Kentucky ~~by the sponsor~~.

(4) ~~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 enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression. This deferral shall only apply for one (1) ~~two (2)~~ ~~consecutive~~ academic year[s]. 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) ~~(4)~~ If a deferral is requested, the recipient shall submit the request to the committee on a "Nursing Incentive Scholarship Fund Request for Deferral" form.

(7) ~~(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. (1) Verification of employment as a nurse in Kentucky pursuant to the contract ~~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)";

and

(g) "Certification of Enrollment (8/96)".

(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.

LINDA THOMAS, President

APPROVED BY AGENCY: June 28, 1996

FILED WITH LRC: August 16, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman

(1) Type and number of entities affected: Applicants for scholarships. Number unknown.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Requirements on the board will remain the same.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License renewal fees.

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

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

(b) Kentucky: An increase in the number of applicants funded is anticipated. This may lead to an increase in the number of licensed nurses.

(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: An increase in the number of nurses.

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

- (c) If detrimental effect would result, explain detrimental effect:
N/A
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict: N/A
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? Tiering was not used as the regulation applies to all affected parties.

STATEMENT OF EMERGENCY
301 KAR 2:225E

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 (6) 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.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.015, 150.025, 150.170, 150.300, 150.320, 150.330, 150.340, 150.360, 150.603

STATUTORY AUTHORITY: KRS 150.015, 150.025, 150.170, 150.320, 150.340, 150.360

EFFECTIVE: August 16, 1996

NECESSITY AND FUNCTION: To allow the taking of migratory birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service. This amendment is necessary to establish hunting dates for the 1996 season. (This administrative regulation contains the substance of 301 KAR 2:044, which it replaces. Substantive changes from 301 KAR 2:044 consist of date changes to reflect calendar shifts.)

Section 1. Definitions. (1) "Migratory game birds" means mourning dove, wood duck, teal, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, and sora rail.

(2) "Teal" means green-winged teal, blue-winged teal, and cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) Doves: September 1 through September 30; October 5 [7] through October 28 [30]; and November 28 [29] through December 3, [November 28.]

(2) Woodcock: October 12 [14] through December 15 [17].

(3) Common snipe: September 18 [13] through November 3 [October 27] and November 28 [29] through January 26 [23].

(4) Wood duck and teal: September 18 [13] through September 22 [17].

(5) Virginia and sora rails, common moorhen and purple gallinule:

September 1 through November 9.

Section 3. Bag and Possession Limits. Persons shall not exceed the following limits:

- (1) Doves: daily limit, fifteen (15); possession limit, thirty (30).
- (2) Woodcock: daily limit, five (5); possession limit, ten (10).
- (3) Common snipe: daily limit, eight (8); possession limit, sixteen (16).

(4) Virginia rails and sora rails, singly or in the aggregate: daily and possession limit, twenty-five (25).

(5) Common moorhen and purple gallinules singly or in the aggregate: daily limit, fifteen (15); possession limit, thirty (30).

(6) Wood duck and teal: daily limit, four (4); shall not include more than two (2) wood ducks; possession limit, eight (8); shall not include more than four (4) wood ducks.

(7) For identification purposes, persons shall leave the head or one (1) fully feathered wing attached to migratory game birds, except doves, being held in the field or transported.

Section 4. Shooting Hours. Persons may take:

(1) Doves:

(a) From 11 a.m. until sunset during the September and October portions of the season; and

(b) From sunrise to sunset during the November-December portion of the season.

(2) Other species listed in this administrative regulation, from one-half (½) hour before sunrise to sunset.

Section 5. Shot Requirements. Persons hunting wood ducks or teal shall not use or possess shotgun shells:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. (1) On wildlife management areas owned or controlled by the department:

(a) Unless excepted below, all sections of this administrative regulation apply.

(b) Persons shall not:

1. Hunt wood ducks or teal on areas closed to waterfowl hunting by 301 KAR 2:222.

2. Hunt in areas marked by signs as closed to hunting.

3. Enter areas marked by signs as closed to the public.

(2) Persons hunting doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River and Westvaco Wildlife Management Areas shall not use or possess shotgun shells containing lead shot.

(3) Ballard Wildlife Management Area.

(a) Persons shall not hunt migratory birds after October 13, except as provided in 301 KAR 2:221.

(b) Dove hunters shall not carry firearms except during shooting hours.

(c) Persons shall not hunt woodcock.

(4) Central Kentucky Wildlife Management Area.

(a) Persons shall not hunt migratory birds after October 13, except as provided in 301 KAR 2:222.

(b) Persons shall not hunt woodcock.

(5) Grayson Lake Wildlife Management Area.

(a) Migratory bird hunters shall check in and out daily at designated check stations.

(b) Persons shall not hunt:

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

2. On Deer Creek Fork; or

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

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

(7) West Kentucky Wildlife Management Area.

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

(b) Persons shall not hunt woodcock and snipe except on tracts 2, 3, 6, and 7.

(c) Persons shall not hunt on tracts designated by numbers followed by the letter "A".

(8) Yatesville Lake Wildlife Management Area. Migratory bird hunters shall check in and out daily.

(9) Persons shall not hunt migratory birds on the main block of Robinson Forest.

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

(a) Terrain of fields;

(b) Topography of fields;

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

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

(a) Of recommended hunter densities;

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

(3) Hunters behaving in an unsafe or uncooperative manner shall be required to leave the premises.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: August 16, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Wilson

(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. U.S. Fish and Wildlife Service approved nontoxic shot is required for all waterfowl hunting. Approved nontoxic shot costs approximately \$2 to \$7 more per box of 25 shells, dependent on shot material selected, 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 \$7.50 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.

(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: 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: 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.
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, 1996, and January 31, 1997, 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 and January 15. 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 and February 28. 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 and January 20. 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 and January 20. 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. Not applicable.

STATEMENT OF EMERGENCY
603 KAR 5:320E

House Bill 271 passed by the 1996 General Assembly has an implementation date of July 15, 1996. This bill promotes highway safety by allowing the Department of Highways to notify the traveling public that speeding fines are doubled in identified highway work zones in which the workers are at a greater than normal risk. It further allows the Transportation Cabinet to temporarily lower the speed limit in highway work zones without doing an engineering study. This administrative regulation is needed on an emergency basis in order that the safety of the workers in highway work zones can be enhanced as soon as possible. The work zones cannot be posted until the administrative regulation is in place. The Notice of Intent to promulgate an ordinary administrative regulation is attached to this administrative regulation for filing with the Administrative Regulations Compiler. This emergency administrative regulation will be replaced by an ordinary administrative regulation as soon as possible.

PAUL E. PATTON, Governor
FRED N. MUDGE, Secretary

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
Division of Construction
Division of Operators
Permits Branch

603 KAR 5:320E. Safety in highway work zones.

RELATES TO: 1996 Ky. Acts ch. 37

STATUTORY AUTHORITY: KRS 189.2325

EFFECTIVE: September 3, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.2325, which was passed by the 1996 General Assembly, requires the Transportation Cabinet to promulgate administrative regulations governing the posting of signs advising motorists that penalties are increased for speeding violations occurring on state-maintained streets or highways in a highway work zone. This administrative regulation shall establish which areas are appropriate for the posting of these signs. Further, KRS 189.390 was also amended by 1996 Ky. Acts ch. 37 to allow the Transportation Cabinet to temporarily reduce established speed limits in a highway work zone without an engineering or traffic investigation. This administrative regulation also addresses the maximum reduction in speed limit the Transportation Cabinet will be able to effect without an engineering or traffic investigation.

Section 1. Definitions. The definition of "highway work zone" shall be governed by KRS 189.232.

Section 2. Double Fine Signs. (1) At the beginning of that portion of a highway work zone where the fines for conviction of speeding are to be doubled, the Department of Highways shall cause to be placed a sign with the following message: "FINE DOUBLED IN WORK ZONE".

(2) At the end of that portion of a highway work zone where the fines for conviction of speeding are to be doubled, the Department of Highways shall cause to be placed a sign with the following message: "END DOUBLE FINE".

(3) The construction or manufacture of double fine signs shall be governed by the criteria set forth in the Department of Highways document "Double Fine Signs Specifications" which is incorporated by reference in Section 8 of this administrative regulation.

(4) The signs required by subsections (1) and (2) of this section shall be removed or covered so that the required message is not visible or legible to the traveling public or a law enforcement officer when the highway work zone does not have any workers for more than a two (2)-hour period of time.

Section 3. Placement of Double Fine Signs. (1) Any highway work zone in which the workers are not routinely protected by a barrier wall, is eligible for the placement of the double fine signs.

(2) A highway work zone which has barrier walls, but in which unusual or hazardous conditions exist which expose the workers to traffic hazards, shall be eligible for the placement of the double fine signs.

(3) The double fine signs shall only be placed in that portion of the highway work zone where workers are exposed to traffic hazards.

(4) The double fine signs may be relocated as the project taking place in the highway work zone progresses.

Section 4. State Forces. The Department of Highways engineer overseeing a construction or maintenance project which is being accomplished with state forces may place double fine signs in accordance with the provisions of this administrative regulation.

Section 5. Encroachment Permit Holders. (1) The applicant for an

encroachment permit pursuant to 603 KAR 5:150 who will have workers exposed to traffic hazards may request permission to place double fine signs in accordance with the provisions of this administrative regulation.

(2) The Department of Highways engineer who approves the encroachment permit shall grant or deny the request for the permit holder to place double fine signs at a highway work zone.

(3) The Department of Highways engineer who approves an encroachment permit request for work on a highway which has hazardous conditions may require the permit holder to place double fine signs at the highway work zone.

(4) The holder of the encroachment permit who is allowed or required to place double fine signs at the highway work zones shall still be required to have an approved traffic control plan for each location.

(5) The holder of the encroachment permit who is allowed or required to place double fine signs at the highway work zones shall place double fine signs which meet the specifications of the "Double Fine Sign Specifications" which is incorporated by reference in Section 8 of this administrative regulation.

(6) In order that the appropriate law enforcement agency is notified, the holder of an encroachment permit who is allowed or required to place double fine signs at the highway work zone shall notify the Transportation Cabinet of the times and locations of the placement of the double fine signs.

Section 6. Contractors in Highway Work Zones. (1) A contractor for the Department of Highways who will have workers exposed to traffic hazards may request permission to place double fine signs in accordance with the provisions of this administrative regulation.

(2) The Department of Highways engineer for the project shall grant or deny the request for the contractor to place double fine signs at a highway work zone.

(3) The Department of Highways engineer overseeing a highway construction project which has hazardous conditions may require the contractor to place double fine signs at the highway work zone.

(4) The contractor who is allowed or required to place double fine signs at the highway work zones shall still be required to have an approved traffic control plan for each location.

(5) The contractor who is allowed or required to place double fine signs at the highway work zones shall place double fine signs which meet the specifications of the "Double Fine Sign Specifications" which is incorporated by reference in Section 8 of this administrative regulation.

(6) In order that the appropriate law enforcement agency is notified, the contractor who is allowed or required to place double fine signs at the highway work zone shall notify the Transportation Cabinet of the times and locations of the placement of the double fine signs.

Section 7. Reduced Speed Limits. (1) Only the Department of Highways may temporarily reduce the speed limit in a highway work zone.

(2) The Department of Highways without an engineering or traffic investigation shall not reduce the speed limit in a highway work zone by more than ten (10) miles per hour.

(3) A temporarily reduced speed limit in a highway work zone shall be signed with a black on white regulatory sign.

(4) A black on orange sign recommending a speed shall be advisory.

(5) The Department of Highways engineer in charge of a maintenance or construction project may temporarily reduce the speed limit in a highway work zone without regard to whether double fine signs are placed in the highway work zone.

Section 8. Incorporation by Reference. (1) The Department of Highways document "Double Fine Sign Specifications" produced in

August 1996 is incorporated by reference as a part of this administrative regulation.

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained free of charge from the Transportation Cabinet, Department of Highways, Division of Traffic. The address is First Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-3020.

J.M. YOWELL, State Highway Engineer

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: August 26, 1996

FILED WITH LRC: September 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All operators of motor vehicles on the public highways of Kentucky and all of the persons working in a highway work zone.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no impact on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no 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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: The Transportation Cabinet will have to make many new signs regarding the double fines. Each sign will cost approximately \$300. However, the effect of the signs on the traveling public should be to make them operate their motor vehicles in a more careful manner in the highway work zones. This should, in turn, reduce the danger to the workers, most of whom are either state employees or persons under contract to the state.

(a) Direct and indirect costs or savings:

1. First year: \$10,000 but the savings resulting from enhanced safety is indeterminable.

2. Continuing costs or savings: Indeterminable

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The cabinet will have to maintain records indicating time and location of all "double fine" signed areas.

(4) Assessment of anticipated effect on state and local revenues: The doubled speeding fines will accrue to the Transportation Cabinet to pay for enhanced police enforcement of highway work zones. The initial guess of the Administrative Office of the Courts is that very little funds will be generated as a result of the passage of HB 271.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The doubled speeding fines assessed pursuant to HB 271 will be used to enforce safety in highway work zones. The funds for implementing the bill and administrative regulation will be made available from the Road Fund.

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

(a) Geographical area in which administrative regulation will be implemented: No anticipated impact on the economy of any geographical region of Kentucky.

(b) Kentucky: No anticipated impact on the economy of Kentucky.

(7) Assessment of alternative methods; reasons why alternatives

were rejected: The Transportation Cabinet considered, but rejected, the concept of allowing a greater than 10 mph reduction in the speed limit without an engineering study. It was rejected because speed differential between vehicles on the highway is one of the most common causes of crashes.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation of HB 271 and this administrative regulation will improve the safety for persons in highway work zones.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, the unsafe conditions in highway work zones will continue unabated.

(c) If detrimental effect would result, explain detrimental effect: Highway work zones are very unsafe because of motorist inattention and speeding. Without this bill and administrative regulation, there would be nothing in place to encourage persons to operate their motor vehicles in a more safe manner.

(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: None

(11) TIERING: Is tiering applied? Yes, tiering was applied in the selection of sites to be posted for double fines. The size of the double fine signs is a variable depending on the type of highway on which it is to be used.

STATEMENT OF EMERGENCY 781 KAR 1:030E

This emergency administrative regulation revises the definitions and priority categories in the department's order of selection for vocational rehabilitation services. The revisions are being made in order to comply with revisions in the federal guidelines for state agencies to use in determining an order of selection. A loss in federal funds may result if revisions are not in place by October 1, 1996, the beginning of the federal fiscal year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
RODNEY CAIN, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department of Vocational Rehabilitation

781 KAR 1:030E. 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)

EFFECTIVE: September 12, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 authorizes ~~[directs]~~ the Commissioner, Department of Vocational Rehabilitation to promulgate ~~[prescribe rules and]~~ administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation 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 unlikely ~~[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]~~ differentiates 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 a the most severe disability ~~[disabilities]~~" means an individual who has a severe disability and who:

(a) 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; or

(b) Has serious limitations in four (4) or more functional capacities (i.e., mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

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) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;

(g) Postemployment services except as provided in subsection (2)(a) through (m) of this section;

(h) Tuition and initial registration fees for training beyond the baccalaureate level;

(i) 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 rehabilitation needs;

(b) Counseling and guidance;

(c) Services provided by staff at state-owned and operated rehabilitation facilities;

(d) Placement;

(e) Rehabilitation technology;

(f) Communication assistance in the individual's native language;

(g) Tuition and initial registration fees for vocational and college

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training up to and including the baccalaureate level;

(h) Supported employment;

(i) Interpreter services for the deaf;

(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 and receiving vocational rehabilitation services under an individualized written rehabilitation program 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 services. [~~counseling, guidance, coordination of comparable benefits, third party payments, or job development and job placement to otherwise eligible individuals.~~]

(3) On implementation of the order of selection, the agency shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) All applicants shall be declared eligible or ineligible as appropriate.

(6) 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) The order of selection policy shall permit immediate reclassification into a higher priority category whenever circumstances justify the reclassification.

(8) If the agency is unable to provide services to all eligible individuals with severe disabilities, eligible individuals with the most severe disabilities shall be served. If the department is unable to serve all eligible individuals with severe disabilities, eligible individuals with severe disabilities shall be served on a first-applied, first-served basis established by date of application.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection system shall have six (6) priority categories as follows:

(a) Priority I - eligible individuals with a [the] most severe disability [disabilities].

(b) Priority Category II - eligible individuals with a severe disability who have serious limitations in three (3) functional capacities.

(c) Priority Category III - eligible individuals with a severe disability who have serious limitations in two (2) functional capacities. [~~public safety officers with a nonsevere disability sustained in the line of duty.~~]

(d) Priority Category IV - eligible individuals with a severe disability who have serious limitations in one (1) functional capacity. [~~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

RODNEY CAIN, Secretary

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 12, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: All applicants for vocational rehabilitation services from the Department of Vocational Rehabilitation.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no direct or indirect savings since any funds conserved would be redistributed among otherwise eligible individuals.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There should be no additional reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department uses state and federal funds with a match ratio of 78.7 federal to 21.3 state dollars.

(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 alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Federal statutes and

regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361.
2. State compliance standards. This administrative regulation details the agency standards for an economic needs test and an order of selection for vocational rehabilitation services.
3. Minimum or uniform standards contained in federal mandate. The federal mandate permits a state to restrict access to services based on reasons of economic need; an order of selection is required when sufficient funds are not available to serve all eligible individuals.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes
5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. The Department of Vocational Rehabilitation is financially unable to provide services for all the eligible individuals. An economic needs test and an order of selection must be imposed which will allow available limited funds to be distributed while assuring adequate services will be available to serve individuals with severe disabilities.

STATEMENT OF EMERGENCY 806 KAR 17:140E

1996 Ky. Acts Chapter 371 requires that health insurance rates be filed with the Commissioner of Insurance for approval or disapproval. This emergency administrative regulation sets forth requirements for submitting health insurance rates to the department. As of July 15, 1996, the Commissioner of Insurance was charged with the responsibility of approving or disapproving the submitted rate filings. Therefore, it is necessary to require that procedures, standards, and guidelines be followed by anyone submitting health insurance rates to the department. These requirements will assist the commissioner in arriving at a well-informed, consistent and uniform decision with respect to the approval or disapproval of health insurance rate filings. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed at a later date.

PAUL E. PATTON, Governor
REDMON LAIR, Deputy Secretary
GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION & REGULATION CABINET Department of Insurance

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

RELATES TO: KRS 304.17A-095

STATUTORY AUTHORITY: KRS 304.17A-095(7)

EFFECTIVE: August 23, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.17A-095(7) provides that the commissioner may promulgate an administrative regulation to obtain relevant information for health insurance rate filings and to set forth the format of the filings. This administrative regulation sets forth procedures for filing health insurance rates so the commissioner will have relevant information to approve or disapprove the rate filing.

Section 1. Definitions. (1) "Base rate" is the monthly premium in modified community rate filings for a single male, age forty (40) to forty-nine (49), standard high benefit option in geographic area six.

(2) "Composite rate" is the average rate considering assumed

distribution of policyholders across all combinations of plan options, geographical areas, age brackets, gender, and family composition.

(3) "FFS" is a fee for service product type.

(4) "HMO" is a health maintenance organization product type.

(5) "Income and expense worksheet" is a form which provides a breakdown of income, claims expenses and overhead expenses for a company over a stated period of time.

(6) "Load" is the portion of premiums anticipated for insurer expenses, taxes and payments other than for projected plan benefits.

(7) "Medical care consumer price index" or "medical CPI" is a monthly index published by the Federal Bureau of Labor Statistics for all urban consumers for the south region.

(8) "Modified community rate diskette" is the diskette that contains the monthly list bill rates for all filed plan option base coverage benefits and supplemental benefit riders.

(9) "Prestandard plans" are health benefit plans in effect prior to July 15, 1995.

(10) "Premium parameter worksheet" is a comparison of proposed rates, existing rates, and Department of Insurance index rates which represents all rate cells for a given rate filing.

(11) "POS" is a point of service product type.

(12) "PPO" is a preferred provider organization product type.

(13) "Trend factor" is a percentage change factor, encompassing anticipated changes in benefit costs, in modified community rate filings that may be applied to proposed rates in order to determine the rates to be effective for a part of the rating period.

Section 2. Scope. Every filing to which the standards of KRS 304.17A-095 applies shall include the information required by this administrative regulation.

(1) Rate filings made on or after the effective date of this administrative regulation. The period of time in which the commissioner may affirmatively approve or disapprove the filing shall not begin until the filing, including the information required by this administrative regulation, and the appropriate fee are received by the department. The filing and fee shall not be deemed received until the department has confirmed that all of the required information by this administrative regulation has been provided and that the appropriate fee has been received.

(2) Rate filings made before the effective date of this administrative regulation.

(a) Within forty-five (45) days from the effective date of this administrative regulation the insurer shall supplement the filing by providing information required by this administrative regulation which has not already been provided.

(b) An additional time period may be granted by the commissioner upon a showing by the insurer and determination by the commissioner of good cause for the extension. A request for extension shall be submitted in writing not less than ten (10) days prior to the running of the forty-five (45) day time period. The request for extension shall contain sufficient detail to permit the commissioner to make an informed decision.

Section 3. For All Rate Filing Procedures. (1) The following items shall be included and properly completed in all health benefit plan rate filing submissions:

(a) Form LH-32, the Product Information Form, which sets forth a summary of the rate filing and is signed by a company representative;

(b) \$100 filing fee or the domiciliary state fee, whichever is greater;

(c) Form LH-1, Face Sheet and Verification Form;

(d) Income and expense worksheet diskette (labeled to identify the company and the filing) for each product within the filing.

(e) Printouts of income and expense worksheet;

(f) Signed actuarial memorandum prepared in accordance with Section 6 of this administrative regulation.

(2) Five (5) copies of all written material and three (3) copies of each diskette shall be submitted.

(3) The annual report to shareholders or policyholders of the company shall be attached to the filing as an exhibit.

Section 4. Special Provisions for Modified Community Rate Filings. (1) Modified community rate filings shall be submitted separately for each combination of the following:

(a) Alliance or nonalliance;

(b) Individual or group;

(2) Modified community rate filings may be combined for FFS/PPO and POS/HMO product types or may be submitted separately for FFS, PPO, POS, and HMO.

(3) Premium parameter worksheet diskette (labeled to identify the company, the product type, line, and marketing name) shall be submitted in the format prescribed on the diskette.

(4) Printouts of the Premium Parameter Worksheet shall be submitted.

(5) Modified community rate diskettes (labeled to identify the company, the product type, line, and marketing name) and printouts of base coverage and supplemental benefit rider rates shall be submitted.

Section 5. Special Provisions for Filings Not Subject to Modified Community Rating. (1) Rate filings for prestandard plans shall be separate for each combination of the following:

(a) Individual and group;

(b) Product type (indemnity or managed care).

(2) A large group rate filing shall include all product types offered (HMO, POS, PPO, and FFS).

Section 6. (1) The actuarial memorandum shall be prepared in accordance with the American Academy of Actuaries Actuarial Standard of Practice No. 8 for Regulatory Filings for Rates and Financial Projections for Health Plan and Interpretative Opinion 3, Professional Communications of Actuaries.

(2) The actuarial memorandum for modified community rate filings shall include each of the following:

(a) Qualifications and experience of signing actuary;

(b) Detailed statement of rate development which shall include detailed explanations of:

1. Base rate;

2. Development of base rate including assumptions, past experience, and claim cost trend projections; past experience is to include paid claims, incurred claims, earned premium and incurred loss ratio for last five (5) years for this product (or similar product if this filing is for a new product);

3. Adjustments for age, gender, geographical area, family composition and product type off the base rate including development and justification for each type of adjustment;

4. Trend factor, if applicable;

5. Any appropriate formulas for new and renewing business and definitions of terms used in formulas;

(c) Detailed explanation of the determination of small group composite rates and the groups to which composite rates shall apply;

(d) Comparison of rates shall be done as follows to determine if the filing is greater than, less than, or equal to the change in medical CPI plus three (3) percent:

1. Comparison of proposed rates to existing rates shall be determined on a composite basis for the product using an appropriate insured population distribution. The change shall be expressed as a percentage increase or decrease.

2. The change in medical CPI plus three (3) percent is calculated as follows with the result being expressed as a percentage change:

$$\text{Change} = \left(\frac{b/a}{x/y} - 1 + (1.03)^{x/12} \right)$$

Where: a = index value on effective date of existing rates;

b = most recent index value available at time of filing;

x = number of months from effective date of existing rates to effective date of proposed rates;

y = number of months from effective date of existing rates to date of "b".

(e) Complete listing of Standard Industry Codes (SIC) with respective industry rate modifiers, based on code 5300 (general retail sales) as the standard factor of one (1.0), as applied to the filing and explanation of industry rate modifiers;

(f) Explanation of the determination for healthy lifestyle discount and discount percentage;

(g) The following load factors shall be discussed with an allocation trail from the company's annual statement and the assumptions used in pricing:

1. Administrative expense breakdown with detailed discussion of overhead, marketing, lobbying, advertising, customer service, issue, billing, claims handling, managed care expenses, rent, salaries, legal fees, consultant fees, data processing cost and reinsurance cost. Discuss how these costs are allocated among plans and attach necessary documentation as exhibits.

2. Detail of commission assumptions and average commission percentage paid for the prior calendar year on this or similar products, and explanation of any change anticipated in the average commission percentage;

3. Statement listing all taxes paid with explanation of allocation to the rate filing;

4. Role of investment income in rate determination.

5. Explanation of profit derived from all sources, historical profit for last three (3) years, and projected profit for rate filing period and how it was determined.

6. Explanation of the expected contingency needs related to the filing.

(h) Information regarding fees paid to providers as follows:

1. Justification of fees paid to providers in relation to rate requested;

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments and other payments for rate filing period;

3. Assumptions made about discounts in this rate filing.

(i) Explanation of the anticipated effect of the requested rate on the policyholders, subscribers, or enrollees.

(3) The actuarial memorandum for filings other than modified community rate filings shall include:

(a) The information prescribed in subsection (2)(a), (b), (d), (g), (h) and (i) of this section.

(b) Under prestandard plan filings, the information provided in subsection (2)(b) of this section shall be limited to subsection (2)(b)1 and 2 of this section, (for which a base rate would not necessarily be involved).

(c) Under large group filings, the following information shall be filed:

1. The information provided in subsection (2)(b) of this section shall be limited to subsection (2)(b)1, 2, 3, and 5 of this section.

2. Any change in the manual rating formula or experience rating formula shall be identified with detailed explanation.

3. Any change in factors which would be used in any formula shall be identified with detailed explanation.

4. Any current trend factor applied in a formula shall be provided.

5. The effect of any change in formula and formula factors, together with the current trend factor, shall be calculated on a composite basis under subsection (2)(d)1 of this section.

Section 7. (1) Each insurer may utilize the rate methodology phase-in provision of KRS 304.17A-120(6) which provides for a grading of rates into the modified community rating methodology over a four (4) year period.

(2) Each insurer shall provide a statement to indicate whether the phase-in provision is or is not being utilized, and, if so, fully explain how the phase-in will be implemented. This explanation shall include the maximum premium increase percentage and the maximum premium decrease percentage used.

(3) The rate methodology phase-in shall apply to policyholders, subscribers and enrollees within the same carrier who are being changed to the modified community rating methodology prescribed by KRS 304.17A-120.

(4) The rate methodology phase-in shall not be used if a policyholder:

(a) Had no coverage under a health benefit plan immediately before being insured under a standard plan subject to modified community rating pursuant to KRS 304.17A-120;

(b) Changes carrier at the time of initially being insured under KRS 304.17A-120;

(c) Selects a standard plan under KRS 304.17A-160 for which the benefits are not similar to the immediately preceding coverage.

Section 8. The Form LH-32, Product Information Form (revised in August 1996), and Form F-1 LH, Face Sheet and Verification Form (revised in January 1992), Premium Parameter Worksheet and Diskette (revised in July 1996), Modified Community Rate Diskette (revised in May 1996), and Income and Expense Worksheet and Diskette (revised in August 1996) are prescribed by the department and herein incorporated by reference. Copies may be obtained from the Department of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40601.

GEORGE NICHOLS III, Commissioner

REDMON LAIR, Deputy Secretary

CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 239, Fax Number: (502) 564-1456

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: August 23, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: There are over 1200 companies that can write health insurance in Kentucky. Currently, there are approximately 55 companies writing health insurance.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time. The department does not anticipate any effect on the costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments regarding this issue.

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

1. First year following implementation: In order to comply with 1996 Ky. Acts ch. 371 § 16, insurers are required to file necessary information prior to health insurance rate approval. This regulation sets out the specific information needed for the Department to efficiently review health insurance rate proposals resulting in rate approval or disapproval. The insurers will be responsible for copy and delivery cost.

2. Second and subsequent years: In order to comply with 1996 Ky. Acts ch. 371, §16, the companies are required to provide the department with new rate proposals if the original filing is modified.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department does not anticipate any effect on costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will review all health insurance rate proposal filings. Following review, the department will follow the procedural directive of 1996 Ky. Acts ch. 371, §16, resulting in approval, disapproval, or a hearing.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department of Insurance budget will be used to implement and enforce 806 KAR 17:140.

(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 comment received.

(b) Kentucky: No public comment received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to the requirements of 1996 Ky. Acts ch. 371, §16, the department is required to review the rate filings for specific statutory information. The department is unable to comply and enforce the law in the absence of a regulation setting out the requirements for rate filing and review. The promulgation of this administrative regulation is the most efficient method to ensure compliance with the health insurance rate filing law.

(8) Assessment of expected benefits: This regulation will enable the department, the Office of Attorney General and the companies filing health insurance rates to be in compliance with 1996 Ky. Acts 371, §16.

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: This regulation will facilitate consistent and efficient compliance with the statutory health insurance rate filing requirements.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied equally to all insurers and health maintenance organizations (HMO's) falling under the health insurance rate filing requirements. 1996 Ky. Acts 371, §16.

STATEMENT OF EMERGENCY

905 KAR 1:180E

This emergency administrative regulation and Notice of Intent were promulgated to establish the current policies and procedures of the Department for Social Services relating to management procedures, support services, family and children's services and youth services. This emergency administrative regulation implements some of the provisions of the voluntary consent decree, entered December 4, 1995 by the United States District Court for the Western District of Kentucky in the case of United States of America v. Commonwealth of Kentucky, et.al., Civil Action No. 3:95 CV-757-S (W.D. Ky. 1995), entered into with the United States Department of Justice to improve conditions for youth housed in thirteen (13) residential treatment

facilities operated or contracted by the cabinet. An emergency administrative regulation is necessary in order to implement requirements of the consent decree which are currently mandated. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation shall be filed with the Regulations Compiler on or about November 15, 1996.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services

905 KAR 1:180E. DSS policy and procedures manual.

RELATES TO: KRS 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645, United States of America v. Commonwealth of Kentucky, et al., Civil Action No. 3:95 CV-757-S (W.D. Ky. 1995)

STATUTORY AUTHORITY: KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, EO 96-862, United States of America v. Commonwealth of Kentucky, et al., Civil Action No. 3:95 CF 757-S (W.D. Ky. 1995)

EFFECTIVE: September 12, 1996

NECESSITY, FUNCTION, CONFORMITY: 42 USC 9901-9912, "Block Grants for Social Services - Title XX," authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services under the Cabinet for Families and Children. This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the implementation of a statewide social service program, and to implement currently required provisions of a consent decree entered December 4, 1995, by the United States District Court for the Western District of Kentucky in United States of America V. Commonwealth of Kentucky, et al., Civil Action No. 3: CV-757-S (W.D. Ky. 1995).

Section 1. Incorporation by Reference. (1) The Department for Social Services Policy and Procedures Manual as revised September, 1996 [December, 1993], is incorporated by reference.

(2) Copies of the Department for Social Services Policy and Procedures Manual may be inspected, copied or obtained in any department field office in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main, 6 Floor West, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

VIOLA P. MILLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: September 12, 1996
FILED WITH LRC: September 12, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide social service program through the current policies and procedures of the department. The implementation of the policies for compliance with the voluntary consent decree entered into with the Department of Justice will affect

the thirteen residential facilities, seventeen group homes and eighteen day treatment programs operated or contracted by the Department for Social Services, Division of Youth Services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: The only change in compliance, reporting and paperwork requirements for the first year is that facilities affected by the consent decree policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the consent decree.

2. Second and subsequent years: The only change in compliance, reporting and paperwork requirements for the second and subsequent years is that facilities affected by the consent decree policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the consent decree.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will not be any first year direct or indirect costs to the Department for Social Services as the proposed regulations only update the material incorporated by reference and implement some provisions of the voluntary consent decree entered into with the Department of Justice.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department for Social Services as the proposed regulation only update the material incorporated by reference and implement some provisions of the voluntary consent decree entered into with the Department of Justice.

3. Additional factors increasing or decreasing costs: The only other factor that may decrease costs is the decrease in liability from law suits related to youth's right to treatment as a result of the implementation of some provisions of the voluntary consent decree entered into with the Department of Justice.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that facilities affected by the consent decree policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the consent decree.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Social Services Block Grant, Title IV-B, Title IV-E, Title IV-A, Medicaid and General Funds.

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

(a) Geographical area in which administrative regulation will be

implemented: A public hearing has been scheduled during which public comments may be received.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered because the proposed amendments update the material incorporated by reference.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operator or contracted by the cabinet.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the public health or environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operator or contracted by the cabinet.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation amends the policies and procedures of all offices of the Department for Social Services and is effective statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Voluntary consent decree entered December 4, 1995 by the United States District Court for the Western District of Kentucky in the case of United States of America v. Commonwealth of Kentucky et.al. Civil Action No. 3:95 CV-757-S (W.D. KY 1995).

2. State compliance standards. The state has issued policies that comply with mandates of the juvenile services consent decree relating to isolation and time out, abuse and neglect, fire safety, suicide screening and maintenance and sanitation.

3. Minimum or uniform standards contained in the federal mandate. The consent decree contained specific requirements to improve conditions for youth housed in thirteen residential treatment facilities operated or contracted by the cabinet.

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. These administrative regulations will not impose stricter standards, or additional or different responsibilities or requirements.

STATEMENT OF EMERGENCY

908 KAR 2:100E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants

and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the definitions used in the administrative regulations. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 2:100E. Kentucky Early Intervention Program definitions.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulation pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health/Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Definitions: (1) "Assistive technology device" means any item, piece of equipment, or product system that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is medically necessary to implement the individualized family service plan;

(2) "Child find" means as defined in KRS 200.654(3);

(3) "Developmental quotient" or "DQ" means a specific designation described in and determined using the examiners manual of a norm referenced test. It is not an extrapolated score based on a screening test. Nor is it a ratio score (i.e., age equivalent X 100) unless specified as such in the test manual;

(4) "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families;

(5) "Disciplines" means those professionals recognized by First Steps to practice in early intervention services.

(6) "District early intervention committee" or "DEIC" means as defined in KRS 200.654(6);

(7) "District technical assistance team" means a professional and a parent of a child with a disability combined in a university based staffing unit for the purpose of providing technical assistance, training, and support to families and providers in the local community;

(8) "Early intervention services" means as defined in KRS 200.654(7);

(9) "Early intervention team" means two (2) or more disciplines providing services to a child and family which employ any one (1) of the team models that include an interdisciplinary team, a multidisciplinary team, or a transdisciplinary team;

(10) "Family centered" means the recognition that the family is the constant in a child's life and that services and personnel must support, respect, encourage, and enhance the strength and competence of the family;

(11) "Family directed" means the recognition that a family has choices and that services are provided in accordance with the family's priorities, concerns, and values;

(12) "First Steps" means Kentucky's Early Intervention System as defined in KRS 200.654;

(13) "Image consistency kit" means the guidelines developed by the interagency coordinating council public awareness committee for the purpose of ensuring that any use of the First Steps logo and other public awareness materials shall be consistent and in conformity with exact specifications set forth by the committee;

(14) "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families;

(15) "Individualized family services plan" or "IFSP" means as defined in KRS 200.654(9);

(16) "Kentucky High Risk Hearing Registry" means as defined in KRS 213.046;

(17) "Mentorship" means a limited period of one (1) year of indirect supervision;

(18) "Multidisciplinary team" or "IFSP team" means as defined in KRS 200.654(11);

(19) "Natural environments" means settings, such as the home and the community, in which the child's age peers who have no disability normally participate;

(20) "Period of eligibility" means the time from referral to First Steps to termination of services due to:

(a) Failure to meet initial program eligibility requirements;

(b) Attainment of age three (3);

(c) Documented refusal of service by parent or legal guardian inclusive of disappearance;

(d) Change of residence out of state; or

(e) Criteria of developmental delay is no longer met.

(21) "Point of entry" or "POE" means as defined in KRS 200.654(12);

(22) "Prematurity" shall mean a gestational age, at birth, of less than thirty-seven (37) weeks;

(23) "Primary referral source" means those in the community who have the greatest opportunity, by virtue of their work, their relationship to children of this age, or their special knowledge, to refer a child to First Steps;

(24) "Primary service coordinator" or "PSC" means the person responsible for coordination of services after the POE initial service coordinator has completed their responsibilities for IFSP development;

(25) "Teratogen" means an agent causing fetal malformations;

(26) "Qualified service provider" means as defined in KRS 200.654(13).

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are

identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general funds in the Department for Public Health, and \$5,004,400 in the Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental

impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing definitions.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 908 KAR 2:110E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the requirements for intake through the point of entry. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 2:110E. Kentucky Early Intervention Program point of entry.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the point of entry provisions pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health/Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Point of Entry. (1) The point of entry (POE) staff shall coordinate child find efforts with local education agencies.

(2) The POE staff shall develop a child find activity plan to be conducted in each district that includes:

(a) Completing a minimum of two (2) face-to-face contacts per month to potential referral sources in the district to explain First Steps services.

(b) Utilizing the materials developed by the interagency coordinating council public awareness committee by making them available to the community upon request in cooperation with the district technical assistance team and the district early intervention committee (DEIC).

(3) The POE staff shall maintain accessibility and provide public awareness activities in each district by:

(a) Having a district toll free telephone number;

(b) Having a dedicated local telephone number to be answered by person or machine twenty-four (24) hours a day, seven (7) days a week as First Steps; and

(c) Utilizing the image consistency kit developed by the interagency coordinating council public awareness committee.

(4) The POE staff shall maintain communication with the DEIC, district technical assistance team and lead agency on matters of child find, service options and other issues relevant to the First Steps Program, by completing the following activities:

(a) Presenting a report at each DEIC meeting that includes the

following information:

1. Number of referrals and referral sources since last DEIC meeting;
2. Service provider updates that include deletions and additions;
3. Report on identified gaps related to services and location; and
4. A highlight of the month's activities that include the public awareness activities.

(b) Solicit advice from the DEIC, district technical assistance teams, and lead agency on child find, service options and other issues relevant to the First Steps Program.

(5) The POE staff shall act on all referrals for First Steps services.

(a) Upon receiving a telephone or written referral, POE staff shall:

1. Determine if the family is aware that a referral is being made; and
2. Do an initial screening to determine if the referral is appropriate based on:
 - a. Establishing that the child's age is between birth and three (3) years old;
 - b. Ensuring the family's residence is within the assigned district; and
 - c. Confirming that there is a developmental concern.

(b) If the initial screening finds the referral to be inappropriate, the POE shall give the referral source the appropriate resource to refer the child and family to the services that meet that child's needs. These resources include:

1. Public schools;
2. The Department for Social Services;
3. Medical services; or
4. Another POE.

(c) If it is determined that the referral is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days for the purpose of:

1. Briefly informing them of First Steps' services;
2. Advising them that all services are voluntary; and
3. Ascertaining whether the family would like more information and an initial visit scheduled.

(d) If a family is interested, the POE staff shall schedule a visit and send the family a letter to confirm the date, time and location of the visit.

(e) If a family is not interested, the family shall be informed by the POE staff that they can contact the POE at any time to reinstate the referral and the POE staff shall:

1. Document in the child's record, the refusal of services; and
2. Send a letter to the referral source explaining refusal of services by the family.

(f) If efforts to contact the family by telephone and in writing fail, in order to bring closure to the referral the POE staff shall send a follow-up letter within ten (10) working days of the referral encouraging the family to contact the POE at anytime to: 1. Initiate services; or

2. To ask further questions.

(g) Within fifteen (15) working days the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at the time.

(6) At the initial visit to the family, the POE staff shall:

- (a) Identify the purpose of the visit;
- (b) Explain the First Steps services;
- (c) Explain the family rights by giving the family the "Family Rights Handbook" and review the statement of assurances;
- (d) Obtain signature of parent on statement of assurance;
- (e) Obtain release of information for medical or developmental information from parent;
- (f) Determine willingness to participate in First Steps services or refusal of services;
- (g) Interview family to help them determine priorities, resources and concerns;

(h) Complete developmental and social history form;

(i) Determine next action needed with family to determine eligibility of child;

(j) Discuss evaluation and service options that include:

1. Convenience;
2. Funding sources; and
3. Family preference.

(k) Establish date for developing individualized family service plan (IFSP);

(l) Discuss options for a primary service coordinator; and

(m) Collect data necessary for billing.

(7) All children referred to First Steps because of suspected developmental delay or established risk condition shall receive the hearing checklist at the initial referral.

(8) The POE staff shall use the following to assist in the determination of hearing status:

(a) If the referral is a birth to three (3) year old child who is "at risk" as indicated on the Kentucky High Risk Hearing Registry and the "at risk" indicator is the only reason they were referred to First Steps, and no audiological screen has been done, the child and family shall be referred to his pediatrician or a clinic for an audiological screen to determine hearing status.

(b) If the referral is a birth to three (3) year old child who is suspected of having a hearing problem, but not suspected of having any developmental problems, the child shall be referred to his pediatrician or a clinic for an audiological screen to determine hearing status.

(c) If the referral is a birth to three (3) year old child with a diagnosis of significant hearing loss of less than forty (40) decibels, the child is considered to have an "established risk" diagnosis and the child shall be eligible for First Steps services and the referral process continues.

(d) If a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which should include an audiological evaluation.

(e) If a birth to three (3) year old child is referred because of suspected developmental delay or established risk condition, but no apparent hearing problems, the POE shall complete the hearing checklist at time of referral.

(9) POE staff shall coordinate the evaluation process for eligibility determination within the federally mandated time line of forty-five (45) days.

(a) The POE staff shall gather existing documentation that will be used to determine eligibility; and

(b) Shall ensure that all releases are completed and on file.

(10) The POE staff shall make appropriate referrals to secure needed evaluations of the child's medical and developmental status. Medicaid eligible children shall have the approval of their Medicaid primary care physician to assure reimbursement of services.

(11) The POE staff shall ensure that referrals for needed assessments shall be completed and that those reports shall be made available for initial the IFSP.

(a) The POE staff shall make the appropriate referrals for needed assessments prior to initial IFSP.

(b) The POE staff shall request copies of completed assessment reports to be included in the child's record and used in the development of initial IFSP.

(c) The POE staff shall send all future assessment reports to the primary service coordinator.

(12) The POE staff shall coordinate and ensure completion of the initial individualized family service plan (IFSP) meeting within federally mandated time line of forty-five (45) days.

(a) The POE staff shall assist the family in identifying the IFSP team members and discuss a potential primary service coordinator.

(b) Once a potential primary service coordinator has been

suggested, the POE staff shall contact that person and confirm his willingness to function as the primary service coordinator.

(c) After releases of information signed by the parent have been obtained, the POE staff shall send copies of the following information to the requested primary service coordinator:

1. Initial referral information;
2. Developmental and social history;
3. Any available evaluation reports; and
4. Any available assessment reports.

(d) The POE staff shall send notices to all identified IFSP team members of the upcoming IFSP meeting date, time, and location.

(e) If a telephone is available, the POE staff shall call the family at least three (3) working days prior to the IFSP meeting to:

1. Confirm the time and place of the meeting;
2. Determine whether transportation is needed;
3. To reiterate the purpose of meeting; and
4. To answer questions.

(f) If the developmental and medical evaluators, family, and POE agree that the child is not eligible prior to the IFSP meeting, a meeting shall not be held. If any one (1) member disagrees or still has concerns, a meeting shall be held.

(g) The POE staff shall facilitate the IFSP meeting by:

1. Leading introductions;
2. Reviewing the purpose of the meeting;
3. Explaining the family rights and the system of services; and
4. Discussing and leading the IFSP team to determine eligibility based on collected documentation.

a. If the child is not eligible, the POE staff shall discuss other options and make the family aware they can recontact the POE anytime.

b. If the child is eligible but the family is not interested in services, the POE staff shall make the family aware they can recontact the POE any time for reevaluation.

c. If the child is eligible and the family is interested in services the POE staff shall:

(i) Develop an IFSP ensuring that all components are present; and

(ii) Determine the primary service coordinator.

(h) The POE staff shall write the IFSP as it is developed at the meeting.

(i) The POE staff shall send the completed IFSP to the family within five (5) working days of the IFSP meeting;

(j) The POE staff shall within five (5) days of the IFSP meeting, send to the primary service coordinator the following:

1. The completed IFSP;
2. Any evaluation reports not previously sent; and
3. Any assessment reports not previously sent.

(k) The identified primary service coordinator shall send copies of the IFSP to other IFSP team members and to the parties requested by the family within ten (10) working days of the IFSP meeting.

(l) The POE staff shall send the billing service sheets to the billing agent within seven (7) working days of the IFSP meeting.

(m) The identified primary service coordinator shall be responsible for referrals to services identified on the IFSP.

(13) The POE staff shall:

(a) Provide consultation and support to the primary service coordinator as requested;

(b) Notify the primary service coordinator at least two (2) months prior to the due date of either the IFSP or the IFSP six (6) month review, that the respective report is due;

(c) Keep on file copies of all IFSP and reviews sent from the primary service coordinator and shall process the billing service sheets immediately upon receipt;

(d) Assist primary service coordinators in transition of children from First Steps services to future services; and

(e) Track and notify the primary service coordinator that a transition conference shall be completed within federal time frame of

no less than ninety (90) days prior to child's third birthday by:

1. Sending notification, no later than the child's 30th month of age, to the primary service coordinator that the transition conference is due and the date by which it shall be held.

2. Receiving from the primary service coordinator the revised IFSP which incorporates the transition plan no later than one (1) week, five (5) working days after the meeting has been held. This plan should include at least:

- a. Basic demographic information;
- b. A listing of family priorities;
- c. Resources and concerns; and
- d. Documentation of the transition meeting and outcomes.

(14) The POE staff shall function as the primary service coordinator to ensure that the transition conference and plan are completed in the event that the primary service coordinator resigns and no other primary service coordinator can be assigned in time, or referral is received within forty-five (45) days of child's third birthday.

(a) The POE staff shall be responsible for knowing the transition procedure as outlined in the First Steps proposed administrative regulations, that include:

1. Ensuring all potential agencies and programs that could provide services to a particular child after the age of three (3), are included when introducing the parents to the First Steps Program.

2. Processing the referrals of all children who are less than the age of two (2) years ten and one-half (10 ½) months for evaluation and First Steps services.

(b) For all children who are two (2) years and ten and one-half (10 ½) months old to age three (3), the POE shall facilitate the transition conference which would include representatives of available next referrals. The purpose of the conference is:

1. For those representatives to help the family determine the next action; and

2. To explain to the family the eligibility requirements of First Steps services, Head Start guidelines, and other services that may meet the needs of the child.

(c) The POE staff shall be responsible for conducting the transition conference and development of the plan when assuming the role of primary service coordinator.

(15) The POE staff shall maintain a complete record on all children referred through the POE by:

(a) Keeping on file all records generated by the POE or sent to the POE from all other service providers;

(b) Ensuring that all POE contacts shall be documented in the child's record;

(c) Notifying the billing agent of all changes in the status of the child or family within seven (7) working days of notification of changes to the POE or at least every six (6) months in conjunction with IFSP six (6) month reviews; and

(d) Providing data to the lead agency as requested.

(16) The POE shall provide a written data report to the DEIC:

(a) The POE shall complete the district data report quarterly. The information to be included in the report is:

1. Number of referrals per quarter;
2. Sources of referrals;
3. Number of eligible children;
4. Eligibility categories and number of children in each category;
5. Number of children not eligible;
6. Number of children or families refusing services;
7. Number of IFSP's completed; and
8. Number of children who received primary, intensive and tertiary evaluations.

(17) The POE shall collect and maintain the district service provider directory.

(a) The POE shall collect data on all available First Steps service providers, maintain that data, and have the current services in a printable form, upon request from the community.

(b) Send a compiled list of changes to their district technical

assistance team quarterly.

Section 2. (1) Incorporated by reference hearing check list may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department of Mental Health/Mental Retardation Services, 100 Fair Oaks Dr., Frankfort, Kentucky 40621. Copies may also be obtained from that office.

(2) Incorporated by reference District Early Intervention Committee Report may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department of Mental Health/Mental Retardation Services, 100 Fair Oaks Dr., Frankfort, Kentucky 40621. Copies may also be obtained from that office.

(3) Incorporated by reference Family Rights Handbook may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department of Mental Health/Mental Retardation Services, 100 Fair Oaks Dr., Frankfort, Kentucky 40621. Copies may also be obtained from that office.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general funds in the Department for Public Health, and \$5,004,400 in the Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early interven-

tion system, by establishing requirements for intake through the point of entry.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

908 KAR 2:120E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the requirements for evaluation and eligibility. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 2:120E. Kentucky Early Intervention Program evaluation and eligibility.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective, July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health/Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Evaluation. (1) Every child shall have an evaluation as a part of his permanent record.

(a) A primary evaluation shall occur within forty-five (45) days after receipt of the referral; or

(b) If primary evaluation does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(2) The primary level evaluation is the first level in a multi-level system that shall be utilized to determine eligibility.

(a) The primary level is used when there are no existing evaluations available within the allowed time limits;

(b) Primary level evaluations shall provide evaluation in all five (5) developmental areas;

(c) Primary evaluation shall be multidisciplinary and shall minimally include:

1. A medical component completed by a physician or a nurse practitioner that includes:

- a. A history and physical examination;
- b. A hearing and vision screening; and
- c. An interpretation of results to the family;

2. A child's medical evaluation shall be current according to the following:

a. For children under twelve (12) months of age, the medical evaluation shall have been performed within three (3) months prior to referral to First Steps; and

b. For children twelve (12) months to three (3) years of age, the medical evaluation shall be performed within six (6) months prior to referral;

3. A developmental component completed by a qualified evaluator that utilizes standardized measures, and the results interpreted to the family.

(3) Verification of a child's eligibility for services shall be based upon the review by parents and professionals at the initial IFSP meeting.

(4) Reevaluations shall be provided when a child's eligibility warrants review or a new condition is suspected or becomes apparent.

(a) The need for reevaluation is determined by the IFSP team;

(b) Reevaluations shall be obtained at the level of evaluation determined to be needed by the IFSP team and initial evaluation provider;

(5) An intensive evaluation is the second level in a multilevel system that shall be utilized to determine eligibility.

(a) A child shall be referred for an intensive level evaluation when:

1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis or further define the child's developmental status. These evaluators include:

- a. A physician;
- b. A nurse practitioner; or
- c. A developmental evaluator.

2. A child doesn't meet eligibility guidelines at the primary level, but a primary evaluator or the family still have concerns that the child is developing atypically.

3. A review of records of primary evaluation is needed.

(b) An intensive level evaluation shall be provided by an approved team consisting of:

1. A board certified developmental pediatrician;
2. A pediatrician who has the required training and experience in the area of early childhood development; and
3. One (1) or more qualified developmental professional.

(6) A tertiary level evaluation is the third level in a multilevel system that shall be utilized to determine eligibility.

(a) A child shall be referred for a tertiary level evaluation when:

1. Diagnostic information is needed in specific areas.
2. The intensive team's review of records and the results of the primary evaluation indicate that the complexity of the problems warrant a more comprehensive neurodevelopmental evaluation that is not available at the intensive level.

(b) The tertiary team level evaluation is a comprehensive neurodevelopmental evaluation for the purpose of:

1. Establishing a definitive diagnosis;
2. Providing evaluation of the infant or young child with complex neurological and developmental problems; and
3. Making specific recommendations regarding treatment and service planning.

(c) The tertiary team evaluation shall be provided by an approved team at a tertiary medical center. The team shall include:

1. A board certified developmental pediatrician; and
2. A licensed developmental psychologist.

(7) Family rights must be respected and procedural safeguards followed in providing evaluation services.

(a) Parental consent shall be obtained before conducting an evaluation or assessment.

(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs:

1. Documentation shall be obtained in the form of a notarized statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong.

2. With the presence of a professional judgement of developmental delay that determines the child to be eligible, First Steps shall provide, at the parent's request, services that do not require by statute proper physical or medical evaluations.

(d) When a family referred for evaluation is under a court order or a social services directive to enroll their child in First Steps, and the parent refuses the evaluation, the court or social service agency shall be informed.

(8) A written report shall be completed for every level of evaluation including record reviews.

(a) The evaluation report shall include:

1. Names of evaluators and discipline;
2. Name and telephone number of contact person;
3. Identifying information that includes:
 - a. Age;
 - b. Date of birth;
 - c. Date of evaluation;
 - d. Evaluator's name, affiliation, and professional degree;
 - e. Referral source; and
 - f. Reason for referral or presenting problems.

4. Tests administered or evaluation procedures utilized and purpose of instrument. No one (1) method of evaluation shall be used, but a combination of tests and methods shall be used;

5. Test results and interpretation of strength and needs of child;

6. Test results reported in standard deviation or developmental quotient when such instrumentation is required;

7. Specific recommendations for intervention relating to areas of delayed development;

8. Recommendations that address the child's holistic needs based on the evaluation;

9. A narrative description of all five (5) areas of a child's developmental status;

10. Test results that include recommendations and a narrative description shall be written in clear, concise and language that is easily understood by the family.

(b) The reports and notification of need for further evaluation shall be made available to the IFSP team in a timely manner.

(9) Child records of timely evaluations transferred from out of state tertiary centers or developmental evaluation centers may be utilized for eligibility determination;

(a) These records shall be reviewed for all required evaluation record components by the POE services coordinator;

(b) If information is unattainable, the child shall be evaluated for eligibility.

Section 2. Eligibility. (1) Children who are eligible for First Steps services include those who:

(a) Shall be ages birth through two (2); and

(b) By using appropriate diagnostic instruments and procedures, or professional judgment, are determined to have fallen significantly behind developmental norms in the following skill areas:

1. Cognitive development;
2. Communication through speech and language development;
3. Physical development including vision and hearing;
4. Social and emotional development; and
5. Adaptive skills development.

(c) Are significantly behind in developmental norms and are considered to be developmentally delayed. Developmental delay criteria are:

1. Two (2) standard deviations below the mean in one (1) skill area (developmental quotient equivalent seventy (70) percent or below); or
2. At least one and one-half (1 ½) standard deviations below the mean in two (2) skill areas.

(2) Children may be determined to be developmentally delayed by professional, clinical judgement, in the event standard deviation scores are inconclusive and evaluation reveals the child has significant atypical development or quality or pattern of development, or further diagnostic evaluation is needed to address concerns related to the five (5) areas of development. Professional clinical judgement to determine a child to be developmentally delayed shall be obtained as a second opinion from an approved evaluator.

(3) Those children who are diagnosed with physical or mental conditions which have a high probability of resulting in developmental delay. The developmental delay shall be within one (1) of the following categories:

(a) Chromosome abnormalities associated with developmental delay;

(b) Recognizable syndromes associated with developmental delay;

(c) Abnormality in central nervous system;

(d) Neurological or neuromuscular disorders associated with developmental delay;

(e) Symptomatic intrauterine infection or neonatal central nervous system infection;

(f) Sensory impairments that result in significant visual or hearing loss, or a combination of both, interfering with the ability to respond

effectively to environmental stimulus;

(g) Metabolic disease having a high likelihood of being associated with developmental delay, even with treatment;

(h) Maternal teratogen exposure at a level known to have a high risk for developmental delay;

(i) Behavioral or emotional disorders associated with extreme excesses or deficits which inhibit function;

(j) Central nervous system malignancy or trauma resulting in developmental delay.

(4) Eligibility for a premature child shall consider:

(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth;

(b) Correction for prematurity is not appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.

(c) Documentation of prematurity shall include a physician, nurse practitioner report of gestational age and a brief medical history.

(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general funds in the Department for Public Health, and \$5,004,400 in the

Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program

Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for evaluations and by establishing the definition of eligibility.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

908 KAR 2:130E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the requirements for assessment and individualized family service planning. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 2:130E. Kentucky Early Intervention Program assessment and service planning.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of assessment and the Individualized Family Service Plans used in First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health/Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Assessment. (1) Assessment shall be the ongoing procedure used by qualified personnel throughout the period of a child's eligibility to identify:

- (a) The child's unique strengths and needs;
- (b) The services appropriate to meet those needs;
- (c) The family's resources, priorities and concerns which shall be:
 - 1. Voluntary on the part of the family;
 - 2. Family-directed; and
 - 3. Based on information provided by the family through personal interview; and

(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their child; (2) Every child determined eligible by established risk shall have an assessment in all five (5) areas of development:

- (a) Within the first forty-five (45) days; or
- (b) If assessment does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented;
- (3) Information gathered in the assessment shall be used to develop the individualized family service plan (IFSP);
- (4) Every child enrolled in First Steps shall receive assessment as an integral part of service delivery throughout the period of the child's enrollment in the program;
- (5) Prior to the annual review of the IFSP an assessment shall be performed and a report provided to the IFSP team.

Section 2. Individualized Family Service Plan. (1) The following principles shall be adhered to in the development and implementation of IFSP.

- (a) Infants and toddlers are uniquely dependent on their families for their survival and nurturance. This dependence necessitates a family-centered approach to early intervention;
- (b) The diversity of family patterns and structures. Each family has its own structure, roles, values, beliefs, and coping styles. Respect for and acceptance of this diversity is a cornerstone of family-centered early intervention;
- (c) Early intervention systems and strategies shall honor the racial, ethnic, cultural, and socioeconomic diversity of families;
- (d) Respect for family autonomy, independence, and decision making means that families must be able to choose the level and nature of early intervention's involvement in their lives;
- (e) Family and professional collaboration and partnerships are the keys to family-centered early intervention and to successful implementation of the IFSP process;
- (f) No one (1) agency or discipline can meet the diverse and

complex needs of infants and toddlers with special needs and their families. Therefore, a team approach to planning and implementing the IFSP is necessary;

(g) An enabling approach to working with families requires that professionals reexamine their traditional roles and practices and develop new practices when necessary that promote mutual respect and partnerships;

(h) First Steps services shall be flexible, accessible and responsive to family-identified needs;

(i) First Steps services shall be provided according to the normalization principle that families should have access to services provided in as normal a fashion and environment as possible and that promote the integration of the child and family within the community;

(2) For a child that has been evaluated for the first time and determined eligible, a meeting to develop the initial IFSP shall:

(a) Be conducted within forty-five (45) days after the receipt of the referral; or

(b) If the IFSP does not occur within forty-five (45) days due to illness of the child or a request by the parent:

1. The delay circumstances shall be documented; and

2. An interim IFSP be developed;

(3) A review of the IFSP for a child and the child's family shall be conducted every six (6) months, or more frequently if:

(a) The family request such a review;

(b) The child's conditions change; or

(c) The service providers change;

(4) A meeting shall be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and to revise if changes have occurred;

(5) With the approval of the family, a conference to discuss the possible transition of the child shall be conducted at least ninety (90) days before the child's third birthday and shall include:

(a) The family;

(b) A representative of the local public school, if school services are being considered;

(c) A representative of the First Steps Program;

(d) Others identified by the family.

(6) The IFSP shall include:

(a) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes:

a. Vision;

b. Hearing;

c. Fine and gross motor skills; and

d. Health status and immunization of the child;

2. Cognitive development that include skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;

4. Social or emotional development that include skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. This includes:

a. Interactions with peers and adults;

b. Play skills;

c. Self-concept development; and

d. Bonding with family members.

5. Adaptive development that includes self-help skills necessary for independent functions, that include:

a. Self-feeding;

b. Toileting; and

c. Dressing and grooming;

(b) Performance levels to determine strengths which can be used when planning instructional strategies to teach skills;

(c) A description of:

1. Underlying factors that may affect the child's development;

2. What motivates the child, as determined on the basis of observation, child interaction and parent report;

(d) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;

(e) A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome statements shall:

1. Be functionally stated;

2. Be representative of the family's own priorities;

3. Fit naturally into the family's routines or schedules;

4. Reflect the use of the family's own resources and social support network;

(f) The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Services shall:

1. Be stated in frequency, intensity, duration, location and method of delivering services; and in the payment arrangements, if any;

2. Unless prior authorized based on individualized needs of the child, the frequency and intensity for therapeutic intervention for each child shall fall within the standards of:

a. Not exceeding three (3) hours per discipline per week for the following disciplines:

(i) Audiologist;

(ii) Family therapist;

(iii) Nurse;

(iv) LPN;

(v) Health aide;

(vi) Nutritionist;

(vii) Dietician;

(viii) Occupational therapist;

(ix) Orientation and mobility specialist;

(x) Physical therapist;

(xi) Physical therapist assistant;

(xii) Psychologist;

(xiii) Speech language pathologist;

(xiv) Speech language pathologist;

(xv) Licensed social worker.

b. Not exceeding five (5) hours per discipline per week for the following:

(i) Developmental interventionist;

(ii) Developmental associate;

(iii) Developmental assistant.

3. To the maximum extent appropriate early intervention services shall be provided in natural environments, including the home and community settings, in which children without disabilities participate;

(g) The projected dates for initiation of the services, and the anticipated duration of those services;

(h) Other services, such as medical services, housing for family, that the child needs, but that are not required under early intervention and the funding sources to be used for those services or the steps that will be taken to secure those services through public or private resources;

(i) The name of the service coordinator from the profession most immediately relevant to the child's or family's needs who will be responsible for the implementation of the IFSP and coordination with other agencies and persons;

(j) The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate;

1. With approval of the family, a transition conference shall occur at least ninety (90) days prior to the child's third birthday;

2. The transition conference shall involve staff from the First Steps Program, the primary service coordinator, the family, and staff from the local public educational agency or other agencies per family

request;

3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. This meeting shall be chaired by the primary service coordinator;

(7) Families shall be encouraged to discuss their child's activities, strengths, likes and dislikes, exhibited at home;

(8) The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits;

(9) Technical jargon shall be avoided;

(10) Every attempt shall be made to explain the child assessment process by using language the family uses and understands;

(11) It shall be remembered that families can agree, disagree, or refute the assessment information and it shall be modified based on family desires and wishes, as appropriate;

(12) The family's interpretation and perception of the assessment results shall be ascertained;

(13) The IFSP shall be reviewed at least every six (6) months or more frequently as determined appropriate by the family or a professional working with the child;

(14) A meeting shall be conducted on an annual basis to evaluate the IFSP and to revise as appropriate.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general

funds in the Department for Public Health, and \$5,004,400 in the Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through

application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for assessment and service planning.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

908 KAR 2:140E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the requirements for primary service coordination. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 2:140E. Kentucky Early Intervention Program primary service coordination.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of primary service coordination as it relates to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health/Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Primary Service Coordination. (1) The primary service coordinator shall coordinate and assist in child find efforts with the local POE.

(2) The primary service coordinator shall make referrals to the POE within forty-eight (48) hours upon identification of a child that may be eligible for First Steps services. Referral shall be made after discussing the benefits of early intervention with the family and acquiring verbal permission to make the referral.

(3) The primary service coordinator shall utilize the image consistency kit developed by the interagency coordinating council public awareness committee for public awareness activities and materials.

(4) The primary service coordinator shall serve as the single point of contact in helping families obtain the services and assistance they need.

(5) The primary service coordinator shall have a caseload of:

(a) Up to ten (10), with a maximum of fifteen (15) if several children will soon be turning three (3) years of age, if he is providing other First Steps services to those children and families or has a caseload in another program;

(b) Up to forty (40), with a maximum of fifty (50) if several children will soon be turning three (3) years of age, if he is not providing any other First Steps services, or is not carrying a caseload in another program.

(6) The primary service coordinator shall:

(a) Attend the First Steps IFSP Phase I training within three (3) months of facilitating, coordinating, or implementing any IFSP's, and attend IFSP Phase II and communicating training with families within six (6) months of becoming a primary service coordinator;

(b) Attend the initial IFSP meeting, if identified as primary service coordinator choice or if invited as a potential option for primary service coordinator, and help the POE facilitate that plan. The POE shall:

1. Set the date for the initial IFSP meeting and invite the potential primary service coordinator and other identified team members;

2. Send the following information to the potential primary service coordinator prior to the initial IFSP with parental permission:

a. Initial referral information;

b. Developmental and social history;

c. Any available evaluation or assessment reports;

(c) Notify all the IFSP team members, in writing, of the upcoming IFSP or review date and location no less than thirty (30) calendar days prior to IFSP or review date;

(d) Facilitate the annual IFSP or six (6) hs reviews. This includes:

1. Documenting outcomes that have been achieved, as well as,

documenting those that have not been achieved;

2. Assisting families in identifying new outcomes, the service providers, frequency and location of all services; and

3. Resolving any conflicts during the IFSP or review by having the team come to consensus on any issue where differences occur;

(e) Refer the family to appropriate agencies for services identified on the IFSP and coordinating those services;

(f) Send copies of the initial and subsequent IFSP reviews to the other team members within ten (10) working days of the IFSP meeting;

(g) Send copies of the IFSP to those persons identified by the family as needing copies, as well as recommending to the family that a copy should be sent to the child's primary physician;

(h) Notify the POE of any changes in the child's or family status and new IFSP services within five (5) working days of changes on the IFSP;

(i) Facilitate the development of a transition plan.

(7) The primary service coordinator shall inform and assist the family of their rights and procedural safeguards by:

(a) Summarizing the family rights handbook any time the family requests;

(b) Familiarizing themselves with the procedural safeguards and due process rules;

(c) Ensuring that all materials are given to the family in a format they can understand in their native language; and

(d) Assisting the family, at their request, with resolving conflicts among service providers.

(8) The primary service coordinator shall assist the family in identifying available service providers by:

(a) Assisting the POE in maintaining a current directory of available First Steps service providers;

(b) Keeping current on all available services in the district, including recent rules regarding funding sources;

(c) Having available to the families a list of all eligible First Steps service providers in each district. The family may choose a service outside the First Steps approved provider list, however, the primary service coordinator's responsibility to the family is to let them know that the provider is not approved through First Steps and may result in a cost to the family; and

(d) Assisting the POE in establishing new service providers by consistently educating the public on the benefits of early identification and intervention.

(9) The primary service coordinator shall ensure that service coordination is available to their families at all times and at the family's request.

(10) The primary service coordinator shall contact the child's family at a minimum of one (1) time a month to discuss service coordination needs.

(11) The primary service coordinator shall give the family their address and phone number and any other information that may be helpful, in the event they would need to contact the primary service coordinator.

(12) The primary service coordinator shall identify to the family and to the POE a back-up service coordinator for the family to call in the event the primary service coordinator will be gone over ten (10) consecutive working days.

(13) If the primary service coordinator can no longer serve in the role of primary service coordinator due to a resignation or unexpected reason the primary service coordinator shall:

(a) If there is at least one (1) week's time notify, in writing, the POE in each district, the family, and service providers and facilitate the identification of a new primary service coordinator;

(b) If there is less than one (1) week's time, the primary service coordinator shall contact the POE in their district immediately. The POE shall contact the family to assist them in identifying a new primary service coordinator. The new primary service coordinator shall notify the other service providers that he is the new primary

service coordinator.

(14) The primary service coordinator shall send to the POE all completed IFSPs, changes, and updates, which includes the transition plan, no later than five (5) working days after the meeting has been held.

(15) In the event there is no primary service coordinator, or the family refuses service coordination, the POE shall coordinate and facilitate the IFSP which includes the transition plan.

(16) The primary service coordinator shall maintain the child's record to ensure that changes are accurately documented. The minimum record to be maintained by the primary service coordinator shall include:

(a) Initial referral information;

(b) Developmental and social history;

(c) All available evaluation reports;

(d) All assessment reports;

(e) All IFSP's;

(f) All primary service coordinator notes;

(g) All correspondence to the family and other service providers;

(h) The transition plan; and

(i) All billing information.

(17) The primary service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record. This documentation shall include a note which consists of:

1. The date of contact;

2. Amount of time spent;

3. Reason for the contact;

4. Type of contact whether by telephone or face-to-face;

5. Result of contact;

6. Plan for further action; and

7. Signature of person making contact.

(18) Primary service coordinator notes shall also include all contacts attempted but not made, and reasons why services were not delivered in a timely manner.

(19) The primary service coordinator shall notify the POE of all changes in the status of the child or family within five (5) working days of the changes.

(20) The primary service coordinator shall encourage the family to access all services available to them while enrolled in First Steps.

(21) If the family wants to voluntarily terminate a service or all services, the primary service coordinator shall:

(a) Document in the record which services are ending and the date of termination;

(b) Send a follow-up letter to the family which includes when and what services are ending, within seven (7) working days after notice from the family of their choice to end services.

(22) If the family is absent from a service with no prior notice for at least three (3) consecutive visits, the service provider shall notify the primary service coordinator within seven (7) working days after last absence. Then the primary service coordinator shall:

(a) Document the service provider's contact and try to make contact to discuss the circumstances. If contact is made send a letter within seven (7) working days to the providers the result of the discussion;

(b) If no contact is made, send the family a letter within seven (7) working days requesting direction as to the choice of the family in continuation of services and stating that the services will cease until a choice is made by the family;

(c) Notify the service providers whose services are changing, in writing, when services are terminated and the date of termination.

(23) The primary service coordinator shall be responsible for securing any release of information necessary to send or secure information from other service providers.

(24) The primary service coordinator shall close the child's record and send a copy of the primary service coordinator record to the referring POE within:

(a) Three (3) months after the child's third birthday, unless they state in writing that the record remain with the primary service coordinator due to continued service coordination services by the primary service coordinator after the child reaches age three (3). A copy of the written request from the family shall be sent to the POE;

(b) One (1) month after the child's family terminates all services and the child is no longer receiving any First Steps services.

(25) The primary service coordinator shall provide data to the cabinet upon request.

(26) The primary service coordinator shall agree to have any or all records maintained by said primary service coordinator monitored by the cabinet, or their designee.

Section 2. Assistive Technology. (1) To be eligible to access assistive technology services and devices the child shall:

(a) Be eligible for First Steps;

(b) Have need for assistive technology devices and services documented by appropriate assessment procedures; and

(c) Have need for and use of assistive technology devices and services documented in the IFSP.

(2) The Kentucky Assistive Technology Service (KATS) Network review process shall be utilized for the following:

(a) All equipment requests which exceed \$500; and

(b) All equipment that is questionable by the initial service coordinator, the primary service coordinator, or cannot be determined by the IFSP team as appropriate.

(3) All equipment request requiring review shall:

(a) Be sent to the monitoring coordinator at the KATS Network with the following information:

1. A current IFSP;

2. Assessments with recommendations;

3. Justification statement of specific devices based on needs.

4. Information regarding equipment or device request;

(b) Be reviewed by the coordinator for completeness and forwarded to a regional monitoring committee; and

(c) Complete process within ten (10) working days of receiving all information;

(4) The decision of the monitoring committee may be appealed to the state First Steps coordinator who shall:

(a) Consult with the appeal committee comprised of:

1. Director of KATS Network; and

2. Project director of First Steps Assistive Technology Program;

(b) Issue final decision.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general funds in the Department for Public Health, and \$5,004,400 in the Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

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

Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for primary service coordination.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 908 KAR 2:150E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the qualifications for personnel. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 2:150E. Kentucky Early Intervention Program personnel qualifications.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of personnel qualifications as they relate to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health/Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Personnel. (1) Qualifications for professionals or disciplines providing services in First Steps shall be:

(a) An audiologist shall have in accordance with KRS 334A.030:

1. A master's degree; and

2. A certificate and license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A family therapist shall have in accordance with KRS 335.300:

1. A master's degree; and

2. A certificate from the Kentucky Board of Certification of Marriage and Family Therapist.

(c) A developmental interventionist shall have in accordance with KRS 161.028:

1. A bachelor's degree; and

2. An interdisciplinary early childhood education certificate by Educational Professional Standards Board or working toward an interdisciplinary early childhood education certificate as demonstrated by implementing a professional development plan approved by the cabinet.

(d) A nurse shall have in accordance with KRS 314.041:

1. An associate degree or diploma from a registered program; and

2. A license from the Kentucky Board of Nursing.

(e) A nutritionist shall have in accordance with KRS 310.031:

1. A master's degree; and

2. A certificate from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionist.

(f) A dietitian shall have in accordance with KRS 310.021:

1. A bachelor's degree; and
2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionist.
- (g) An occupational therapist shall have in accordance with KRS 319A.130:
 1. A bachelor's degree; and
 2. A certificate and license from the Kentucky Occupational Therapy Board.
- (h) An orientation and mobility (O & M) specialist shall have in accordance with the Division of Special Learning Needs, Kentucky Department of Education a bachelor's degree in special education with emphasis on visual impairment and O & M. KRS 161.020.
- (i) A physician shall have in accordance with KRS 311.571:
 1. A doctor of medicine degree or doctor of osteopathy degree; and
 2. A license from the Kentucky Board of Medical Licensure.
- (j) A physical therapist shall have in accordance with KRS 327.020:
 1. Bachelor's degree; and
 2. A license from the Kentucky Board of Physical Therapist.
- (k) A psychologist shall have in accordance with KRS 319.032:
 1. A doctoral degree; and
 2. A license from Kentucky Board of Examiners of Psychology.
- (l) A certified psychologist with autonomous functioning or psychological associate shall have in accordance with KRS 319.056-064:
 1. A master's degree; and
 2. A certificate from the Kentucky Board of Examiners of Psychology.
- (m) A social worker shall have in accordance with KRS 335.090:
 1. A bachelor's degree; and
 2. A license from the State Board of Examiners of Social Work of Kentucky.
- (n) A speech-language pathologist shall have in accordance with KRS 334A.050:
 1. A master's degree; and
 2. A certificate and license from the Kentucky Board of Speech-Language Pathology and Audiology.
- (o) A teacher of children who are deaf and hard of hearing shall have in accordance with KRS 161.030:
 1. A bachelor's degree; and
 2. A provisional certificate for teaching the deaf and hard of hearing, K-12 issued by the Educational Professional Standards Board.
- (p) A teacher of the visually impaired shall have in accordance with KRS 161.020-030:
 1. A bachelor's degree; and
 2. A certificate for teaching of the visually impaired, K-12 issued by the Education Professional Standards Board.
- (2) The qualification for paraprofessionals providing early interventions services shall be:
 - (a) A developmental associate shall have:
 1. An associate degree; or
 2. A child development associate degree; or
 3. A postsecondary vocational education diploma in child development or child care.
 - (b) A developmental assistant shall have:
 1. A high school diploma; or
 2. A GED.
 - (c) A certified occupational therapy assistant shall have in accordance with KRS 319A.110:
 1. An OTA degree; and
 2. A certificate and license from the Kentucky Occupational Therapy Board.
 - (d) A physical therapy assistant shall have in accordance with KRS 327.040(12):
 1. An associate degree in physical therapy assistance; and

2. A license from the Kentucky Board of Physical Therapy.
- (e) A speech-language pathology assistant shall have in accordance with KRS 334A.030:
 1. A bachelor's degree; and
 2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.
- (f) A licensed practical nurse shall have in accordance with KRS 314.051:
 1. A high school diploma or a GED;
 2. Have completed a state approved LPN education program; and
 3. A license from the Kentucky Board of Nursing.
- (3) The qualifications for recognized service positions providing services in First Steps shall be:
 - (a) An initial service coordinator shall:
 1. Meet minimum highest entry-level requirement for one (1) of the professions delineated in this administrative regulation; or
 2. Be approved by the cabinet and have the equivalency of two (2) years' experience in working with children in a position in which the following skills and competencies have been demonstrated:
 - a. Communication skills in interviewing, negotiating and mediating, and providing informal support;
 - b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;
 - c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and
 - d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.
 - (b) A primary service coordinator shall:
 1. Meet minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; or
 2. Meet requirements for one (1) of the paraprofessionals delineated in this administrative regulation; or
 3. Be approved by the cabinet and have the equivalency of two (2) years' experience in working with children in a position in which the following skills and competencies have been demonstrated:
 - a. Communication skills in interviewing, negotiating and mediating, and providing informal support;
 - b. Problem-solving: finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;
 - c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and
 - d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.
 - (c) A primary developmental evaluator shall:
 1. Meet minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; or:
 - a. Have a bachelor's degree in a related field;
 - b. Have two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development; and
 - c. Be approved by the cabinet.
 2. Have had one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice, or completes a mentorship during the first year of providing services in First Steps as approved by the cabinet.
 - (d) An assistive technology specialists shall:
 1. Meet minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; 2. Have extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

3. Meet the qualifications in subparagraph 2 of this paragraph and be employed by an agency that currently provides assistive technology services in First Steps, and be approved by the cabinet.

(e) A respite provider shall:

1. Meet all license, regulations, and other requirements applicable to the setting in which respite is provided;
2. Be approved by the individualized family service planning team.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general funds in the Department for Public Health, and \$5,004,400 in the Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through

the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing qualifications for personnel.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 908 KAR 2:160E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the requirements for the covered services. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 2:160E. Kentucky Early Intervention Program covered services.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of covered services under First Steps, Kentucky's Early Intervention Program.

Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health/Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Covered Services. (1) Services are covered when included and authorized in the individual's IFSP developed by an IFSP team which shall include, at least, the family and two (2) disciplines:

(a) One (1) discipline shall be a licensed medical professional; and

(b) Two (2) of the disciplines shall be from separate agencies or represent different approved providers.

(2) Services covered are:

(a) Service coordination as provided in accordance with 908 KAR 2:110 and 908 KAR 2:140.

1. A child shall have only one (1) designated service coordinator at a given time;

2. Service coordination shall be provided by those identified in 908 KAR 2:150.

(b) Primary evaluation as provided in accordance with 908 KAR 2:120.

1. Primary evaluation shall be considered the first level of a trilevel system of evaluation;

2. Primary evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150.

(c) Intensive team evaluation as provided in accordance with 908 KAR 2:120.

1. Intensive team evaluation shall be considered the second level of a trilevel system of evaluation;

2. Intensive team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150.

(d) Tertiary team evaluation as provided in accordance with 908 KAR 2:120.

1. Tertiary team evaluation shall be considered the third level of evaluation in a trilevel system of evaluation;

2. Tertiary team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150.

(e) Service assessment as provided in accordance with 908 KAR 2:130.

(f) Therapeutic intervention.

1. Therapeutic intervention includes three (3) types of service:

a. Individual home or community services which includes intervention provided to the child by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes);

b. Individual office or center-based service which includes intervention provided by First Steps qualified professionals to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes);

c. Group intervention which includes the provision of early intervention services by First Steps qualified personnel to an eligible child in a group at an early intervention professional's site, office, center, home or other community based setting where children under three (3) years of age are typically found. The group may also include children without disabilities.

2. Disciplines providing therapeutic intervention shall be qualified in accordance with 908 KAR 2:150, and shall include the following:

a. An audiologist;

b. A family therapist;

c. A developmental interventionist;

d. A developmental associate;

e. A developmental assistant;

- f. A nurse;
- g. An LPN;
- h. A health aide;
- i. A nutritionist;
- j. A dietician;
- k. An occupational therapist;
- l. An orientation and mobility specialist;
- m. A physical therapist;
- n. A physical therapist assistant;
- o. A psychologist;
- p. A speech language pathologist;
- q. A speech language pathologist assistant;
- r. A licensed social worker.

(g) Integrated disciplines center-based service is an intervention provided by an agency who offers services by at least three (3) of the following disciplines who qualify in accordance with 908 KAR 2:150.

- 1. Developmental interventionist;
- 2. Developmental interventionist associate;
- 3. Occupational therapist;
- 4. Physical therapist; or
- 5. Speech therapist.

(h) Collateral service is the provision of consultation directed toward the needs of the child with parents, legal guardian, other persons in a position of custodial control, developmental professionals, or other clinicians responsible for the health of the child in accordance with the IFSP. These services shall include:

- 1. Professionals attending the IFSP meeting;
- 2. Transdisciplinary consultation; and
- 3. Consultation with the child's physician.

(i) Assistive technology in accordance with 908 KAR 2:100 and 908 KAR 2:140.

(3) Rates for covered services are negotiated rates based on reasonable and customary rates for same services or comparable services provided in the community.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically

ly increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general funds in the Department for Public Health, and \$5,004,400 in the Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
 (10) Any additional information or comments: None
 (11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.
2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for covered services.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No
2. State what unit, part or division of local government this administrative regulation will affect.
3. State the aspect or service of local government to which this administrative regulation relates.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
 Revenues (+/-):
 Expenditures (+/-):
 Other Explanation:

STATEMENT OF EMERGENCY 908 KAR 2:170E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the requirements for the administrative appeal process. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to

prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation

908 KAR 2:170E. Notice of action and administrative appeal.

RELATES TO: KRS 200.650-676, 20 USC 1471-1485
 STATUTORY AUTHORITY: KRS Chapter 13B, 200.650-676, EO 96-862

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Cabinet for Health Services, Department for Mental Health/Mental Retardation administers the early childhood intervention program for infants and toddlers. Through this program services are made available to infants and toddlers with special health care needs. The function of this administrative regulation is to establish an administrative appeal process for parents who wish to appeal a decision of the agency relating to the identification, evaluation or provision of service to a child through the program. Executive Order 96-862, effective, July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health/Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Notice of provider action shall be provided the parent or guardian which shall include at least the following:

- (1) A description of action by the provider with explanation, including a description of any options the provider considered and the reasons why those options were rejected.
- (2) A description of each evaluation procedure, test, record report or other relevant factor the provider used as the basis for the action;
- (3) A description of the parent or guardian's right to appeal and of the parent or guardian right to inspect provider records pertaining to the decision which is the subject of the notice of action.

Section 2. At anytime following receipt of a written notification by the provider relating to the identification, evaluation or provision of service to a child or anytime following a refusal by the provider to initiate a change in the identification, evaluation or service provided to a child, a parent or guardian may file an appeal with the Cabinet for Health Services.

Section 3. Upon receipt of an appeal, the cabinet shall issue within five (5) days a notice of hearing conforming in content to the requirements of KRS 13B.050.

Section 4. (1) An administrative hearing shall be conducted within fifteen (15) days of receipt of an appeal by an impartial hearing officer appointed by the secretary of the cabinet.

(2) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090. A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the appellant and the cabinet within ten (10) days of the administrative hearing.

(3) The recommendation of the hearing officer shall be forwarded to the secretary of the cabinet. All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision. A

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final decision on the recommendation shall be made no later than forty-five (45) days following receipt of the appeal.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general funds in the Department for Public Health, and \$5,004,400 in the Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for administrative appeal.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict

and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

908 KAR 2:180E

The Cabinet for Health Services has applied for a grant for federal funds to provide health and developmental services to infants and toddlers under federal enabling legislation. The function of this administrative regulation is to establish the requirements for mediation. This administrative regulation is promulgated on an emergency basis pursuant to KRS 13A.190 to prevent the loss of federal funds associated with the grant. An ordinary administrative regulation would not become effective in sufficient time to deliver services to eligible clients as required by the federal enabling legislation. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

PAUL E. PATTON, Governor

JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 2:180E. Kentucky Early Intervention Program mediation.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

EFFECTIVE: September 13, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement administrative regulations. This administrative regulation sets forth the provisions of mediation used in First Steps, Kentucky's Early Intervention System. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Retardation Services and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Mediation. (1) Mediation shall be adopted as an option to resolve complaints in lieu of a formal due process hearing;

(2) Mediation shall be voluntary and freely agreed to by both

parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;

(3) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;

(4) The time table for the mediation process shall be:

(a) Within five (5) working days after a request for mediation is made to the cabinet, the appointment of a mediator shall be made;

(b) Either party may waive the mediation and if waived the parents shall be informed by the cabinet within two (2) working days of this decision;

(c) Mediation shall be completed within thirty (30) working days of the receipt by the cabinet of the request for mediation. If resolution is not reached with thirty (30) days, parents shall again be informed of their right to a due process hearing;

(d) At any time during the mediation process, a request for a due process hearing may be initiated;

(e) Either party may request that the mediator grant a continuance. Such continuance shall be granted upon an exhibition of good cause, such as being near resolution and additional time is needed or illness. A continuance may not exceed the thirty (30) calendar day maximum for the resolution of a complaint unless the party initiating the request for mediation is agreeable to such an extension.

(5) Mediation resolutions may not conflict with state or federal laws and shall be to the satisfaction of both parties. Satisfaction shall be indicated by the signature of both parties on the written resolution;

(6) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the cabinet;

(7) Mediators shall be trained in First Steps policies and procedures.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 200 providers statewide, including: Mental Health/Mental Retardation Boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements

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for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds in the Department for Mental Health/Mental Retardation Services, \$930,700 in state general funds in the Department for Public Health, and \$5,004,400 in the Department for Medicaid to implement First Steps, Kentucky's Early Intervention System. In addition, the Cabinet for Health Services has applied for \$3,876,538 in federal funds. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

b. Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for mediation.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on September 9, 1996.

REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research
(As Amended)

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

RELATES TO: KRS 141.330, 141.335

STATUTORY AUTHORITY: KRS 131.130, 141.335 ~~[Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.335(2)

requires the cabinet to establish the form and required contents of the withholding statement to be filed pursuant to KRS 141.225(1). ~~[Under authority of]~~ KRS 141.335, this administrative regulation specifies the information that is required on employer income tax withholding statements.

Section 1. General. Employers shall ~~[must]~~ furnish to each employee, by January 31 following the close of the calendar year, the designated copies of the Withholding Statement, Revenue Form K-2 (the state portions of the combined federal and state withholding statements are also acceptable) if:

- (1) Tax has been withheld from wages, or
- (2) Tax would have been withheld if the employee had claimed no more than one (1) withholding exemption.

Section 2. Contents. (1) Revenue Form K-2 (or the state portion of the combined withholding statements) shall ~~[must]~~ contain the following information:

- (a) Employer's and employee's name and address,
- (b) Employer withholding account number,
- (c) Employee's social security number,
- (d) Total wages paid to employee,
- (e) Federal income tax withheld, and
- (f) Kentucky tax withheld.

(2)(a) Withholding statements prepared incorrectly or on unacceptable forms shall ~~[will]~~ be returned to the employer for reissuance. Commercially printed forms shall:

1. [must] ~~[must]~~ Contain a designated space for state name and for state tax; and

2. ~~[They must also]~~ Be legible and conform substantially in content and size with the official form.

(b) An employer shall ~~[must]~~ submit commercially printed substitute forms to the cabinet for written approval before they may be used.

Section 3. Interrupted and Terminated Employment. (1) If employment ends before the close of the calendar year, the designated copy of the withholding statement shall ~~[must]~~ be furnished to the employee within thirty (30) days from the last payment of wages. ~~[In the case of interrupted employment, where there is reasonable expectation on the part of both employer and employee of further employment during the calendar year, the furnishing of the statement may be deferred to the date when the expectation of further employment during the calendar year ceases to exist.]~~

(2)(a) The furnishing of a statement may be deferred:

1. If employment is interrupted; and
2. There is a reasonable expectation on the part of employer

and employee of further employment during the calendar year.

(b) The statement may be deferred to the date it is determined that further employment during the calendar year will not occur.

Section 4. Incorrect and Duplicate Statements. (1) If it ~~is~~ ~~[becomes]~~ necessary to correct a Revenue Form K-2 after it has been issued to an employee, the new statement shall ~~[must]~~ be clearly marked "Corrected by Employer."

(2) If the statement is lost or destroyed, the employer shall prepare and issue duplicate copies to the employee that are ~~[The duplicate copies must be]~~ clearly marked "Duplicate."

Section 5. Cabinet Copy. (1) Designated copies of ~~[all]~~ withholding statements issued shall ~~[must]~~ be submitted to the cabinet by each employer with Revenue Form K-3 and K-3E.

(2) An employer who issues ~~[Employers issuing]~~ more than 250 Forms K-2 annually shall ~~[must]~~ utilize an acceptable form of magnetic media filing.

(3) An employer who issues ~~[These employers issuing]~~ less than 250 Forms K-2 may ~~[are encouraged but not required to]~~ utilize magnetic media filing.

(4)(a) The cabinet shall ~~[will]~~ provide to ~~[all]~~ employers by October 31 of each year information about the types of magnetic media that shall be ~~[are]~~ acceptable to the cabinet.

(b) Acceptable magnetic media shall ~~[These will]~~ include all of the acceptable methods utilized by the Social Security Administration and the Internal Revenue Service that can be supported by the cabinet's equipment. ~~[K-3B. A list totaling the tax withheld as shown on the statements must be submitted. A large number of statements may be grouped in separate units and a list may be submitted for each unit. In such case a summary must be submitted totaling all unit lists. The statements may be submitted to the department in packages of convenient size. The packages must be identified with the name of the employer and consecutively numbered. The number of packages must be indicated immediately following the employer's name on Revenue Form K-3 or K-3B. Revenue Form K-3 and K-3B and the remittance should be filed in the usual manner. Accompanied with a statement that the withholding statements are in separate packages. The employer may request permission to submit the cabinet copy in the form of a computer listing. Computer listing requirements will be furnished upon request.]~~

Section 6. Extension. Upon application to the cabinet, the Income Tax Division shall be ~~[is]~~ authorized to grant employers an extension of time, not in excess of thirty (30) days, in which to furnish employees with the designated copy of withholding statements.

MARGARET HANDMAKER, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 11 am.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(As Amended)

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

RELATES TO: KRS 325.261, 325.270

STATUTORY AUTHORITY: KRS 325.240

ADMINISTRATIVE REGISTER - 1579

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.270 requires the board to hold examinations for candidates desiring to become certified public accountants in Kentucky. This administrative regulation governs examination subjects, grading and reexamination.

Section 1. Examination Subjects. An examination shall include questions or problems in:

- (1) Accounting and Reporting - Taxation, Managerial, and Governmental and Not-for-Profit Organizations (ARE);
- (2) Financial Accounting and Reporting [~~Business Enterprises~~] (FARE);
- (3) Auditing (AUDIT); and
- (4) Business Law & Professional Responsibilities (LPR).

Section 2. Grading and Reexamination Procedures. (1) A candidate shall pass all subjects of the examination to be considered for a certificate.

- (2) The passing score shall be seventy-five (75) on each subject.
- (3) If during one (1) examination administration a candidate receives a passing score on two (2) or more subjects and grade of fifty (50) or more on each subject not passed, he shall receive conditional credit for those subjects passed.
- (4) A ~~[conditioned]~~ candidate awarded conditional credit may add conditional credits at subsequent examinations if he receives a passing grade on one (1) of the subjects reexamined and a grade of fifty (50) or more on the subject not passed. Previously attained conditional credits shall not be affected by the failure to receive a grade of fifty (50).
- (5)(a) A candidate awarded conditional credit shall pass the subjects he failed within the next six (6) examinations following the examination at which the first conditional credit was earned.
- (b) An additional number of examinations may be granted at the discretion of the board for good cause.
- (c) 1. If a candidate fails to pass all of the examination subjects within the prescribed period, he shall be considered to have failed the examination.
2. He may make a new application as an examination ~~(first-time)~~ candidate.
- (6) At any examination, the candidate shall take all subjects for which he has not yet received a passing grade.
- (7) The failure of a candidate to submit an answer paper for any subject of an examination shall disqualify all papers submitted by him at that examination, unless the board, in its discretion, finds good cause not to disqualify the papers submitted.
- (8) A person who took the same examination given by the board in a state other than Kentucky may have conditional credits obtained in the other state accepted by the board if:
 - (a) The standards under which the conditional credits were obtained are the same as those required by this administrative regulation; and
 - (b) He meets all other standards required for approval as an examination candidate in Kentucky.

~~[Section 3. Transfer of Credit. (1) Current candidates who received conditional credit for some sections of the examination prior to May 1994 shall have the credit transferred to the new sections as follows:~~

- ~~(a) Accounting Practice to Accounting & Reporting - Taxation, Managerial, and Governmental and Not-for-Profit Organizations, (ARE);~~
- ~~(b) Theory of Accounts to Financial Accounting & Reporting - Business Enterprises, (FARE);~~
- ~~(c) Auditing to Auditing (AUDIT); and~~
- ~~(d) Business Law to Business Law & Professional Responsibilities (LPR).~~
- (2) A licensed attorney who previously obtained an exemption

~~from the business law portion of the examination may retain the exemption if he maintains his current examination candidacy.]~~

DAVID L. ANNEKEN, CPA, President
APPROVED BY AGENCY: July 10, 1996
FILED WITH LRC: July 11, 1996 at noon

GENERAL GOVERNMENT CABINET State Board of Accountancy (As Amended)

201 KAR 1:130. Examination application procedure.

RELATES TO: KRS 325.261, 325.270
STATUTORY AUTHORITY: KRS 325.240, 325.270
NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.270 requires the board to hold examinations for candidates desiring to become certified public accountants in Kentucky. KRS 325.261(1)(e) requires passage of the examination prior to a person's certification as a certified public accountant. This administrative regulation establishes the procedures to apply for admission to the Uniform Certified Public Accountant Examination, which is the examination used by the Board of Accountancy.

Section 1. Definitions. (1) "Official transcript" means an official statement from a college or university which indicates the college course work completed, degrees awarded, and the date the degree was awarded, and contains an authorizing signature or seal.

- (2) "Quarter hour" means ~~[equal to]~~ 66/100ths of a semester hour.
- (3) "Major or concentration" in accounting means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting subjects.
- (4) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.
- (5) "Accounting course" means a course that contains in the course prefix, or title, the word accounting or some variation.

Section 2. ~~[First-Time]~~ Examination Applicants. Unless the applicant is taking the CPA examination in Kentucky under the provisions of Section 8 of this administrative regulation, the applicant shall have a Kentucky street address and submit:

- (1) A completed "Application Uniform ~~[for Admission to the]~~ CPA Examination" that includes the following information:
 - (a) The applicant's name, address, daytime telephone number, date of birth, and Social Security number;
 - (b) The examination date for which the applicant is applying;
 - (c) The state of which the applicant is a legal resident;
 - (d) Whether the applicant has:
 1. Ever changed his name; and if so, a list of the prior names;
 2. Taken the CPA examination before; and if so, the date and state where it was taken;
 3. Been convicted, plead guilty or no contest to a felony or misdemeanor, other than a minor traffic violation; and if so, a copy of the judgment, sentence of conviction, and a letter of explanation shall be attached to the application;
 4. Been denied admission to the Uniform CPA Examination; and if so, a letter explaining the reason, date, and jurisdiction of denial shall be attached to the application; and
 5. Had disciplinary action taken against his CPA certificate or other professional license; and if so, a letter indicating the jurisdiction, date of action, and an explanation of the circumstances shall be attached to the application;

(e) If the applicant needs modifications to the exam administration because of a disability that limits one (1) or more of his major life activities (e.g., walking, hearing, speaking, seeing, reading, or writing), a description of the disability and needed modifications from the applicant and written documentation from an appropriate health care professional supporting the requested accommodation:

1. The documentation shall include a diagnosis of the disability and a specific recommendation and justification for the requested accommodation.

2. The board shall not be responsible for the costs of obtaining the diagnosis and recommendation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant;

(f) Whether the education of the applicant is complete or in progress;

(g) The names of the colleges from which a transcript shall be attached to the application;

(h) The signature of the applicant certifying that:

1. The information in the application is true;

2. The applicant:

a. Is applying for admission to the Uniform CPA Examination in conformity with Kentucky law;

b. Has submitted the required application, attachments, and fee;

c. Has read and agrees to abide by the applicable laws and administrative regulations; and

d. Understands that, in the event the examination papers are lost or the examination is not held, the applicant's claim shall be limited to the examination fees that the applicant paid to the board; and

(i) A certification by a notary public that the application was subscribed and sworn to before the notary. [has been signed and acknowledged before a notary public;]

(2) An official transcript which evidences completion of the educational requirements specified in KRS 325.261 which includes a major or concentration in accounting as defined in this administrative regulation.

(a) The educational requirements shall have been completed at a:

1. [(a)] College or university within[:

1. Within] the United States whose [:-and

2. Whose] course credits are accorded full recognition by a Kentucky state-funded four (4) year institution of higher education; or

2. [(b)-A] Postsecondary educational institution outside [:-

1. Outside] the United States whose [:-and

2. Whose] course credits are certified by the Foreign Academics Credentialing Service (FACS) or another credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc.;

(b) [(e)] The certification required by paragraph (a)2 [(b)] of this subsection shall state that the:

1. Foreign degree is equivalent to a baccalaureate degree earned in an accredited United States college or university; and

2. Applicant had a major or concentration in accounting; and

(c) A copy of the "Request for Advisory Evaluation of Foreign Credentials" form that FACS requires an applicant to use to request certification from its service may be obtained from

[(d) A FACS application is incorporated by reference and may be inspected or obtained at] the board office, 332 West Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday; and

(3) A nonrefundable fee of \$140, in the form of a check or money order made payable to the "Kentucky State Board of Accountancy".

Section 3. (1) [An] Applications and all required documents to sit for the May examination shall be received in [filed with] the boards

office [or postmarked] no later than March 1st.

(2) Applications and all required documents to sit for the November examination shall be received in [filed with] the board's office [or postmarked] no later than September 1st.

(3) If an applicant wants to receive an acknowledgment from the board when it receives the application and required documents, the applicant may:

(a) Enclose a self-addressed stamped postcard with his application; or

(b) Obtain a receipt of mailing from the postal service.

Section 4. Provisional Examination Applicants. (1) A person currently enrolled in courses to complete [which, if completed and documented prior to the time periods set forth below, shall [who expects to] satisfy] the educational requirements of KRS 325.261 and this administrative regulation may [within ninety (90) days following an administration of the examination shall be eligible to] apply [submit an application] for the examination as a provisional candidate if he:

(a) Submits the application, attachments, and nonrefundable fee as required by [(1)-Satisfies the requirements of] Sections 2 and 3 of this administrative regulation;

(b) [(2)] Submits an official transcript of college courses completed at an institution meeting the requirements of Section 2(2) of this administrative regulation;

(c) [(3)] [(a)] Submits [an official statement from his college or university stating that the applicant will complete the course of study required by KRS 325.261 and this administrative regulation within ninety days following the examination;

(b) The statement shall include] a list of all course titles, numbers and credit hours in which the applicant is currently enrolled; and

(d) [(4)] Agrees to submit [(e) Submits] a final official transcript showing completion of all educational requirements no later than June 15 following the administration of the May examination and January 15 following the administration of the November examination. [within ninety (90) days following the administration of the examination.

(d) [(4)] [If a provisional examination candidate fails to submit the information specified in this section, the results of his examination shall not be released and for any future examinations he shall apply as a new examination [first time] candidate.]

(2)(a) If a provisional examination candidate sits for the examination and fails to submit the final official transcript required by subsection (1)(d) of this section, the results of his examination shall not be released and, for future examinations, he shall apply as a new examination candidate;

(b) If a provisional examination candidate does not sit for the examination and fails to submit the final official transcript required by subsection (1)(d) of this section, he shall apply as a new examination candidate for future examinations.

Section 5. (1) Upon approval by the board of the application, the applicant shall be considered an examination candidate and a confirmation letter shall be sent to the applicant from the board stating that his application to take the examination has been approved.

(2) The applicant shall immediately notify the board of a change in his mailing address.

Section 6. Reexamination Application. [Letter of Intent to Attend the Examination.] (1) The board shall mail a reexamination application [letter of intent] with information about the dates, times and location of the next scheduled examination to examination candidates who fail to pass the examination and [conditioned] candidates awarded conditional credit. The reexamination application [letter of intent] shall be mailed to the most recent address provided by the candidate. The board shall not be responsible if the reexamination application is not delivered by the postal service.

(2)(a) To sit for an examination, the candidate shall return the

reexamination application [letter of intent] to the board. The reexamination application shall contain the following information:

1. The applicant's name, address, daytime telephone number, date of birth, and Social Security number;

2. Whether the applicant shall sit for the next scheduled examination; and if so, where the applicant shall take the examination;

3. A statement that the fee and all applicable materials are attached;

4. If the applicant needs modifications to the exam administration because of a disability, whether the required information is on file or is attached to the reexamination application;

5. What sections of the examination the applicant shall take; and

6. The applicant's signature. [stating if [whether or not] he shall [intends to] sit for the next scheduled examination.]

(b) The reexamination application [letter of intent] shall be received in [postmarked or filed with] the board's office no later than:

1. March 1 [46], for the May examination; and
2. September 1 [46], for the November examination.

(3)(a) [Except as provided in paragraph (b) of this subsection,] The candidate shall return the completed reexamination application [letter of intent] with the reexamination fee.

(b) [A candidate who is taking the examination for the first time shall submit the examination fee with his application.]

(c) [The reexamination fee shall be thirty-five (35) dollars per subject.]

(d) [The reexamination fee shall be paid by one (1) check or money order made payable to the Kentucky State Board of Accountancy.]

(4) A reexamination candidate who fails to comply with the requirements of this section shall not be permitted to sit for reexamination. [(a) A conditional examination candidate who fails to file a letter of intent with regard to the examination shall:

1. Remain a conditional examination candidate;
2. Not be permitted to sit for the examination; and
3. Forfeit deferred examination fees.

(b) The examination, for which the conditional examination candidate fails to file a letter of intent, shall count as one (1) of the six (6) additional sittings.

(5)(a) A nonconditional candidate who fails to comply with the deadlines specified in this administrative regulation shall:

1. Not be permitted to sit for the examination;
2. Forfeit fees paid; and
3. Have his application cancelled.

(b) If an application has been cancelled under the provisions of this section, a subsequent application shall be filed as a first-time application under Section 2 of this administrative regulation.]

(5) The reexamination application shall not be accepted from a person who has failed to sit for two (2) consecutive examination administrations. This person shall be [is] allowed to file a new examination application. This requirement shall not apply to a person who has received conditional credit as described in 201 KAR 1:045.

(6) A confirmation letter shall be sent to the applicant from the board stating that his application to take the reexamination has been approved.

(7) The applicant shall immediately notify the board of a change in his mailing address.

Section 7. [(1) Except as provided by subsections (2) and (3) of this section, an] Examination and reexamination fees shall not be deferred to another [the next scheduled] examination [if:

(a) The candidate has filed a:

1. Letter of intent within the period specified in Section 5 of this administrative regulation; and

2. Written request to defer the fee; and

(b) No later than five (5) days following the examination, the

request specified in paragraph (a)(2) of this section has been:

1. Received by the board; or

2. Postmarked.

(2) A candidate shall be granted one (1) deferral.

(3) A candidate shall not be entitled to the refund of a deferred fee, if he fails to attend the next scheduled examination after deferral].

Section 8. (1) A candidate who does not have a Kentucky street address may apply to take the examination in Kentucky if the state board of accountancy from his state requests that the candidate be proctored in Kentucky. The board shall [The state board of accountancy of another state may request that one (1) of their candidates be proctored in Kentucky. The board may] grant the request if a seat is available and the requesting board:

(a) Agrees to be responsible for the costs incurred by the board for all accommodations required by the Americans with Disabilities Act; and

(b) Submits [A person, who is registered with another state to sit for the Uniform CPA Examination, may request to sit for the examination in Kentucky if:

(a) A seat is available; and

(b) He has submitted] the items specified in subsection (2) of this section on or before:

1. March 15, for the May examination; or
2. September 15, for the November examination.

(2) Items required by subsection (1) of this section are:

(a) A written request from the other state Board of Accountancy [of the state in which he intends to be licensed]; and

(b) A check or money order in the amount of \$100 made payable to the Kentucky State Board of Accountancy[; and

(c) The letter of intent required by Section 6 of this administrative regulation].

Section 9. Candidates shall display during the examination a state driver's license or a picture identification card issued by a state motor vehicle licensing agency or a passport.

(1) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(2) Failure to bring this document to the examination shall prohibit the candidate from sitting for the examination.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application Uniform CPA Examination", 1996, Kentucky Board of Accountancy; and

(b) "Uniform CPA Examination Reexamination Application", 1996, Kentucky Board of Accountancy. ["Application Uniform [for Admission to the] CPA Examination" (1996) and "Reexamination Application (1996) are [1994] is] incorporated by reference.]

(2) These [This] documents may be inspected, copied, or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

DAVID L. ANNEKEN, CPA, President

APPROVED BY AGENCY: July 10, 1996

FILED WITH LRC: July 11, 1996 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended)

201 KAR 8:430. Unprofessional conduct.

RELATES TO: KRS 313.130(3)

STATUTORY AUTHORITY: KRS 313.140, 313.220

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220 authorizes the board to promulgate administrative regulations regulating the practice of dentistry and the use of dental auxiliary personnel. This administrative regulation establishes definitions of unprofessional conduct for which disciplinary action may be taken against a licensee by the Board of Dentistry.

Section 1. "Informed consent" means that, except in an emergency situation where consent of the patient cannot reasonably be obtained before the provision of dental services, a patient has:

- (1) An understanding of the:
 - (a) Procedure and medically or dentally acceptable alternative procedures or treatments; and
 - (b) Substantial risks and hazards inherent in the proposed treatment or procedures; and
- (2) Consented to the provision of dental services.

Section 2. A licensee shall be guilty of "unprofessional conduct" if the licensee:

- (1) Has been convicted of one (1) of the following offenses involving a patient, employee, or coworker of the licensee:
 - (a) A misdemeanor offense under KRS Chapter 510; or
 - (b) A felony offense under KRS Chapter 510, or 530.064 or 531.310;
- (2) Has been determined by the board to have had sexual contact, as defined in KRS 510.010(7), without the consent of both parties, with:
 - (a) A patient while the patient was under the care of the licensee; or
 - (b) With an employee or coworker of the licensee;
- (3) Has been determined by the board to have sexually harassed a patient, employee, or co-worker of the licensee;
- (4) Fails to keep written dental records and medical history records that justify the course of treatment of the patient, including:
 - (a) Patient histories;
 - (b) Examination results; and
 - (c) X-rays, if taken;
- (5) Fails to provide and maintain reasonable sanitary facilities and conditions;
- (6) Fails to provide adequate radiation safeguards;
- (7) Is guilty of incompetence or negligence by a failure to meet the minimum standards of performance in diagnosis and treatment when measured against the degree of care and skill which is expected of a reasonably competent dentist or dental hygienist:
 - (a) Acting in the same or similar circumstances; and
 - (b) Of the same class to which the licensee belongs;
- (8) Provides or recommends dental services without justification;
- (9) Commits a dishonest act in the provision of dental services;
- (10) Practices beyond the scope of the license;
- (11) Presigns blank prescription or laboratory work-order forms;
- (12) Administers anesthesia to patients in any manner which violates an administrative regulation promulgated by the board;
- (13) Fails to report to the board any injuries to patients as required by 201 KAR 8:390, Section 6;
- (14) Violates KRS 422.317;
- (15) Performs professional services without first obtaining the informed consent of the patient;
- (16) Prescribes, procures, dispenses, administers, mixes, or otherwise prepares a legend drug, including a controlled substance:
 - (a) Other than in the course of the professional practice of

the dentist:

- (b) In inappropriate amounts or quantities not in the best interest of a patient; or
- (c) To himself if the drug is listed in Schedule I, II, III, or IV, of KRS Chapter 218A;
- (17) Presents false or misleading testimony or statements to the board or the board's investigator or employees during:
 - (a) An investigation or hearing of the board; or
 - (b) A civil or criminal proceeding relating to the licensee's or another licensee's practice of dentistry or dental hygiene;
- (18) Violates:
 - (a) A section of KRS Chapter 313;
 - (b) An administrative regulation promulgated by the Board of Dentistry; or
 - (c) A lawful order of the board;
- (19) Conspires with another person to commit, or commits, an act, that:
 - (a) Would tend to coerce, intimidate, or preclude a patient or witness to testify against a licensee in a disciplinary hearing; or
 - (b) Retaliates against a person who testifies or cooperates with the board during an investigation of a licensee under KRS Chapter 313; or
- (20) Commits an act relating to the practice of dentistry that creates a danger to the public, patients, or employees of the licensee, whether or not the act constitutes a crime.

Section 3. If a licensee has been disciplined by the licensing authority of another jurisdiction, the board shall determine:

- (1) Whether or not the action or behavior that resulted in discipline constitutes unprofessional conduct in Kentucky; and
- (2) The action, if any, that should be taken against the licensee. ["Unprofessional conduct" means:
 - (1) Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country. For purposes of this section, the surrender of a license under threat of revocation shall be considered the same as if it had been revoked.
 - (2) [Section 2.] Committing any act which would constitute sexual battery, as defined in KRS Chapter 500, upon a patient or employee; intentionally touching a sexual organ of a patient; sexually harassing any patient or employee; or engaging in any other lewd or immoral conduct in connection with the provision of dental services.
 - (3) [Section 3. (1)] Failing to keep written dental records and medical history records justifying the course of treatment of [or] the patient including, but not limited to, patient histories, examination results, and X rays if taken.
 - (4) [(2)] Failure to provide and maintain reasonable sanitary facilities and conditions.
 - (5) [(3)] Failure to provide adequate radiation safeguards.
 - (6) [(4)] Being guilty of incompetence or negligence by failure to meet the minimum standards of performance in diagnosis and treatment when measured against that degree of care and skill which is expected of a reasonably competent dentist or dental hygienist acting in the same or similar circumstances, and belonging to the same class to which the accused dental practitioner belongs.
 - (7) [(5)] Practicing beyond the scope of dentistry.
 - (8) [(6)] Presigning blank prescription or laboratory work-order forms.
 - (9) [(7)] Administering anesthesia or failing to report any injuries to patients in any manner which violates an administrative regulation promulgated by the board [subject to the provisions of KRS Chapter 43A].
 - (10) [(8)] Failing to make available to a patient, or the patient's legal representative or to the board if authorized in writing by the patient, copies of documents in the possession or under control of the licensee which relate to the patient according to KRS 422.317.]

~~(11) [Section 4.] Performing professional services without first obtaining the informed consent of the patient or the patient's legal representative, except in the case of an emergency or other circumstances where the patient is incapable of providing consent. For purposes of the chapter, "informed consent" shall [be deemed to] have the same meaning as specified in KRS 304.40-320.~~

~~(12) [Section 5.] Prescribing, procuring, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance:~~

~~(a) [(1)] Other than in the course of the professional practice of the dentist;~~

~~(b) [(2)] In excessive amounts or inappropriate quantities not in the best interest of a patient; or~~

~~(c) [(3)] To himself or herself any medicinal drug appearing on Schedule I, II, III, or IV, as set forth in KRS Chapter 218A.~~

~~(13) Practicing the profession when unable to provide [Section 6. Being unable to practice the profession with] reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. [In enforcing this section, the board.] Upon a finding of the board or its designee that probable cause exists to believe that the licensee is unable to practice dentistry or dental hygiene because of the reasons stated in this section, the board may [shall have the authority to] issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the board. If the licensee refuses to comply with that order, the board's order directing the examination may be enforced by filing a petition for enforcement in the Circuit Court where the licensee resides or does business. The licensee against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. A licensee affected under this section shall at reasonable intervals be afforded an opportunity to demonstrate that the licensee can resume the competent practice of the profession with skill and safety to patients.~~

~~(14) [Section 7.] Presenting false or misleading testimony or statements to the board or the board's investigator or employees during the scope of any investigation, or at any hearing of the board, or at any civil or criminal proceeding relating to the licensee's or any other licensee's practice of dentistry or dental hygiene.~~

~~(15) Violating any section of KRS Chapter 313, an administrative regulation promulgated by the Board of Dentistry, or a lawful order of the board entered in a disciplinary hearing; or failing to comply with a subpoena issued by the board. [Section 8. The violation or the repeated violation of any section of this chapter, or of any administrative regulation promulgated pursuant to this chapter or KRS Chapter 13A; the violation of a lawful order of the board previously entered in a disciplinary hearing; or failure to comply with a lawfully issued subpoena of the board.]~~

~~(16) [Section 9.] Conspiring with another licensee or with any person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude any patient or witness to testify against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the board during any investigation of any licensee under KRS Chapter 313. [this chapter.]~~

~~(17) [Section 10.] Any other act not specified in this section which creates a danger to the public, patients, or employees of a licensee, or which demonstrates a lack of moral qualifications to practice under this chapter, or brings the profession under disrepute.]~~

STEPHEN T. SCHULER, D.M.D., President
APPROVED BY AGENCY: June 12, 1996
FILED WITH LRC: June 14, 1996 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Registration
for Professional Geologists
(As Amended)

201 KAR 31:060. Code of professional conduct.

RELATES TO: KRS 322A.010, 322A.030(6), 322A.100
STATUTORY AUTHORITY: KRS 322A.030[~~322A.100~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.030 requires the board to adopt by administrative regulation a code of professional conduct. This administrative regulation establishes ~~sets forth~~ a code of professional conduct, which includes a list of actions considered to be grounds for disciplinary action against a registrant.

Section 1. Public Trust and Welfare. (1) The public practice of geology requires professional ethical conduct and professional responsibility, as well as scientific knowledge on the part of the practitioner.

(2) Each registered geologist shall protect, to the fullest extent possible, the public health and welfare, and public and private property, in carrying out the public practice of geology.

Section 2. Integrity in Professional Practice. (1) Each registered geologist shall be guided by the highest standards of ethics, honesty, integrity, personal honor, fairness, and professional conduct when engaged in the public practice of geology.

(2) A registered geologist shall provide professional service only when qualified by training or experience in the technical areas involved. A registered geologist may practice under the supervision of another ~~a qualified~~ registered geologist for the purpose of obtaining training or experience in new technical areas.

(3) A registered geologist shall exercise reasonable care when rendering professional services and shall apply technical knowledge and skills ordinarily applied by practicing geologists. A registered geologist shall distinguish between fact and opinion in all estimates and evaluations provided, and set forth all assumptions.

(4) A registered geologist, when engaged in the public practice of geology, shall base his professional opinions upon empirical knowledge and commonly recognized geological principles.

(5) A registered geologist shall not issue a false statement or false information, or make sensational, exaggerated and unwarranted statements when engaged in the public practice of geology with the intent to mislead or deceive others.

(6) A registered geologist shall sign and seal only professional work, including, but not limited to, maps and reports for which the geologist has direct professional knowledge, and for which the geologist intends to be responsible for its accuracy and adequacy.

Section 3. Relationship of Professional Geologists to Employer or Client. (1) A registered geologist shall provide adequate and accurate representation of his credentials, qualifications and scope of responsibilities for all previous experience claimed when negotiating with prospective employers or clients.

(2) A registered geologist shall protect, to the fullest possible extent, the interest of his or her employer or client, and the confidentiality of information obtained from an employer or client, so far as is consistent with the law and the geologist's professional obligations and ethics.

(3) A registered geologist shall avoid conflict of interest with an employer or client and shall disclose the circumstances to the employer or client if a conflict is unavoidable. Specifically, a registered geologist shall make full disclosure to all parties of:

(a) Any transaction involving payments made to any person for the purpose of securing a contract, assignment, or engagement;

(b) Any monetary, financial or beneficial interest the professional geologist may have in any contract or entity providing goods or

services, other than professional services, to a project or engagement;

(c) Any compensation or concurrent employment from more than one (1) employer or client on the same project; or

(d) Any owned or controlled mineral or other interest which may, either directly or indirectly, have a pertinent bearing on the geologist's employment to the employer or client.

(4) A registered geologist in the public practice of geology shall not accept compensation without furnishing services.

(5) A registered geologist shall give due notice of withdrawal of service from an employer or client except that the geologist may withdraw without due notice if:

(a) The geologist fails to receive adequate compensation, or has reasonable cause to believe that compensation for services performed will not be received;

(b) The geologist knows, or has reasonable cause to believe, that continued employment will result in a violation of KRS Chapter 322A, the accompanying administrative regulations promulgated thereunder, or otherwise be illegal;

(c) The geologist knows, or has reasonable cause to believe, that the employer or client is involved in illegal or fraudulent practices, or practices dangerous to the public health and welfare or property; or

(d) The geologist knows, or has reasonable cause to believe, that continued employment will result in sickness or injury to the geologist or the geologist's dependents.

Section 4. Relationship of Professional Geologists to Other Professionals Engaged in the Public Practice of Geology and Other Related Disciplines. (1) A registered geologist shall freely give credit for work done by others to whom credit is due and shall refrain from plagiarism in oral and written communications, and not knowingly accept credit rightfully due another.

(2) A geologist shall either engage, or advise an employer or client to engage, other experts or specialists if the client's interests are best served by this ~~such~~ service.

(3) If a registered geologist has knowledge or reasonable cause to believe another person or geologist is in violation of any provision of KRS Chapter 322A or the administrative regulations promulgated thereunder, the geologist shall present information in writing to the board.

(4) A registered geologist shall provide adequate supervision and training to other geologists the registered geologist is supervising, and make them aware of this code of professional conduct.

Section 5. Grounds for Disciplinary Action. (1) A registered geologist shall not:

(a) Violate any provision of KRS Chapter 322A or the accompanying administrative regulations including this code of professional conduct;

(b) Issue a false statement or false information, or make a sensational, exaggerated, or unwarranted statement while engaged in the public practice of geology with the intent to mislead or deceive others;

(c) Defraud or deceive a client or employer while ~~whole~~ engaged in the practice of geology;

(d) ~~Engage in the practice of geology while his registration is suspended or revoked;~~

~~(e)~~ Fail to comply with an order issued by the board;

~~(e)~~ (f) Fail to cooperate with the board by:

1. Unreasonably refusing to furnish a paper or document ~~any papers or documents~~ requested by the board;

2. Unreasonably refusing to furnish in writing a complete explanation covering a matter contained in a complaint against the registrant filed with the board;

3. Not appearing before the board at a time and place designated by the board during the investigation of a complaint or hearing; or

4. Not properly responding to a subpoena issued by the board.

~~(f)~~ (g) Aide or abet an unregistered person in the public ~~unregistered~~ practice of geology when registration is required;

~~(g)~~ (h) Fail to provide adequate supervision to persons for whom the registered geologist is professionally responsible;

~~(h)~~ (i) Sign, seal or stamp professional work not prepared under his direct professional control or supervision;

~~(i)~~ (j) 1. Be convicted of ~~any felony or~~

a. A felony; or

b. A misdemeanor related to the practice of geology;

2. Conviction shall include conviction based on:

a. A plea of nolo contendere or an Alford plea; or

b. The suspension or deferral of a sentence; or

~~(j)~~ (k) Engage in the practice of geology while declared mentally incompetent or insane by a court of law.

JOHN C. PHILLEY, Ph.D., Board Chairman

APPROVED BY AGENCY: June 10, 1996

FILED WITH LRC: June 12, 1996 at 10 a.m.

GENERAL GOVERNMENT CABINET

Board of Certification of Marriage and Family Therapists (As Amended)

201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 335.340(1)(b)

STATUTORY AUTHORITY: KRS 335.320(7), 335.340(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

335.340(1)(b) authorizes the board to promulgate an administrative regulation requiring marriage and family therapists to complete continuing education requirements as a condition of renewal of their certification. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. As used in this administrative regulation, unless the context otherwise requires:

(1) "Approved" means recognized by the Kentucky Board of Certification of Marriage and Family Therapists.

(2) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(3) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series.

(4) "Academic courses offered by an accredited post-secondary institution" means:

(a) A marriage and family therapy course, designated by a marriage and family therapy course title or content, beyond the undergraduate level; or

(b) An academic course, relevant to marriage and family therapy, beyond the undergraduate level. General education courses, either electives or designated to meet degree requirements, shall not be ~~are not~~ acceptable. Academic credit equivalency for continuing education hours shall ~~will~~ be based on one (1) credit hour equals fifteen (15) continuing education hours.

(5) "Relevant" means having content applicable to the practice of marriage and family therapy as determined by the board.

(6) "Provider" means an organization approved by the Kentucky Board of Certification for Marriage and Family Therapists ~~Therapy~~ for providing continuing education programs.

(7) "Successful completion" means that the certificate holder has satisfactorily met the specific requirements of the program and the certificate holder has earned the continuing education hours.

Section 2. Accrual of Continuing Education Hours; Computation

of Accrual. (1) A minimum of forty-five (45) continuing education hours shall be accrued by each person holding certification during the three (3) year certification period for renewal, except that those persons holding certification which is due to be renewed by May 1, 1998, shall obtain fifteen (15) continuing education hours for this renewal period only. All persons holding certification shall obtain forty-five (45) continuing education hours for each renewal thereafter.

(2) The certification period shall be May 1 through April 30 of the third calendar year.

(3) All hours shall be in or related to the field of marriage and family therapy.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the mandatory certificate shall be directly related to the professional growth and development of marriage and family therapy practitioners. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be ~~[are therefore]~~ approved without further review by the board:

(a) Programs provided by the American Association for Marriage And Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as set forth in Section 1 of this administrative regulation; and ~~[or]~~

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall ~~[may]~~ be reviewed and determined to be relevant and therefore subsequently approved by the board:

(a) Relevant programs, including ~~[but not limited to]~~ home study courses and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the certificate holder. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Relevant publications in a professionally recognized or juried publication. Credit may be granted only for those publications that were published within the three (3) year period immediately preceding the renewal date. A certificate holder shall earn one-half (1/2) of the continuing education hours required for a relevant publication. Only one (1) publication may be counted during each renewal period; and ~~[or]~~

(d) Related areas not specifically a part of the field of marriage and family therapy may be approved for up to five (5) continuing education hours out of the forty-five (45) required if the board believes the related areas may serve to enhance the certificate holder's ability to practice.

Section 4. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, stating the:

(a) Type of learning activity;

(b) Subject matter;

(c) Names and qualifications of the instructors; and

(d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters which integrally relate to the

practice of marriage and family therapy;

(c) Contributes to the professional competency of the certificate holder; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5. Responsibilities and Reporting Requirements of Certificate Holders. A certificate holder shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding certification shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board when applicable a request for approval for continuing education activities not approved by the board as set forth in Section 4 of this administrative regulation;

(3) Maintain records of continuing education hours. Each person holding certification shall maintain, for a period of three (3) years from the date of renewal, all documentation verifying successful completion of continuing education hours. During each certification renewal period, up to fifteen (15) percent of all certificate holders shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall ~~[is]~~ not otherwise be reported to the board;

(4) Document attendance and participation in a continuing education activity in the form of ~~[but not limited to]~~ official documents including ~~[such as]~~ transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence including ~~[such as]~~ written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required shall vary ~~[varies]~~ depending on the specific activity submitted to the board for approval; and

(5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and may result in the refusal to renew, suspension, or revocation of the certification.

Section 6. Carry-over of Continuing Education Hours, Prohibited. There shall not be a ~~[be no]~~ carry-over of continuing education hours earned in excess of those required under Section 2 of this administrative regulation into the immediately following certification renewal period.

Section 7. Board to Approve Continuing Education Hours; Appeal when Approval Denied. ~~[(1)]~~ In the event of denial, in whole or part, of any application for approval of continuing education hours, the person holding certification shall have the right to request reconsideration by the board of its decisions. The request shall be in writing and ~~[appeal in writing to the board. Notice of appeal]~~ shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

~~[(2) A hearing before the full board may be held at the request of the person holding certification if the written appeal is denied, provided the board receives written request for such hearing within ten (10) days after the entry date of the board's decision denying the written appeal.]~~

Section 8. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding

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certification and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding certification shall reapply for the waiver or extension.

JOHN SOHAN, Board Chairman

APPROVED BY AGENCY: May 16, 1996

FILED WITH LRC: June 13, 1996 at 4 p.m.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (As Amended)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections ~~(commissioner)~~ to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, July 12, 1996 ~~(April 11, 1996)~~, is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 01-05-01 Procedures Officer
GRCC 01-09-01 Duty Officer Responsibilities
GRCC 01-10-01 Smoking: GRCC Facility
GRCC 01-12-01 Public Information and Media Communication
(Added 7/12/96)
GRCC 02-01-02 Fiscal Management Accounting Procedures
GRCC 02-01-03 Fiscal Management Agency Funds
GRCC 02-02-01 Fiscal Management: Budget
GRCC 02-03-01 Fiscal Management: Audits
GRCC 02-06-01 Inmate Canteen
GRCC 02-07-01 Inmate Personal Funds ~~(Added 4/11/96)~~
GRCC 04-01-01 Employee Training and Staff Development
GRCC 05-01-01 Information System
GRCC 06-01-01 Offender Records
~~GRCC 06-03-01 Sex Offender Register (Added 7/12/96) (Deleted 9/9/96)~~
GRCC 08-03-01 Escape Plan ~~(Added 4/11/96)~~
GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation ~~(Added 4/11/96)~~
GRCC 08-06-01 Response Units ~~(Added 4/11/96)~~
GRCC 08-07-01 Natural Disaster/Earthquake ~~(Added 4/11/96)~~
GRCC 09-02-01 Drug Abuse Testing ~~(Added 4/11/96)~~

GRCC 09-03-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power ~~(Added 4/11/96)~~
GRCC 09-04-01 Inmate Death ~~(Added 4/11/96)~~
GRCC 09-05-01 Construction Crew Entry and Exit Guidelines ~~(Added 4/11/96)~~
GRCC 09-06-01 Entry and Exit Procedures ~~(Added 4/11/96)~~
GRCC 09-07-01 Institutional Inspections ~~(Added 4/11/96)~~
GRCC 09-08-01 Storage, Issue and Use of Chemical Agents ~~(Added 4/11/96)~~
GRCC 09-09-01 Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence ~~(Added 4/11/96)~~
GRCC 09-10-01 Emergency Release from Locked Areas ~~(Added 4/11/96)~~
GRCC 10-01-01 Special Management Unit ~~(Amended 4/11/96)~~
GRCC 11-01-01 Food Service Guidelines ~~(Amended 4/11/96)~~
GRCC 11-02-01 Food Service: Security ~~(Amended 4/11/96)~~
GRCC 11-03-01 Dining Room Guidelines ~~(Amended 4/11/96)~~
GRCC 11-04-01 Food Service: Meals
GRCC 11-04-02 Food Service: Menu, Nutrition and Special Diets
GRCC 11-06-01 Health Requirements of Food Handlers
GRCC 11-07-01 Food Service: Inspections and Sanitation ~~(Amended 4/11/96)~~
GRCC 11-08-01 Food Service: Purchasing, Storage and Farm Products ~~(Amended 4/11/96)~~
GRCC 12-01-01 Clothing, Bedding, Hygiene Supplies and Barber Services
GRCC 13-01-01 Organization of Medical Services
GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call
GRCC 13-02-03 Continuing of Care: Health Evaluations, Intra-System Transfer and Individual Treatment Plans
(Added 7/12/96)
GRCC 13-03-01 Use of Pharmaceutical Products
GRCC 13-04-01 Health Records
GRCC 13-04-02 Psychological and Psychiatric Reports
GRCC 13-05-01 Management of Serious and Infectious Diseases
GRCC 13-06-01 Mental Health Services (Added 7/12/96)
GRCC 13-07-01 Medical Restraints ~~(Added 4/11/96)~~
GRCC 13-08-01 Eye Care ~~(Added 4/11/96)~~
GRCC 13-09-01 Dental Care ~~(Added 4/11/96)~~
GRCC 13-10-01 Transfers and Medical Profiles (Added 7/12/96)
GRCC 13-11-01 Informed Consent (Added 7/12/96)
GRCC 13-12-01 Infirmary Care (Added 7/12/96)
GRCC 14-01-01 Inmate Rights and Responsibilities
GRCC 14-02-01 Legal Services Program
GRCC 15-01-01 GRCC Adjustment Program and Procedures
GRCC 16-01-01 Inmate Visiting
GRCC 16-02-01 Inmate Correspondence and Privilege Mail
GRCC 16-03-01 Inmate Telephone Communications
GRCC 16-04-01 Inmate Packages
GRCC 17-01-01 GRCC Inmate Property Control
GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process
GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair
GRCC 18-01-01 Inmate Classification
GRCC 18-02-01 Meritorious Housing
GRCC 18-02-02 Meritorious Visitation Program
GRCC 19-01-01 Inmate Work Programs
GRCC 20-01-01 Educational Programs
GRCC 21-01-01 Library Services ~~(Amended 4/11/96)~~
GRCC 22-01-01 Recreation Programs ~~(Amended 4/11/96)~~
GRCC 22-02-01 Inmate Organizations
GRCC 22-05-01 Inmate Photo Project (Added 7/12/96)
GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates

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GRCC 24-01-01 Social Services and Counseling Program
GRCC 25-01-01 Prerelease Program
GRCC 25-02-01 Parole Hearing Procedure (Added 7/12/96)

DOUG SAPP, Commissioner
APPROVED BY AGENCY: July 10, 1996
FILED WITH LRC: July 15, 1996 at 8 a.m.

KENTUCKY JUSTICE CABINET
Department of Criminal Justice Training
(As Amended)

503 KAR 4:010. Definitions for 503 KAR Chapter 4.

RELATES TO: HB 40 sec. 1(2)(f)4

STATUTORY AUTHORITY: HB 40 sec. 1(2)(f)4

NECESSITY, FUNCTION, AND CONFORMITY: Section 1(2)(f)4 of House Bill 40, enacted during the 1996 Regular Session of the General Assembly, requires the department to promulgate administrative regulations concerning the: (1) certification and decertification of firearms instructors practicing in Kentucky; and (2) firearms safety and training courses or classes that are: (a) approved by the department; or (b) conducted by the department or by a firearms instructor certified by the department. This administrative regulation establishes the definitions for administrative regulations relating to: (1) the certification of firearms instructors; and (2) firearms safety and training courses or classes. [HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearms instructors teaching the courses authorized by HB 40. This administrative regulation defines the terms used in 503 KAR Chapter 4.]

Section 1. Definitions. (1) "Applicant training course" means a firearms safety or training course or class required by House Bill 40 that:

(a) The department:

1. Conducts; or

2. Has approved; or

(b) Is conducted by firearms instructors certified by the Department. [course of instruction taught by a qualified firearms instructor to certify persons as competent with firearms as required by HB 40.]

(2) "Certifying agency" means the Department of Criminal Justice Training [state] or federal agency that qualifies students as competent with firearms.

(3) "[The] Department" means the Department of Criminal Justice Training.

(4) "Instructor candidate" means a person who is taking a firearms safety or training course or class in order to qualify as a firearms instructor. [who is attempting to qualify to become a qualified firearms instructor or instructor trainer by taking a course offered or approved by the department.]

(5) "Instructor trainer" means a [qualified] firearms instructor who has [met additional requirements as stipulated in this administrative regulation and has] been certified by the department to train qualified firearms instructors.

(6) "Certified [Qualified] firearms instructor" means a person who has [met the requirements of this administrative regulation and has] been certified by the department to teach applicant training courses.

(7) "Student" means a person taking an applicant training course.

JOHN W. BIZZACK, Commissioner
E. DANIEL CHERRY, Secretary
APPROVED BY AGENCY: July 12, 1996
FILED WITH LRC: July 12, 1996 at 3 p.m.

KENTUCKY JUSTICE CABINET
Department of Criminal Justice Training
(As Amended)

503 KAR 4:020. Teaching and advertising courses.

RELATES TO: HB 40 sec. 1(2)(f)4

STATUTORY AUTHORITY: HB 40 sec. 1(2)(f)4

NECESSITY, FUNCTION, AND CONFORMITY: Section 1(2)(f)4 of House Bill 40, enacted during the 1996 Regular Session of the General Assembly, requires the department to promulgate administrative regulations concerning the: (1) certification and decertification of firearms instructors practicing in Kentucky; and (2) firearms safety and training courses or classes that are: (a) approved by the department; or (b) conducted by the department or by a firearms instructor certified by the department. This administrative regulation: (1) restricts the teaching of applicant training instructor qualification courses to persons who are certified by the department to teach; and (2) prohibits advertisements or other representations relating to firearms safety and training courses or classes and licensure to carry a concealed firearm by persons who are not certified by the department. [HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearms instructors teaching courses authorized by HB 40. This administrative regulation establishes who may teach applicant training courses, and prohibits those not certified from representing their courses as meeting the requirements of HB 40.]

Section 1. A person who is [Persons who are] not a certified [qualified] firearms instructor shall not teach applicant training courses.

Section 2. A person who is [Persons who are] not a certified [qualified] firearms instructor shall not advertise or otherwise represent a course he teaches [courses they teach] as qualifying [their] students to meet the requirements to receive a license to carry concealed deadly weapons in Kentucky.

Section 3. A person who is [Persons who are] not a certified instructor trainer shall not teach instructor qualification courses.

JOHN W. BIZZACK, Commissioner
E. DANIEL CHERRY, Secretary
APPROVED BY AGENCY: July 12, 1996
FILED WITH LRC: July 12, 1996 at 3 p.m.

KENTUCKY JUSTICE CABINET
Department of Criminal Justice Training
(As Amended)

503 KAR 4:030. Instructor qualifications.

RELATES TO: HB 40 sec. 1(2)(f)4

STATUTORY AUTHORITY: HB 40 sec. 1(2)(f)4

NECESSITY, FUNCTION, AND CONFORMITY: Section 1(2)(f)4 of House Bill 40, enacted during the 1996 Regular Session of the General Assembly, requires the department to promulgate administrative regulations concerning the certification and decertification of firearms instructors practicing in Kentucky. This administrative regulation establishes requirements for the certification of firearms instructors. [HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearms instructors teaching courses authorized by HB 40. This administrative regulation establishes the qualifications for persons teaching applicant training courses.]

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Section 1. A person shall be eligible for certification as a firearms instructor if he: ~~[Persons wishing to become qualified firearms instructors shall:]~~

- (1) ~~Is~~ Is ~~[Be]~~ at least twenty-one (21) years of age;
- (2) ~~Is~~ Is ~~[Be]~~ a citizen of the United States; and
- (3) ~~Meets~~ the requirements of Section 1(2)(b), (c), (d), (e), (g), (h) and (3) of HB 40.

Section 2. A person shall be eligible for certification as an instructor if, ~~[Persons wishing to become instructor trainers,]~~ in addition to the requirements of subsection (1) of this section, he ~~[shall]:~~

- (1) Possesses a high school diploma or GED certificate;
- (2) ~~Has~~ Has ~~[Have]~~ at least one (1) of the following valid firearms instructor certifications:
 - (a) National Rifle Association Personal Protection Instructor;
 - (b) National Rifle Association Pistol Marksmanship Instructor;
 - (c) Certification from a Kentucky or other firearms instructor's course offered by a state or federal governmental agency; or
 - (d) A ~~[similar]~~ firearms instructor qualifying course, that has been ~~[as]~~ determined by the Secretary of the Justice Cabinet or his designee to be the equivalent of courses specified in paragraphs (a) through (c) of this subsection.

Section 3. (1) An applicant shall be subject ~~[agree]~~ to a background check.

(2) An applicant shall ~~[may]~~ be disqualified from taking firearms instructor training, or have his instructor qualification revoked if the applicant:

- (a) Does not meet the requirements of HB 40 to possess a license to carry concealed deadly weapons;
- (b) Provides false or misleading information on his ~~[the]~~ application; or
- (c) Has had a prior instructor certification ~~[qualification]~~ revoked by the department.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (As Amended)

503 KAR 4:040. Required instructor training.

RELATES TO: HB 40 sec. 1(2)(f)4

STATUTORY AUTHORITY: HB 40 sec. 1(2)(f)4

NECESSITY, FUNCTION, AND CONFORMITY: Section 1(2)(f)4 of House Bill 40, enacted during the 1996 Regular Session of the General Assembly, requires the department to promulgate administrative regulations concerning firearms safety and training courses or classes that are: (a) approved by the department; or (b) conducted by the department or by a firearms instructor certified by the department. This administrative regulation establishes the training required for certification as a firearms instructor or firearms instructor trainer. [HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearm instructors teaching course authorized by HB 40. This administrative regulation describes the requirements and stipulates the minimum requirements of the instructor-qualifying course.]

Section 1. A firearms instructor and instructor training course shall include: ~~[The training course to certify firearms instructors and~~

~~instructor trainers shall include:]~~

(1) Sixteen (16) hours of classroom instruction covering at least the following topics:

(a) By means of a videotape produced or approved by the department:

1. The requirements for obtaining a concealed deadly weapons license in Kentucky;

2. Sections of ~~[Laws relating to firearms as contained in]~~ KRS Chapters 237 and 527 that relate to firearms; and

3. Sections of ~~[Laws relating to the justifiable use of force as contained in]~~ KRS Chapter 503 relating to the justifiable use of force;

- (b) The conduct of applicant training courses;
- (c) Recordkeeping requirements of this administrative regulation;
- (d) The basic nomenclature of handguns;
- (e) The basic principles of marksmanship; and
- (f) The safe handling of handguns.

(2) A classroom demonstration, during which the instructor candidate shall receive instruction on and demonstrate competency in the ability to prepare and deliver a classroom presentation using materials from the applicant curriculum.

(3) Range instruction and firing of live ammunition, during which the instructor candidate shall receive instruction on and demonstrate competency in the ability to:

- (a) Handle and fire a handgun safely and accurately;
- (b) Conduct a function test and safety inspection of common types of handguns;
- (c) Clean and care for common types of handguns; and
- (d) Supervise and conduct live firing exercises in a safe and efficient manner.

Section 2. To qualify as a certified firearms instructor or an instructor trainer, instructor candidate shall achieve:

(1) A minimum score of seventy (70) percent on a written examination covering the material taught during the classroom portion of the course;

(2) A minimum score of eighty (80) percent on range firing of a handgun from a safe ~~[the standing]~~ position while aiming at a B-21 PC silhouette target or an equivalent target ~~[as]~~ approved by the department, with a minimum of:

- (a) Ten (10) rounds from seven (7) yards; and
- (b) Ten (10) rounds from fifteen (15) yards; and
- (3) A score of "passing" from the course instructor for demonstrating competency in each of the following:
 - (a) Supervising and conducting live fire;
 - (b) Cleaning and inspecting handguns; and
 - (c) Preparing and delivering the classroom lecture.

Section 3. (1) An instructor candidate who fails to meet the ~~[minimum]~~ requirements of Section 2 of this administrative regulation may retake the examination, range work or classroom demonstration one (1) time without having to repeat the course.

(2) An instructor candidate shall retake examination, range work, or classroom demonstration within thirty (30) days of his failure to meet the requirements of Section 2 of this administrative regulation.

Section 4. (1) ~~[Qualified]~~ Firearms instructor and instructor trainer certificate shall be valid for three (3) years from date of issue.

(2) A certified ~~[Qualified]~~ firearms instructor or instructor trainer may renew his ~~[their]~~ certification by successfully completing a refresher course offered or approved by the department.

Section 5. (1) The fee for instructor trainer or refresher courses shall be \$100 per student.

(2) (a) The fee for an ~~[qualified]~~ instructor course shall not exceed ~~[be no more than]~~ \$100 per student.

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(b) An ~~[The]~~ instructor trainer shall remit fifty (50) dollars per student to the department.

(c) An instructor trainer shall remit an applicant's fee and application to the department within three (3) days following an applicant's:

1. Successful completion of the course or retesting; or

2. Failure of the course or retesting.

(3) Fees shall not be refunded to a student ~~[these]~~ who does not pass or otherwise fails to complete a course.

Section 6. (1) A course participant shall provide a ~~[their own]~~ safe, functional handgun and factory-loaded ammunition.

(2) Prior to conducting range firing, the course instructor shall:

(a) Inspect each applicant's firearm; and

(b) Not allow the firing of a handgun which is not in sound mechanical condition or otherwise may pose a safety hazard.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (As Amended)

503 KAR 4:050. Required content and conduct of the applicant training course.

RELATES TO: HB 40 sec. 1(2)(f)4

STATUTORY AUTHORITY: HB 40 sec. 1(2)(f)4

NECESSITY, FUNCTION, AND CONFORMITY: Section 1(2)(f)4 of House Bill 40, enacted during the 1996 Regular Session of the General Assembly, requires the department to promulgate administrative regulations concerning the: (1) certification and decertification of firearms instructors practicing in Kentucky; and (2) firearms safety and training courses or classes that are: (a) approved by the department; or (b) conducted by the department or by a firearms instructor certified by the department. This administrative regulation establishes: (1) the procedures that shall be followed by qualified firearms instructors in teaching applicant training courses; (2) the minimum age and other requirements for students taking training courses; and (3) the fees for applicant training courses. [HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearm instructors teaching course authorized by HB 40. This administrative regulation describes the procedures qualified firearms instructors shall use in teaching applicant training courses, the minimum age and other requirements for students taking, and the maximum fees for, applicant training courses.]

Section 1. (1) An ~~[The]~~ applicant training course shall be:

(a) The standardized training course furnished by the department; and

(b) Taught by a certified ~~[qualified]~~ firearms instructor.

(2) An applicant training course shall consist ~~[consisting of]~~ ~~(4)]~~ eight (8) hours of classroom instruction, covering at least the following topics:

(a) Handgun safety in the classroom, at home, on the firing range or while carrying the firearm;

(b) The basic principles of marksmanship; and

(c) Care and cleaning of handguns;

(d) By means of a videotape produced or approved by the department:

1. The requirements for obtaining a concealed deadly weapons license in Kentucky;

2. Sections of ~~[Laws relating to firearms as contained in]~~ KRS Chapters 237 and 527 relating to firearms; and

3. Sections of ~~[Laws relating to the justifiable use of force as contained in]~~ KRS Chapter 503 relating to the justifiable use of force.

(3) ~~(2)]~~ Live firing exercises of sufficient duration for an ~~[each]~~ applicant to fire a handgun:

(a) From a safe ~~[standing]~~ position;

(b) A minimum of twenty (20) rounds; and

(c) At a distance from a B-21 silhouette target, or an equivalent as approved by the department, of seven (7) yards.

Section 2. The classroom portion of the course shall ~~[may]~~ be taught, at the qualified firearms instructor's discretion, ~~[taught]~~ in one (1) eight (8) hour block or divided into segments of not less than one (1) hour each.

Section 3. (1) An applicant training course shall not be open to persons who are less than twenty-one (21) years of age.

(2) An applicant training course student shall complete a Course Application Form, which shall include a statement acknowledging receipt of copies of pertinent sections of KRS Chapters 237, 527 and 503 and a liability waiver.

~~[(2) The Course Application Form, 1996, is incorporated by reference. This form may be obtained from the qualified firearms instructor at the time of the course.]~~

Section 4. A certified ~~[Qualified]~~ firearms instructor shall not discuss ~~[the content of]~~ the video tape or ~~[the content of]~~ KRS Chapters 237, 503 or 527 with students, either individually or as a class.

Section 5. At the conclusion of the classroom portion of an ~~[the]~~ applicant training course, a certified ~~[the qualified]~~ firearms instructor shall:

(1) Distribute a standard course examination to the students;

(2) Not leave the room in which the examination is being held while the examination is in progress; ~~[and]~~

(3) Collect examination booklets and answer sheets from each student at the end of the examination period;

(4) Not grade the examinations in the presence of student;

(5)(a) Not divulge an applicant's numeric score; and

(b) State ~~[on the day of the examination, but may indicate]~~ whether an applicant passed or failed the examination.

Section 6. Except for an instructor, a person shall not:

(1) Make a ~~[n unauthorized]~~ copy of the applicant training course examination, in whole or in part;

(2) Possess an ~~[the]~~ applicant training course examination, or questions from an ~~[the]~~ examination, unless authorized by the department; or

(3) Divulge the contents of applicant training course examination questions to another person.

Section 7. (1) A student shall provide a ~~[their own]~~ safe, functional handgun and factory-loaded ammunition.

(2) Prior to conducting range firing, a ~~[the]~~ certified firearms instructor shall:

(a) Inspect each applicant's firearm; and

(b) Not allow the firing of a handgun that ~~[which]~~ is not in sound mechanical condition or otherwise may pose a safety hazard.

Section 8. A passing grade ~~[Grades of "passing"]~~ shall not be given on range work to an applicant who:

(1) Does not follow the orders of a ~~[the]~~ certified firearms instructor;

(2) In the judgment of a ~~[the]~~ certified firearm instructor, handles

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a firearm in a manner that poses a danger to the applicant or to others; or

(3) Fails to hit the silhouette portion of a [the] target with a [the] majority of the twenty (20) rounds.

Section 9. A certified firearms instructor shall:

(1) Allow monitoring of his class by the department or by an official of another agency approved by the department; [their classes by officials of any certifying agency;]

(2) Make all course records available upon demand to authorized personnel of the department; and

(3) Not divulge course records except as authorized by the department [certifying agency].

Section 10. (1) The fee for an applicant training course shall not exceed seventy-five (75) dollars per student.

(2) A certified [Qualified] firearms instructor shall collect the fee and remit twenty-five (25) dollars of the fee and the application to the department within three (3) days following an applicant's:
(a) Successful completion of the course or retesting; or
(b) Failure of the course or retesting.

(3) The fee shall not be refunded to a student who fails or does [otherwise do] not complete the course.

Section 11. An applicant training course shall not have more than:

(1) Forty (40) students in the classroom portion; or

(2) [more than] Five (5) students per range officer engaged in range firing.

Section 12. Incorporation by Reference. (1) "Applicant Request for Training for License to Carry Concealed Deadly Weapon(s) 07/11/96", Form #126 is incorporated by reference.

(2) It may be inspected, copied, or obtained at Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (As Amended)

503 KAR 4:060. Reporting test scores and issuing certificates of completion.

RELATES TO: HB 40 sec. 1(2)(f)4

STATUTORY AUTHORITY: HB 40 sec. 1(2)(f)4

NECESSITY, FUNCTION, AND CONFORMITY: Section 1(2)(f)4 of House Bill 40, enacted during the 1996 Regular Session of the General Assembly, requires the department to promulgate administrative regulations concerning the certification of applicants for licensure to carry a concealed deadly weapon after applicants have demonstrated competence with a firearm by completion of a firearms safety or training course or class specified by House Bill 40. This administrative regulation establishes the: (1) procedures for the examination given applicants for licensure to carry concealed deadly weapons after completion of the required course or class; (2) required passing scores; (3) notification of applicants of examination results; and (4) issuance of a certificate of successful completion of the course. [HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearm instructors teaching course

authorized by HB 40. This administrative regulation stipulates how test scores from applicant training courses are to be reported, the minimum acceptable scores, and the issuance of certificates of completion.]

Section 1. Within three (3) working days after the completion of the course, a [the] certified firearms instructor shall:

(1) Grade the examinations; and

(2) Mail to the department:

(a) The completed course application form, showing the student's score on the written examination and indicating whether the student passed or failed the range work; and

(b) The graded examinations.

Section 2. Within fifteen (15) days after receipt of the material specified [described] in Section 1 of this administrative regulation, the department shall mail to an [the] applicant:

(1) A certificate of successful course completion; or

(2) A notice [Notification] that the applicant has failed the:

(a) Course and will not be certified; and

(b) Written examination, the range firing, or both, as appropriate.

Section 3. A student shall be issued a certificate of completion if he has:

(1) Answered [Answers] at least seventy (70) percent of the written examination questions correctly; and

(2) Achieved [Achieves] a grade of "passing" on the range work.

Section 4. (1) A student who scored below seventy (70) percent on the written examination may retake the examination one (1) time without having to retake the course.

(2) A student who has [de] not passed [achieve a grade of "passing" on] the range work may repeat the range work one (1) time without having to retake the course.

[(3) Notices of failure will include information on whether the student failed the written exam, the range firing, or both.]

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (As Amended)

503 KAR 4:070. Revocation of instructor certification and appeal process.

RELATES TO: HB 40 sec. 1(2)(f)4

STATUTORY AUTHORITY: HB 40 sec. 1(2)(f)4

NECESSITY, FUNCTION, AND CONFORMITY: Section 1(2)(f)4 of House Bill 40, enacted during the 1996 Regular Session of the General Assembly, requires the department to promulgate administrative regulations concerning the certification of firearms instructors. This administrative regulation establishes the: (1) grounds for which the certification of a firearms instructor may be revoked; and (2) procedures for the appeal or the revocation of certification by a firearms instructor to the Secretary of the Justice Cabinet. [HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearms instructors teaching course authorized by HB 40. This administrative regulation specifies the conditions for which a qualified firearms instructor may lose his certification and the process for appealing decertification.]

Section 1. The department shall revoke the ~~[instructor or instructor-trainer]~~ certificate of an instructor or instructor trainer ~~[a person]~~ who has:

(1) Violated ~~[Violates]~~ a provision of 503 KAR 4:010 through 503 KAR 4:060; and

(2) Committed ~~[Commits]~~ an act that makes him ~~[which would cause the person to become]~~ ineligible for a license to carry a concealed deadly weapon in Kentucky.

Section 2. An instructor ~~[Persons]~~ may appeal the revocation of certification by requesting a hearing before the Secretary of the Justice Cabinet ~~[or his designee]~~.

Section 3. A hearing ~~[Appeal hearings]~~ shall be conducted under the provisions of KRS Chapter 13B.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(As Amended)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400 through 174.425, 49 CFR 107, 130, 171-173, 175, 177, 180 ~~[471-480]~~

STATUTORY AUTHORITY: KRS 174.410(2), 49 CFR Parts 130, 171-173, 175, 177, 180 ~~[471-480]~~

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 174.425 relating to the transportation of hazardous materials by air or highway. 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) 49 CFR Part 107 ~~[Title 49, Code of Federal Regulations, Part 407]~~, effective October 1, 1995, as amended at 60 Fed. Reg. 49106, September 21, 1995; ~~[4996]~~ 61 Fed. Reg. 7178, February 26, 1996; at 61 Fed. Reg. 18926, April 29, 1996; at 61 Fed. Reg. 21084, May 9, 1996; and at 61 Fed. Reg. 27948, June 3, 1996. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) 49 CFR Part 130 effective October 1, 1995, as amended at 61 Fed. Reg. 30533, June 17, 1996. ~~[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) 49 CFR ~~[Title 49, Code of Federal Regulations]~~ Part 171 effective October 1, 1995, as amended at 60 Fed. Reg. 49106, September 21, 1995; 60 Fed. Reg. 50292, September 28, 1995; at 61 Fed. Reg. 7958, February 29, 1996; at 61 Fed. Reg. 18926, April 29, 1996; at 61 Fed. Reg. 21084, May 9, 1996; at 61 Fed. Reg. 25940, May 23, 1996; at 61 Fed. Reg. 26418, May 24, 1996; at 61 Fed. Reg.

26750, May 28, 1996; at 61 Fed. Reg. 27166, May 30, 1996; at 61 Fed. Reg. 28666, June 5, 1996; and at 61 Fed. Reg. 33250, June 26, 1996. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) ~~49 CFR [Title 49, Code of Federal Regulations]~~ Part 172 effective October 1, 1995, as amended at 60 Fed. Reg. 49106, September 21, 1995; at 60 Fed. Reg. 50292, September 28, 1995; at 61 Fed. Reg. 18926, April 29, 1996; at 61 Fed. Reg. 20747, May 8, 1996; at 61 Fed. Reg. 27166, May 30, 1996; and at 61 Fed. Reg. 28666, June 5, 1996. 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) ~~49 CFR [Title 49, Code of Federal Regulations]~~ Part 173 effective October 1, 1995, as amended at 60 Fed. Reg. 49106, September 21, 1995; at 60 Fed. Reg. 50292, September 28, 1995; at 61 Fed. Reg. 18926, April 29, 1996; at Fed. Reg. 20747, May 8, 1996; at 61 Fed. Reg. 21084, May 9, 1996; at 61 Fed. Reg. 25940, May 23, 1996; at Fed. Reg. 26418, May 24, 1996; at 61 Fed. Reg. 26750, May 28, 1996; at 61 Fed. Reg. 27166, May 30, 1996; at 61 Fed. Reg. 28666, June 5, 1996; and at 61 Fed. Reg. 33250, June 26, 1996. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) ~~49 CFR [Title 49, Code of Federal Regulations]~~ Part 175 effective October 1, 1995, as amended at 60 Fed. Reg. 49106, September 21, 1996; at 60 Fed. Reg. 50292, September 28, 1995; and at 61 Fed. Reg. 18926, April 29, 1996. 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) ~~49 CFR [Title 49, Code of Federal Regulations]~~ Part 177, effective October 1, 1995, as amended at 60 Fed. Reg. 50292, September 28, 1995; at 61 Fed. Reg. 18926, April 29, 1996; and at 61 Fed. Reg. 27166, May 30, 1996. 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) ~~49 CFR [Title 49, Code of Federal Regulations]~~ Part 178 effective October 1, 1995, as amended at 60 Fed. Reg. 49106, September 21, 1995; 60 Fed. Reg. 50292, September 28, 1995; 61 Fed. Reg. 18926, April 29, 1996; at 61 Fed. Reg. 21084, May 9, 1996; at 61 Fed. Reg. 25940, May 23, 1996; at 61 Fed. Reg. 27166, May 30, 1996; ~~[4966]~~ and at 61 Fed. Reg. 28666, June 5, 1996. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) 49 CFR ~~[Title 49, Code of Federal Regulations]~~ Part 180, effective October 1 ~~[May 22]~~, 1995, as amended at 60 Fed. Reg. 50292, September 28, 1995; at 61 Fed. Reg. 18926, April 29, 1996; and at 61 Fed. Reg. 27166, May 30, 1996. 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. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) 60 Fed. Reg. 49106, September 21, 1995;

(b) 60 Fed. Reg. 50292, September 28, 1995;

(c) 61 Fed. Reg. 7178, February 26, 1996;

(d) 61 Fed. Reg. 7958, February 29, 1996;

(e) 61 Fed. Reg. 18926, April 29, 1996;

- (f) 61 Fed. Reg. 20747, May 8, 1996;
- (g) 61 Fed. Reg. 21084, May 9, 1996;
- (h) 61 Fed. Reg. 25940, May 23, 1996;
- (i) 61 Fed. Reg. 26418, May 24, 1996;
- (j) 61 Fed. Reg. 26750, May 28, 1996;
- (k) 61 Fed. Reg. 27166, May 30, 1996;
- (l) **61 Fed. Reg. 27948, June 3, 1996;**
- (m) 61 Fed. Reg. 28666, June 5, 1996;
- (n) ~~(m)~~ 61 Fed. Reg. 30533, June 17, 1996; and
- (o) ~~(n)~~ 61 Fed. Reg. 33250, June 26, 1996.

(2) The material incorporated by reference in this administrative regulation may be inspected, copied, or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502) 564-3276.

ED LOGSDON, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended)

601 KAR 1:101. Proof of liability and cargo insurance.

RELATES TO: KRS 281.600, 281.655, 281.656, 281.670, 281.990 [~~Chapter 281~~], 49 CFR Parts 387, 1023, 1043

STATUTORY AUTHORITY: KRS 281.600, 49 CFR Parts 387, 1023, 1043

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.655(1) requires that before any certificate or permit will be issued or renewed, the applicant or holder shall file with the department an approved indemnifying bond or insurance policy. This administrative regulation establishes [~~To establish~~] a system of insurance filings for all motor carriers operating in intrastate commerce or which have been registered in Kentucky pursuant to the provisions of 49 CFR Part 1023.

Section 1. Proof of Insurance of Interstate Exempt and Intrastate Motor Carriers. (1) Evidence of insurance required by KRS 281.655(1) [~~Chapter 281~~] shall be filed for motor carriers operating in intrastate commerce and those operating in interstate commerce but which are exempt from the authority of the Interstate Commerce Commission with the Division of Motor Carriers in the form of a certificate of insurance. The certificate of insurance shall be written to show the term of the [~~bond or~~] policy to be continuous until cancelled under proper notice. Another form of evidence of insurance shall not be accepted.

(2) The certificate of bodily injury and property damage insurance shall be on form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance" revised April, 1988. [~~This form is incorporated by reference.~~]

(3) All household goods motor carriers [~~operating pursuant to KRS 281.655(7)~~] shall file proof of cargo insurance on form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance" revised April, 1988. [~~This form is incorporated by reference.~~]

(4)(a) Cancellation of insurance required to be filed pursuant to KRS [~~Chapter~~] 281.655(9) shall be effected through the filing of form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies" revised April, 1988. [~~This form is incorporated by reference.~~]

(b) Notice of the reinstatement of insurance which was cancelled

pursuant to subparagraph (a) of this subsection shall be as set forth in subsections (2) and (3) of this section.

Section 2. Insurance - Interstate Authorized Carriers. (1) Provisions of Title 49, Code of Federal Regulations, Part 387 as effective January 11, 1995 [~~October 1, 1992~~] and 49 CFR Part 1043.2 as effective November 13, 1990, shall govern the minimum amounts of liability insurance of a motor carrier of property or passengers authorized to do so by the Interstate Commerce Commission.

(2) In accordance with 49 CFR Part 1023, Interstate Commerce Commission authorized motor carriers registered in Kentucky pursuant to 601 KAR 1:040, Section 5 shall file proof of insurance with the Division of Motor Carriers on Form B.M.C. 91, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982, or if more than one (1) insurance carrier is involved, Form B.M.C. 91X, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982. These forms are incorporated by reference.

Section 3. Reinstatement of Insurance. A motor carrier desiring to file a reinstatement of insurance which has been cancelled shall file a new certificate of insurance as required by this administrative regulation.

Section 4. Self-insurers. (1) Persons applying in accordance with KRS 281.655(1) [~~(4)~~] for an exemption in whole or in part, from the requirements of KRS 281.655(1), (5) and (6) shall file their application in petition form accompanied by a balance sheet and an income statement, as exhibits, which shall be prepared by a Certified Public Accountant or a responsible accounting officer of the applicant and shall reflect the actual financial condition of the applicant as of the last calendar quarter preceding the date of the application.

(2) When an authorized carrier operating exclusively in interstate commerce has qualified as a self-insurer with the Interstate Commerce Commission, and that commission has entered an order allowing the carrier to qualify as a self-insurer, the applicant may file, as an exhibit, a certified copy of the ICC order with its application in lieu of a balance sheet and an [~~in~~] income statement.

(3) The cabinet shall [~~may~~], in its discretion, enter an order consistent with its opinion of the applicant's financial condition.

(4) The order may be revoked by the cabinet at any time when it has reason to believe that the financial condition of the applicant has changed.

(5) The cabinet may also require the filing of additional financial statements or at any time it has reason to believe the financial condition of the applicant has changed.

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance", revised April 1988;

(b) Form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance", revised April 1988;

(c) Form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies", revised April 1988;

(d) Form B.M.C. 91, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance", revised January 1982, Interstate Commerce Commission; and

(e) Form B.M.C. 91X, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance", revised January 1982, Interstate Commerce Commission.

(2) This material may be inspected, copied, or obtained at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort,

Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-4540. [All of the material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor of the State Office Building, 601 High Street, Frankfort, Kentucky 40622. The [its] hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. The [its] telephone number is (502) 564-4540.

NORRIS BECKLEY, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: January 11, 1996

FILED WITH LRC: July 10, 1996 at 3 p.m.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended)**

601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests.

RELATES TO: KRS 186.411, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.400, 186.411, 186.444, 186.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.444 and 186.570 require the Transportation Cabinet to promulgate administrative regulations establishing the Medical Review Board. This administrative regulation establishes the board and clarifies differences between the statutes. [The Medical Review Board has existed through administrative regulation since June, 1964. The 1994 General Assembly passed two (2) bills, SB 205 and HB 417, mandating the establishment of the Medical Review Board and authorizing the Transportation Cabinet to promulgate an administrative regulation to implement the Medical Review Board. Statutory authority was necessary because the Administrative Regulations Review Subcommittee determined in late 1993 that the Transportation Cabinet does not have the specific authority necessary to promulgate an administrative regulation relating to the Medical Review Board and, therefore, 601 KAR 13:010 expired on April 15, 1994. Because of a slight conflict between SB 205 and HB 417, the Transportation Cabinet is including in this administrative regulation clarification of the differences between the two (2) bills.]

Section 1. (1) The Medical Review Board shall be chaired by the Commissioner of the Department of Vehicle Regulation of the Transportation Cabinet or his representative.

(2) A quorum of the Medical Review Board shall be at least ~~not less than~~ three (3) physicians licensed to practice medicine in the Commonwealth of Kentucky.

(3) Appointees to the Medical Review Board who are not physicians licensed pursuant to KRS Chapter 311 may have their appointment restricted to a specified area of expertise.

(4) The Commissioner of the Department of Vehicle Regulation or his representative shall prescribe the time and place for the board to meet.

(5) The nonstate government members of the board who participate in a meeting shall be paid \$200 each day or part of a day and reimbursed for necessary expenses incurred in attending the meeting.

Section 2. (1) If [When] the Commissioner of the Department of Vehicle Regulation or his representative receives notice that one (1) or more of the conditions listed in Section 4 of this administrative regulation exists in a person and that the person's physical or mental condition may render it unsafe for him to operate a motor vehicle

upon the public highways, the commissioner shall refuse to issue an operator's license to the person or he shall suspend the existing driving privilege of the person unless the person submits to an examination by a qualified physician within forty-five (45) days of notification of the commissioner's intentions.

(2) If the department deems that an examination by a qualified physician is necessary, the required medical examination shall be conducted at the person's own expense by a ~~any~~ licensed physician of his choice.

(3) The examining physician shall report within forty-five (45) days the results of his examination directly to the Division of Driver Licensing on a form furnished by the Department of Vehicle Regulation. The Medical Review Board Form TC 94-86, revised in November 1995, is incorporated by reference in Section 5 of this administrative regulation.

(4)(a) As soon as possible after receipt of the completed form, the Department of Vehicle Regulation shall evaluate it according to the medical standards set forth in 601 KAR 13:100.

(b) The Department of Vehicle Regulation shall submit a ~~any~~ case ~~[to the Medical Review Board]~~ in which medical or rehabilitation expertise is needed to evaluate the driving ability of a person to the Medical Review Board.

(c) The Medical Review Board may make recommendations to the Department of Vehicle Regulation for further medical examination, testing, or restriction of the person's driving privilege, or denial of driving privilege.

(d) If the Medical Review Board recommends further examination or investigative testing or if the Department of Vehicle Regulation determines it to be necessary, the Commissioner of the Department of Vehicle Regulation or his representative shall notify the person of the date by which he shall comply in order to retain or obtain his driving privilege.

Section 3. (1) If the Medical Review Board or Department of Vehicle Regulation, pursuant to the evaluation in Section 2(3) of this administrative regulation, recommends total suspension of a person's driving privilege or any limitations thereon, the Commissioner of the Department of Vehicle Regulation or his representative shall notify the person at the last known address of the person that this action will be taken unless a written request for an informal hearing before the board is received within twenty (20) days following the first class mailing of the notice. The person shall also be informed of his right to:

(a) An informal hearing before the board; and

(b) If necessary, an appeal to the board for a formal administrative hearing pursuant to KRS Chapter 13B. ~~[an immediate administrative hearing pursuant to the provisions of KRS Chapter 13B.]~~

(2) The informal hearing shall be scheduled as early as practicable at a time and place designated by the commissioner or his representative. ~~[and]~~ Notice shall be mailed to the person involved no later than ten (10) days prior to the hearing date.

(3) The commissioner or his representative shall preside at the hearing before the Medical Review Board and at least three (3) physician members shall be present.

(4) The presiding officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

(5) The scope of the hearing shall be limited to the presentation of the evidence upon which the Medical Review Board made their recommendation and any medical evidence the petitioner wishes to present in explanation or refutation of this evidence.

(6) Evidence may be presented at the hearing in the form of depositions.

(7) All testimony at the hearing shall be recorded and together with any depositions or exhibits introduced at the hearing shall form the complete record.

(8) Within ten (10) working days after the hearing, the commissioner shall issue a decision which [and this] shall be promptly forwarded to the petitioner along with the notice required pursuant to subsection (9) of this section.

(9) ~~[In the notice provided pursuant to subsection (8) of this section.]~~ The petitioner shall be informed of his right to an administrative hearing pursuant to the provisions of KRS Chapter 13B.

Section 4. The Commissioner of the Department of Vehicle Regulation or his representative shall promptly notify the person involved to submit to the physical examination set out in Section 2 of this administrative regulation when one (1) or more of the following conditions exists:

(1) Driver has indicated that he "blacked out", lost consciousness or suffered a seizure prior to a reportable motor vehicle accident;

(2) Driver has been named in an affidavit by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental infirmities;

(3) Driver has been reported by a physician as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;

(4) Driver has been reported by a law enforcement officer or a Kentucky State Police license examiner who has reason to believe or who has observed an individual driving or behaving in an erratic or dangerous manner which indicates a possibility of a physical or mental disability which may impair his driving ability;

(5) Applicant for a motor vehicle operator's license or for its renewal indicates on the application form that he has a physical or mental disability which may impair his driving ability;

(6) Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental impairment;

(7) Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental impairment; or

(8) Driver has reported to the Transportation Cabinet or Medical Review Board that he has a mental or physical impairment.

Section 5. (1) Medical Review Board Form TC 94-86, revised November 1995, ~~[1996]~~ is incorporated by reference as a part of this administrative regulation.

(2) The material incorporated by reference in this administrative regulation can be viewed, copied, or obtained from the Division of Driver Licensing. The address is 501 High Street, Second Floor, Frankfort, Kentucky 40601. The telephone number is (502) 564-5384. The business hours are 8 a.m. to 4:30 p.m. on weekdays.

ED LOGSDON, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: May 21, 1996

FILED WITH LRC: June 12, 1996 at 9 a.m.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended)**

601 KAR 13:100. Medical standards for operators of motor vehicles.

RELATES TO: KRS 186.411, 186.440, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.444, 186.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.570 requires the Transportation Cabinet to withhold driving privileges from an individual who has a mental or physical disability that makes it unsafe for him to drive upon the highways. KRS 186.411 requires that a person with a seizure condition be seizure-free for ninety (90) days

prior to licensing. This administrative regulation establishes [sets forth] the standards to be used by the Transportation Cabinet and Medical Review Board in determining who is unsafe to operate a motor vehicle because of a mental or physical disability.

Section 1. Definitions. (1) "Altered consciousness" means a state of awareness characterized by loss or distortion of the impressions made by the senses or inability to respond to the impressions made by the senses.

(2) "Assessment" means an evaluation of a person's substance abuse performed by a certified chemical dependency counselor, a certified driving under the influence (DUI) assessor, or other mental health professional in a licensed treatment facility. ~~[examination of a person's use of chemicals for the person by an approved public treatment facility.]~~

(3) "Chemical" means alcohol, a drug, or a controlled substance as defined in KRS Chapter 218A.

(4) "Cognition" means the ability to think, perceive, and remember.

(5) "Comorbid" means that more than one (1) condition is present at the same time.

(6) "Corrective lens" means an ophthalmic lens, whether an eyeglass, contact lens or single lens system, that corrects the refraction error or other optically correctable deficiency of the eye.

(7) "Driving evaluation" means a test conducted to determine if a person adequately compensates for his medical, mental, or physical condition or functional impairment.

(8) "Episode" means any incident or segment of time involving altered consciousness or loss of bodily control.

(9) "Field of vision" means the entire horizontal and vertical planes a person has for each eye without shifting the gaze.

(10) "Functional ability" means the degree of cognitive, mental or emotional, sensorimotor and sensory capability in performing activities of daily living, including safely performing the tasks of driving.

(11) "Licensing action" means any action by the Transportation Cabinet involving the denial, cancellation, restriction, or issuance of a motor vehicle operator's license under KRS Chapter 186.

(12) "Loss of bodily control" means involuntary movements of the body characterized by muscle spasms or muscle rigidity, or loss of muscle tone or muscle movement.

(13) "Medical condition" means any physical, mental, or emotional condition which affects a person's health for which a person is receiving medical or substance abuse treatment, or for which medical or substance abuse treatment is usually prescribed.

(14) "Mental or emotional function" means interaction and communication skills, adaptive behavior or coping capacity, and orientation.

(15) "Review board" means the Medical Review Board established under KRS ~~[Chapter]~~ 186.444 and 186.570.

(16) "Sensory function" means vision, hearing, touch, smell, or vibration sense.

(17) "Vision specialist" means a person licensed to practice optometry as defined by KRS Chapter 320, or a physician licensed pursuant to KRS Chapter 311.

Section 2. General Requirements. (1) If the Department of Vehicle Regulation learns that a person applying for, renewing, or holding a motor vehicle operator's license may have a medical condition which may affect safe driving, the department may require the person to provide the department with medical information about the person's medical condition. The department shall review the medical information using the standards specified in this administrative regulation.

(2) A person holding a Kentucky operator's license or instruction permit shall report to the department medical conditions that adversely affect his driving skills.

Section 3. Information to be Considered in Licensing Actions.

Pursuant to 601 KAR 13:090, the Medical Review Board ~~if [when]~~ making recommendations, and the department ~~if [when]~~ taking licensing action, may consider the following information:

(1) Any medical condition affecting the person including~~[-but not limited to:]~~:

- (a) History of illness;
 - (b) Severity of symptoms and prognosis;
 - (c) Complications or comorbid conditions, or both;
 - (d) Treatment and medications, including effects and side effects, and the person's knowledge and use of medications;
 - (e) Results of medical ~~[medical]~~ tests and reports of laboratory findings;
 - (f) Physician's medical report;
 - (g) Physician's recommendations with regard to functional impairment; and
 - (h) Physicians's identification of risk factors.
- (2) Reports of driver condition or behavior;
- (3) The results of any driving evaluation of the person;
- (4) Substance abuse assessment reports from a licensed treatment facility, certified chemical dependency counselor, or certified driving under the influence (DUI) assessor; [Alcohol or drug assessment reports by an agency;]
- (5) Traffic accidents that may have been caused in whole or in part by a medical condition;
- (6) Vision specialist's report;
- (7) A person's failure to provide requested information to the department; or
- (8) A report from a rehabilitation specialist.

Section 4. Conditions Affecting Cardiovascular Function. (1) With respect to conditions affecting cardiovascular function, the Medical Review Board ~~if [when]~~ making recommendations, and the department ~~if [when]~~ taking licensing action, may consider disorders including~~[-but not limited to:]~~ the following:

- (a) Cardiac dysfunction;
 - (b) Arrhythmias; and
 - (c) Other cardiac or circulatory disorder or dysfunction.
- (2) The department or the Medical Review Board may require a person to provide information on the person's cardiovascular functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cardiovascular function of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following cardiovascular function criteria:
- (a) There shall not be current symptoms of coronary artery disease, such as unstable angina, dyspnea, or pain at rest, which interfere with safe driving;
 - (b) There shall not be a cause of cardiac syncope present, including ventricular tachycardia or fibrillation, which is not successfully controlled;
 - (c) There shall not be congestive heart failure that limits functional ability;
 - (d) There shall not be cardiac rhythm disturbances which are not successfully controlled;
 - (e) There shall not be an automatic implantable cardioverter defibrillator, unless the device is assessed by an electrophysiologist as not interfering with safe driving;
 - (f) There shall not be medications interfering with safe driving; and
 - (g) There shall not be valvular heart disease or malfunction of prosthetic valves that interferes with safe driving.

Section 5. Conditions Affecting Cerebrovascular Function. (1) With respect to conditions affecting cerebrovascular function, the Medical Review Board ~~if [when]~~ making recommendations, and the

department ~~if [when]~~ taking licensing action, may consider disorders including~~[-but not limited to:]~~ the following:

- (a) Cerebrovascular accident; and
 - (b) Other cerebrovascular disorder or dysfunction.
- (2) The department or Medical Review Board may require information on a person's central nervous system functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cerebrovascular functions of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following cerebrovascular function criteria:
- (a) There shall not be a sensori-motor deficit preventing safe driving;
 - (b) There shall not be impairment of reasoning or judgement preventing safe operation of a vehicle; and
 - (c) There shall not be medications interfering with the person's ability to operate a motor vehicle safely.

Section 6. Conditions Affecting Endocrine Function. (1) With respect to conditions affecting endocrine function, the Medical Review Board, ~~if [when]~~ making recommendations, and the department ~~if [when]~~ taking licensing action, may consider disorders including~~[-but not limited to:]~~ the following:

- (a) Diabetes mellitus; and
 - (b) Other endocrine disorder or dysfunction.
- (2) The department or Medical Review Board may require information on a person's endocrine functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting endocrine functions of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following endocrine function criteria:
- (a) There shall not be diabetic neuropathy or other complication which interferes with safe driving;
 - (b) There shall not be frequent and functionally impaired hypoglycemic reactions; and
 - (c) There shall not be evidence of use of alcohol or other drugs to an extent that interfere with the person's prescribed treatment program for the condition.

Section 7. Conditions Affecting Musculoskeletal Function. (1) With respect to conditions affecting musculoskeletal function, the Medical Review Board ~~if [when]~~ making recommendations, and the department ~~if [when]~~ taking licensing action, may consider disorders including~~[-but not limited to:]~~ the following:

- (a) Rheumatoid arthritis;
 - (b) Paralysis; and
 - (c) Other musculoskeletal disorder or dysfunction.
- (2) The department or Medical Review Board may require information on a person's musculoskeletal functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting musculoskeletal function of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet of the following musculoskeletal function criteria:
- (a) Pain shall not interfere with the person's ability to safely operate a motor vehicle;
 - (b) The person's operation of a vehicle in a driving evaluation demonstrates adequate compensation for any weakness or limitations in range of motion or mobility; and
 - (c) There shall not be effects or side effects of medication interfering with safe driving.

Section 8. Conditions Affecting Neurological or Neuromuscular Function. (1) With respect to conditions affecting neurological or neuromuscular function, the review board ~~if [when]~~ making recommendations, and the department ~~if [when]~~ taking licensing action, may consider disorders including~~[-but not limited to,]~~ the following:

- (a) Central nervous system diseases or disorders;
- (b) Demyelinating diseases;
- (c) Muscular diseases or disorders; and
- (d) Seizure disorders.

(2) The department or Medical Review Board may require information on neurological or neuromuscular functional abilities or disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting neurological or neuromuscular function of this subsection and a person who applies for, renews, or holds for motor vehicle operator's license shall meet all of the following neuromuscular function criteria:

- (a) There shall not have been a seizure episode as set forth in KRS 186.411;
- (b) The person adequately compensates for any paralysis or sensory deficit when operating a vehicle;
- (c) Fatigue, weakness, muscle spasm or tremor at rest does not impair safe driving;
- (d) There shall not be effects of or side effects of medication that interferes with safe driving; and
- (e) There shall not be a decline in cognition to an extent that interferes with safe driving.

Section 9. Conditions Affecting Mental or Emotional Function. (1) With respect to conditions affecting psychosocial, mental or emotional function, the review board ~~if [when]~~ making recommendations, and the department ~~if [when]~~ taking licensing action, may consider disorders including~~[-but not limited to,]~~ the following:

- (a) Substance and alcohol abuse; and
- (b) Other mental or emotional disorder or dysfunction.

(2) The department or Medical Review Board may require information on mental or emotional functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting mental and emotional function of this subsection and a person who applies for, renews, or holds any classification of operator's license shall meet all of the following mental and emotional function criteria:

- (a) There shall not be dementia that is unresponsive to treatment;
- (b) There shall not be a behavior disorder with threatening or assaultive behavior at the time of application;
- (c) There shall not be a delusional system which interferes with safe driving;
- (d) There shall not be a suicidal tendency;
- (e) There shall not be an impairment of judgement that interferes with safe driving;
- (f) There shall not be an active psychosis that interferes with safe driving; and
- (g) There shall not be effects or side effects of medication that interferes with safe driving.

Section 10. Conditions Affecting Respiratory Function. (1) With respect to conditions affecting respiratory function, the review board ~~if [when]~~ making recommendations, and the department ~~if [when]~~ taking licensing action, may consider disorders including~~[-but not limited to,]~~ the following:

- (a) Chronic obstructive pulmonary diseases; and
- (b) Any other respiratory disorder or dysfunction.

(2) The department or Medical Review Board may require information on respiratory functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to,

renewed by, or held by a person who does not meet the medical review standards for conditions affecting respiratory function of the subsection and a person who applied for, renews, or holds a motor vehicle operator's license shall meet all of the following respiratory function criteria:

- (a) The person does not require medication that interferes with driving; and
- (b) There shall not be dyspnea that interferes with safe driving.

Section 11. Conditions Affecting Vision and Sensory Function. (1) With respect to conditions affecting sensory function, the review board ~~if [when]~~ making recommendations, and the department ~~if [when]~~ taking licensing action, may consider conditions including~~[-but not limited to,]~~ the following:

- (a) Vision loss; and
- (b) Any other ocular or sensory disorder or dysfunction.

(2) The department or Medical Review Board may require information on ocular and sensory functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting sensory functions of this subsection and a person who applies for, renews, or holds any classification of operator's license shall meet all of the following criteria:

- (a) Visual acuity of at least 20/60 or better in at least one (1) eye with single lens system; and
- (b) Binocular horizontal field of vision of at least thirty-five (35) degrees to the left and right side of fixation and a binocular vertical field of vision of at least twenty-five (25) degrees above and below fixation.

Section 12. License Restrictions. (1) The department may restrict a person's operating privilege based on any of the following:

- (a) A recommendation of a physician or vision specialist;
 - (b) The results of a driving examination or evaluation performed by the Kentucky State Police or a rehabilitation specialist or facility; or
 - (c) Recommendation of the Medical Review Board.
- (2) License restrictions may require a person to:
- (a) Wear corrective lenses;
 - (b) Use special equipment or specially equipped vehicles;
 - (c) Operate only during daylight hours;
 - (d) Restrict the driving area; or
 - (e) Restrict the motor vehicle operating privilege in any other manner which the department deems necessary for safety purposes.

ED LOGSDON, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: August 5, 1996

FILED WITH LRC: August 9, 1996 at 9 a.m.

**TRANSPORTATION CABINET
Department of Highways
Division of Contract Procurement
Division of Construction
(As Amended)**

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

RELATES TO: KRS 45A.245, 176.090-176.110, 176.130 to 176.220~~[-Chapter 177]~~

STATUTORY AUTHORITY: KRS ~~[13A.100, 61-878,]~~ 174.080, 176.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.140 authorizes the Department of Highways to determine the eligibility of

bidders for construction contracts with the department. This administrative regulation is promulgated ~~[adopted]~~ to provide a method by which the ~~[such]~~ determination shall ~~[may]~~ be made. This administrative regulation also establishes ~~[Further the KRS 13A.100 requirement that any administrative body promulgate administrative regulations pertaining to its hearing procedure is followed in setting forth]~~ the hearing procedures for a contract claims dispute and denial, revocation, or limitation of certification.

Section 1. Definitions. (1) "Commissioner" ~~[shall]~~ means the Commissioner of Highways.

(2) "Cabinet" ~~[shall]~~ means the Transportation Cabinet.

(3) "Department" ~~[shall]~~ means the Department of Highways.

(4) "Division" ~~[shall]~~ means the Division of Construction.

(5) "Concurrence" ~~[shall]~~ means the agreement with the entire report and recommendation of the hearing examiner.

(6) "Dissent" ~~[shall]~~ means disagreement with a part or portions of the report and recommendation of the hearing examiner.

(7) "Contract" ~~[shall]~~ means a competitively bid contract between the contractor and the department pursuant to KRS Chapter 45A and 176.090 to 176.110 ~~[+77]~~.

(8) "Contractor" ~~[shall]~~ means the person, corporation, partnership or joint venture which enters into a contract with the department for highway maintenance or construction.

(9) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work permitted at any one (1) time.

Section 2. Certificate of Eligibility. (1)(a) A contractor ~~[All contractors]~~ bidding on a construction or ~~[and]~~ maintenance project or ~~[and]~~ accepting a subcontract on a construction or ~~[and]~~ maintenance project of the Transportation Cabinet, Department of Highways, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.

(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor is qualified.

(c) The department may ~~[reserves the right to]~~ waive this requirement on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the ~~[where such]~~ requirement is not mandated by KRS 176.130. The ~~[Such]~~ waiver shall be contained in the notice to contractors and the bid proposal for the ~~[such]~~ project.

(2) The Commissioner of Highways shall appoint a construction prequalification committee composed of department employees to review each application and make a recommendation to the State Highway Engineer ~~[Commissioner of Highways]~~ concerning the eligibility of a contractor to bid on a department construction or maintenance contract.

Section 3. Application for Certificate of Eligibility. A contractor desiring to procure a certificate shall submit, on the application and financial statement form ~~[e]~~ IC-14-1, "Application for Certificate of Eligibility", September 1995 edition, [which is incorporated by reference in Section 11 of this administrative regulation and] provided by the department, information relating to the following:

(1) Ability to perform the types of work for which eligibility is requested.

(2) Construction experience resumes of the principal officers and key personnel of the contractor.

(3) Description of plant and equipment.

(4) Balance sheet and financial statement prepared as of the close of the last fiscal year or to reflect the current financial status of a newly established contractor.

(a) The financial statement of an applicant desiring eligibility in excess of \$1,000,000 shall ~~[must]~~ be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal

office of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant shall also comply with the specific instructions relative to the presentation of supporting detail requested by the department to determine the amount of net current assets available.

(b) The financial statement of an applicant desiring eligibility of \$1,000,000 or less shall be signed by the person preparing the statement and by a principal officer of the contractor.

(5) A "Certificate of Authority" if required by KRS 176.150(4) ~~[Other information deemed necessary by the department to indicate the applicant's capacity and ability to complete highway construction projects].~~

Section 4. Confidentiality of Financial Information. In order to comply with KRS 61.878(1)(c) ~~[(b)]~~ and KRS 176.210 the department shall not make available to the public the application information required in Section 3(3) and (4) of this administrative regulation.

Section 5. Method of Computing Maximum Eligibility Amount. (1)(a) The allowable net current assets as determined from the financial statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor.

(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.

(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.

(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the following maximum percentages:

(a) Organization and experience - twenty (20) percent;

(b) Plant and equipment - thirty (30) percent;

(c) Performance - fifty (50) percent.

(3)(a) The maximum eligibility amount ~~[which is the maximum amount of uncompleted prime contract work permitted at any one time]~~ shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor.

(b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted.

Section 6. Issuance of Certificate of Eligibility. (1)(a) The Construction Prequalification Committee ~~[department]~~ shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.

(b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) days after receipt of the application unless the ~~[such]~~ application is deferred as provided in Section 7 [6](3) of this administrative regulation.

(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal-aid project which has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.

(2) A certificate ~~[All certificates]~~ of eligibility shall terminate ~~[not later than]~~ 120 days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time. Ninety (90) days of this period is to permit the applicant to file a new

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application in accordance with Section 3 of this administrative regulation, thirty (30) days is for the department's review of the application and, if approved, the issuance of the new certificate of eligibility.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

(4) An applicant may, in regard to the department's decision on its application:

(a) Request reconsideration of the department's decision in accordance with Section 7 of this administrative regulation; or

(b) Appeal the department's decision in accordance with Section 10 of this administrative regulation.

Section 7. Reconsideration of Decisions of Construction Prequalification Committee. (1)(a) An applicant may at any time request reconsideration of an application if the applicant is [when] denied a certificate of eligibility or [when the applicant] disagrees with the maximum eligibility amount [and] for the types of work set forth in its certificate of eligibility by notifying the department in writing [within ten (10) days after receipt of its certificate of eligibility]. An applicant may also request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount if the request is submitted in writing within ten (10) days after receipt of the notice of the department's action.

(b) A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.

(c) The Construction Prequalification Committee [department] shall review the request, may contact the applicant for clarification or expansion of the submitted information, and shall make recommendation to the State Highway Engineer.

(d) The Department of Highways shall [and] notify the applicant of its determination within thirty (30) days after receipt of the request for reconsideration.

(e) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his right to an administrative hearing pursuant to Section 10 of this administrative regulation.

(2) An applicant denied a certificate of eligibility may submit a new application if [when] factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The department shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.

(3)(a) An application which is deferred by the department until the applicant settles outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the [such] time that the reason for deferral is resolved to the satisfaction of the department.

(b) The department shall then take action on the deferred application to issue or deny a certificate of eligibility.

(c) The applicant submitting an application, which is deferred, shall [will] be notified of the deferral within ten (10) days after action is taken by the department to defer the application. The applicant shall be notified pursuant to Section 10 of this administrative regulation of his right to an administrative hearing regarding the deferral.

(4) An interim application may be submitted if [when] there has been a substantial increase in the net current assets of the applicant and the applicant [if the contractor] wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility. The [Such] interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. The department shall review the interim application and

notify the applicant of its determination within thirty (30) days after receipt of the application.

(5) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement ~~[and] for~~ current information relating to the applicant's organization, equipment and work status. The information requested shall [must] be submitted within thirty (30) days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.

(6) An applicant may request an administrative hearing if the applicant is [when] denied a certificate of eligibility, [when] his application is deferred, or [when] the applicant disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing within ten (10) days after receipt of its denial or certificate of eligibility. The department shall hold an administrative hearing pursuant to the provisions of Section 10 of this administrative regulation.

Section 8. Revocation of Certificate of Eligibility or Reduction of Maximum Eligibility Amount. (1) Upon receipt of information or evidence ~~that~~ a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, administrative regulations, ~~or [and]~~ specifications applicable to a contract or subcontract, the department may take action to suspend or [and] revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(2) A notice to the certificate holder, setting forth the grounds on which the action is proposed, shall be sent by certified mail.

(3) The proposed action shall become final unless the certificate holder submits a written request for a reconsideration pursuant to Section 7 of this administrative regulation or an administrative hearing within ten (10) days after receipt of the notice.

(4) If the certificate holder requests an administrative hearing, the department shall hold this hearing in accordance with the provisions of Section 10 of this administrative regulation. [Within ten (10) days after receipt of a request for hearing, the department shall set a date for an informal hearing at which time the certificate holder may submit any pertinent information and evidence. The department shall advise the certificate holder of its determination within ten (10) days after the informal hearing.]

Section 9. Exhaustion of Engineering Structure Administrative Process. (1) If a [When the] contractor has a contract claim or requests relief from the department, the contractor shall exhaust the administrative process within the engineering structure of the department prior to requesting an administrative hearing. [a hearing] The administrative process [within the engineering structure of the department] shall be exhausted by the contractor submitting [through submission of] the claim or request for relief to the following:

(a) First, to the resident engineer in charge of the project out of which the contract claim arose. The contractor shall submit his claim or request to the resident engineer not later than thirty (30) days after issuance of final payment to the contractor under the terms of the contract in question;

(b) Second, to the chief construction engineer in the district; and

(c) Third, to the division through its director. The decision of the division shall be in writing and shall be mailed to the contractor.

(2) The contractor may request an administrative hearing pursuant to Section 10 of this administrative regulation on his contract claim or request for relief within thirty (30) days of the date of the decision of the division.

Section 10. Hearing Procedure ~~[for Contract Claims]~~. (1) A request [All requests] for an administrative hearing pursuant to the provisions of this administrative regulation [relating to contract claims or request for relief] shall be in writing and mailed to the Commissioner, Department of Highways, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(2) Upon receipt of a request for an administrative hearing, the commissioner shall proceed in accordance with the provisions of KRS Chapter 13B. ~~[assign the matter to a hearing examiner. The hearing examiner shall not be a full-time employee of the cabinet.]~~

(3) ~~The hearing examiner shall schedule a date for the hearing as schedules of the parties who attend the hearing permit.~~

(4) ~~The following people shall attend the hearing:~~

(a) ~~The state highway engineer or his designee;~~

(b) ~~The general counsel for the cabinet or his designee;~~

(c) ~~The contractor or his spokesperson; and~~

(d) ~~The departmental construction engineers.~~

(5) ~~The hearing shall be recorded and the technical rules of evidence shall not apply.~~

Section 11. Hearing Examiner's Report. (1) ~~The hearing examiner may consult with department engineers not affiliated with the division for technical assistance and consultation in the preparation of his report.~~

(2) ~~Following the hearing,~~

(3) The hearing examiner shall prepare and submit his report with a recommendation to the commissioner through the state highway engineer and the general counsel. The state highway engineer and the general counsel may concur, not concur or dissent in the report of the hearing examiner.

(a) If the report and recommendation is concurred in by both the state highway engineer and the general counsel, the report and recommendation shall be transmitted to the commissioner for approval.

(b) If either the state highway engineer or the general counsel or both fail to concur in the report and recommendation, the report and recommendation shall be transmitted to the commissioner with any accompanying dissent or comment by the state highway engineer or the general counsel indicating reasons for disagreement.

(4) ~~[(3)]~~ The commissioner, after receiving the report and recommendation of the hearing examiner and any accompanying dissent or comment, may accept the report and recommendation in its entirety, or reject or modify any or all of the findings and recommendations of the hearing examiner.

(5) ~~[(4)]~~ The contractor shall be notified in writing of the commissioner's decision in accordance with the provisions of KRS Chapter 13B.

(6) ~~[(5)]~~ If the commissioner approves relief in whole or in part, the granting of relief shall be conditioned on the contractor's written agreement to accept the relief offered as full satisfaction and accord of all present or future administrative or legal remedies arising from the contract. Granting of the approved relief shall further be conditioned on the contractor's written agreement to dismiss with prejudice by agreed order or unilateral withdrawal any pending legal action against the department concerning the contract.

(7) ~~[(6)]~~ If the contractor ~~[should]~~ accepts the relief approved by the commissioner and executes the required agreements described above, the commissioner shall sign an official order or certificate of eligibility granting the relief.

Section 11. Material Incorporated by Reference. (1) The Transportation Cabinet form TC 14-1, "Application for Certificate of Eligibility", September 1995 edition, is incorporated by reference as a part of this administrative regulation.

(2) Copies of the material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Department of Highways, Division of Contract Procurement, 501 High Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502)564-3500.

J.M. YOWELL, P.E., State Highway Engineer
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(As Amended)

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

RELATES TO: KRS 351.175(3)

STATUTORY AUTHORITY: KRS 351.070(13) ~~[Chapter 13A]~~, 351.175(3)

NECESSITY, FUNCTION AND CONFORMITY: KRS 351.175(3) requires the Department of Mines and Minerals to establish mine license fees. This administrative regulation establishes the fees to be charged for a license to operate a mine.

Section 1. ~~[For purposes of this administrative regulation, "working section" means all areas of a coal or clay mine from the loading point or transfer point of the section to and including the working faces. This is the definition given "working section" in KRS 352.010(1)(ii).]~~

Section 2. ~~[Every application to the Department of Mines and Minerals for a license to operate a mine shall be accompanied by a United States Postal Money Order or Cashier's Check drawn in favor of the State Treasurer.]~~ The amount of ~~the~~ [this] license fee for a mine ~~[for an underground mine]~~ shall be established as follows: ~~[determined by the number of working sections in such a mine and by reference to subsections (1) and (2) of this section.]~~

(1) The annual license fee for a new mine ~~[which are those mines not licensed in the immediately previous year,]~~ (with one (1) working section) shall be \$300. A "new mine" shall include a mine which has previously produced coal, but was not licensed and operating in the immediately previous year.

~~[(2) The annual license fee for mines with more than one (1) working section shall be \$300, plus \$100 for each additional working section.]~~

Section 3. ~~The license fee for a surface mine shall be determined by the tonnage produced from such mine and by reference to subsections (1) and (2) of this section.~~

~~(1) The minimum annual license fee for a surface mine shall be \$300.]~~

(2) The annual license fee for a mine licensed and producing coal in the immediately preceding calendar year shall be as follows:

(a) Mines producing 100,000 tons or less in the previous year - \$300.

(b) Mines producing more than 100,000 tons in the previous year - \$300, plus \$100 for each additional 100,000 tons mined or part thereof. [The annual license fee for mines having been licensed and produced in the preceding calendar year, at or in excess of 100,000 tons per year shall be \$300, plus \$100 for each additional 100,000 tons or part thereof mined in the immediately previous year.]

LAURA M. DOUGLAS, Secretary
JOHN L. FRANKLIN, Chairman and Commissioner
APPROVED BY AGENCY: July 15, 1996
FILED WITH LRC: July 15, 1996 at 10 a.m.

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CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management & Development (As Amended)

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

RELATES TO: KRS 194.050, 7 CFR 273.7, PL 103-66

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer a Food Stamp Employment and Training Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program. Administrative regulation 904 KAR 3:041 has expired and this administrative regulation corrects a deficiency on that administrative regulation that was found by the Interim Joint Committee on Health and Welfare by deleting an age factor to the priority status criteria listed in Section 3(2) of this administrative regulation.

Section 1. Definitions. (1) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with food stamp employment and training requirements occurred.

(2) "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(3) "Primary wage earner" means the household member providing the most earned income in the prior two (2) months.

(4) "Voluntary quit" means the self termination of employment by a household member on a voluntary basis.

Section 2. Work Registration. (1) Except those meeting exempt criteria in subsection (4) of this section, all household members shall be required to register for work:

(a) At the initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

(a) The member required to register; or

(b) The person making application for the household.

(3) Unless otherwise exempt, persons who are excluded household members of the food stamp case, shall be required to register for work during periods of disqualification. These individuals are:

(a) Ineligible aliens;

(b) Individuals disqualified for refusing to provide or apply for a Social Security number; and

(c) Individuals disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

(a) A person younger than sixteen (16) years of age or a person sixty (60) years of age or older;

(b) A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis;

(c) A person with a physical or mental disability;

(d) A household member subject to and complying with any work requirement in the Aid to Families with Dependent Children Program;

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register

for work with the Department for Employment Services as part of the unemployment compensation application process;

(g) A regular participant in a substance abuse or alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, provided that those meeting student status have met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances that are subject to the reporting requirements of the Food Stamp Program shall work register:

(a) When the change is reported, if the change is:

1. A change in the source of income or in the amount of gross monthly income totaling more than twenty-five (25) dollars, unless the amount change is in an Aid to Families with Dependent Children grant;

2. Any change in household composition, including the addition or loss of a household member;

3. A change in residence and the resulting change in shelter costs;

4. The acquisition of a nonexempt licensed vehicle or loss of a vehicle exemption for a household member who has a physical disability;

5. A change in total resources that reach or exceed the allowable maximum; or

(b) At the household's next recertification if the change in circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) All nonexempt household members shall be subject to the following work requirements:

(a) Keep the initial assessment interview;

(b) Provide requested verification by mail or in person;

(c) Participate in a Food Stamp Employment and Training Program if assigned;

(d) Respond to any request for additional information regarding employment status or availability for work;

(e) Report to an employer if referred by the food stamp employment and training worker or designee provided that the potential employment is not unsuitable as designated in Section 7 of this administrative regulation; and

(f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.

(7) Household members who are exempt or those completing the work registration requirements may volunteer to participate in the Food Stamp Employment and Training Program.

(8) The food stamp employment and training worker shall explain to the food stamp applicant:

(a) The work requirements for each nonexempt household member;

(b) The rights and responsibilities of the work registered household members; and

(c) The consequences of failing to comply.

(9) Each household member required to register shall be notified in writing of the requirements in subsection (6) of this section.

Section 3. Employment and Training Participation. (1) Work registrants who reside in a county which offers a Food Stamp Employment and Training Program shall be required to participate in the Food Stamp Employment and Training Program based on priority

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status.

(2) Priority status shall be determined if the work registrant:

(a) Has no high school diploma or general equivalency diploma (GED);

(b) Has no employment in the last twelve (12) months; or
(c) Is a veteran.

(3) Food stamp employment and training participants shall:

(a) Be placed in education, skills training or job search activities;
(b) Be reimbursed for miscellaneous and dependent care expenses, if otherwise eligible, up to:

1. The child care maximum payments as specified in 904 KAR 2:017 not to exceed \$200 per month per child under two (2) years of age or \$175 per month per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994; and

2. Twenty-five (25) dollars a month for miscellaneous expenses incurred while participating in the Food Stamp Employment and Training Program.

(4) Those participants who do not meet the criteria in subsection (2) of this section shall not be selected to participate in a Food Stamp Employment and Training component unless they are adamant about participating.

Section 4. Components. All counties offering the Employment and Training Program shall offer the following services and activities:

(1) Educational components shall be:

(a) Literacy programs;
(b) Adult basic education (ABE);
(c) General equivalency diploma (GED); and
(d) Community college.

(2) Skills training components shall be:

(a) Vocational school;
(b) On-the-job training; and
(c) Kentucky Domestic Violence Association (KDVA).

(3) Job search components shall be:

(a) Job seeking skills training;
(b) Group job search; and
(c) Individual job search.

Section 5. Conciliation. (1) When a food stamp employment and training participant fails to comply with Food Stamp Employment and Training Program requirements, a conciliation period shall be initiated.

(2) Conciliation shall be used to:

(a) Determine the reason for the noncompliance; and
(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation lasts for fifteen (15) days and in that time the food stamp employment and training worker shall:

(a) Determine good cause for noncompliance; or
(b) Encourage the participant to resume food stamp employment and training activity; or
(c) Recommend disqualification for failure to comply with program requirements.

(4) If the participant resumes food stamp employment and training activity, no further action is required toward applying a sanction.

(5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where the work registrant has failed to comply with:

(a) Work registration requirements as specified in Section 1 of this administrative regulation;
(b) Employment and training requirements as specified in Section 3 of this administrative regulation; or
(c) Voluntary quit requirements as specified in Section 9 of this

administrative regulation.

(2) Good cause for failing to meet work registration and employment and training requirements shall include circumstances beyond the control of the registrant including:

(a) Illness;
(b) Illness of another household member requiring the presence of the registrant;
(c) A household emergency;
(d) Unavailability of transportation; and
(e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).

Section 7. Sanctions in the Food Stamp Employment and Training Program. (1) Disqualifications shall be imposed as follows:

(a) If the nonprimary wage earner fails to comply with food stamp employment and training requirements, the individual shall be ineligible to receive food stamp benefits for two (2) months;

(b) If the primary wage earner fails to comply with food stamp employment and training requirements, the entire household shall be ineligible to receive food stamp benefits for two (2) months.

(2) If a disqualification is imposed, the disqualified member shall make reapplication for food stamps or request that the member be added to an active food stamp case to initiate a cure for noncompliance.

(3) Ineligibility as outlined in subsections (1) and (2) of this section continues until the ineligible member:

(a) Leaves the household;
(b) Becomes exempt from work registration;
(c) Complies with the work registration requirements; or
(d) The two (2) month disqualification period expires, whichever occurs first.

(4) If an ineligible household member joins a new household and:

(a) Is the primary wage earner, the entire new household then becomes ineligible for the remainder of the disqualification period; or
(b) Is not the primary wage earner, only he remains ineligible for the remainder of the disqualification period.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:

(1) The wage offered is less than the highest of the following:

(a) The applicable federal minimum wage;
(b) The applicable state minimum wage; or
(c) Eighty (80) percent of the federal minimum wage if neither the federal nor state minimum wage is applicable.

(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.

(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.

(5) In addition, employment shall be considered unsuitable if the household member involved can demonstrate or the worker otherwise becomes aware that:

(a) The degree of risk to health and safety is unreasonable;
(b) The member is physically or mentally unsuited to perform the employment. This shall be documented by medical evidence or by reliable information from other sources;

(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience as demonstrated by the individual or if the worker otherwise becomes aware;

(d) Daily commuting time exceeds two (2) hours a day, not including transporting a child to and from a child care facility;

(e) The distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site; or

(f) The working hours or nature of the employment interferes with the member's religious observances, convictions or beliefs.

Section 9. Voluntary Quit. (1) A primary wage earner who voluntarily quits a job of twenty (20) hours or more a week without good cause sixty (60) days or less prior to the date of food stamp application shall not be eligible to participate in the program.

(2) The disqualification period for voluntary quit shall be:

(a) Ninety (90) days from the date of quit if the individual is an applicant; and

(b) Ninety (90) days beginning with the first of the month after all normal procedures for taking adverse action have been taken if the individual is in an active food stamp case.

(3) Good cause for leaving employment includes criteria in Section ~~6~~ [5] of this administrative regulation and the following:

(a) Discrimination by the employer based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(b) Work demands or conditions that render continued employment unreasonable, as in working without being paid on time;

(c) Acceptance of employment by the head of household, or enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the head of household to leave employment;

(e) Resignations of persons under age sixty (60) which are recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment of more than twenty (20) hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours which, because of circumstances beyond the control of the primary wage earner, subsequently either does not materialize or results in employment of less than twenty (20) hours a week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours; and

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another as in migrant farm labor or construction work.

(4) Good cause for voluntary quit shall be verified if questionable.

Section 10. Curing Sanction for Voluntary Quit. (1) A household may begin participation in the Food Stamp Program following the voluntary quit disqualification period if it applies again and is determined eligible.

(2) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be allowed to resume participation if the member who caused the disqualification:

(a) Secures new employment which is comparable in salary or hours to the job which was quit; or

(b) Leaves the household.

(3) A work registrant who:

(a) Is required to participate in the:

1. Food Stamp Employment and Training Program; or

2. Aid to Families with Dependent Children, Job Opportunities and Basic Skills Program as specified in 904 KAR 2:006 and 904 KAR 2:370; and

(b) If fails to participate shall be ineligible to receive food stamp benefits for two (2) months unless:

1. Good cause exists;

2. The noncompliant individual was participating in a Job Opportunities and Basic Skills Program component which is more stringent than the components of the Food Stamp Employment and Training Program; or

3. The noncompliant Job Opportunities and Basic Skills Program participant is otherwise exempt from work registration in the Food Stamp Employment and Training Program.

(c) An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in paragraph (b)2 of this subsection shall be work registered in the Food Stamp Employment and Training Program unless otherwise exempt by subsection 2 of this section.

Section 11. Hearing Process. Work registrants shall have the same opportunity to request a hearing as specified in 904 KAR 3:070.

Section 12. Replacements for employment and training reimbursement checks that are lost or stolen shall be made by completing appropriate forms.

Section 13. Material Incorporated by Reference. (1) Forms necessary for participation in the Food Stamp Employment and Training Program are being incorporated. These forms include:

- (a) ET-101, revised 7/93;
- (b) ET-102, revised 8/93;
- (c) ET-102 Supplement A, revised 12/91;
- (d) J/ET-108, revised 9/91;
- (e) ET-111, revised 7/93;
- (f) ET-112, revised 10/90;
- (g) ET-114, revised 12/91;
- (h) ET-116, revised 12/93.

(2) Material Incorporated by Reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 10, 1996 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 1996

LEGISLATIVE ETHICS COMMISSION
(Amendment)

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

RELATES TO: KRS 6.666(6) to (13), 6.807, 6.821, 6.824, 6.827
STATUTORY AUTHORITY: KRS 6.666(5)

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

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

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

Section 3. (1) The "Initial Legislative Agent/Employer Registration Statement", "Legislative Agents Updated Registration Statement", "Legislative Agents Notice of Termination of Engagement", "Employers Updated Registration Statement", "Employers Notice of Termination of Engagement", are incorporated by reference on July 15, 1996.

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

JUDGE CHARLES B. LESTER, Chairman

EARL S. MACKEY, Executive Director

APPROVED BY AGENCY: September 13, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing will be held at the Legislative Ethics Commission Office at 22 Mill Creek Park, Frankfort, Kentucky 40601, 10 a.m., on October 22, 1996. Individuals interested in attending this hearing shall notify this agency in writing by October 15, 1996, 5 work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are 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 the contact person.

CONTACT PERSON: Peggy J. Williams, Principal Assistant, Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601. Phone - (502) 573-2863, FAX (502) 573-2929.

REGULATORY IMPACT ANALYSIS

Contact person: Peggy J. Williams

(1) Type and number of entities affected: Affected by this

amendment are approximately 400 employers and 600 legislative agents. This number varies and can only be approximate.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable. NA

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable. NA

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

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

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

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

3. Additional factors increasing or decreasing costs: NA

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds budgeted for these administrative costs will be used to cover the cost of printing of the updated registration statements and terminations for employers and legislative agents.

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

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

(b) Kentucky: NA

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict: NA

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- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No. Tiering is not applicable as this regulation applies equally to all legislative agents and employers.

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)

12 KAR 2:006. Definitions.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: The function of this administrative regulation is to define terms used in reference to commercial feeds and to name and define feed ingredients which may be used.

Section 1. The names and definitions for commercial feeds shall be the "Official Definition of Feed Ingredients" adopted by the Association of American Feed Control Officials and published in its Official Publication, except as the director designates otherwise in specific cases.

Section 2. The terms used in reference to commercial feeds shall be the official feed terms adopted by the Association of American Feed Control Officials and published in its Official Publication, except as the director designates otherwise in specific cases [areas].

Section 3. The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of KRS 250.501(4): raw meat; and hay, straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials; provided that these commodities are not adulterated within the meaning of KRS 250.541(1).

Section 4. The term "quantity statement" means the net weight (mass), net volume (liquid or dry), or county.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:006, Definition, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

- (1) Type and number of entities affected: 900 feed companies.
- (a) Direct and indirect costs or savings to those affected:
1. First year: None. Bring Kentucky Commercial Feed Law in conformity with the U. S. Fair Packaging and Labeling Act relative to statement of net contents.
2. Continuing costs or savings: Yes. Eliminates potential for dual labeling as to net contents resulting in savings to manufacturer.
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: None
- (a) Direct and indirect costs and savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (3) Assessment of anticipated effect on state and local revenues: None
- (4) Assessment of alternative methods; reasons why alternatives were rejected: Adopts national labeling requirements.
- (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (6) Any additional information or comments:
- TIERING: Was tiering applied? No. Consistency with Fair Labeling and Packaging Act beneficial to all size firms.

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)

12 KAR 2:011. Label format.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish a uniform format for presentation of labeling to the purchaser of animal feeds.

Section 1. Commercial feeds, other than customer formula feed, shall be labeled with the information prescribed in this administrative regulation on the principal display panel of the product and in the following [general] format:

- (1) ~~Net weight.~~
- ~~(2)~~ Product name and brand name, if any, as stipulated in 12 KAR 2:016.
- ~~(2)~~ If a drug is used ~~[(3) If drugs are used:~~
- ~~(a)~~ the word "medicated" shall appear directly following and below the product name in type size no smaller than one-half (1/2) the type size of the product name.
- ~~(3)~~ Product purpose statement as stipulated in 12 KAR 2:017.
- ~~(4)~~ If a drug is used:
- ~~(a)~~ ~~[(b)]~~ The purpose of medication (claim statement).
- ~~[(c)] The required direction for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by 12 KAR 2:031 and 12 KAR 2:036 appear elsewhere on the label.]~~
- ~~(b)~~ ~~[(d)]~~ An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with 12 KAR 2:021, Section 4.
- ~~(5)~~ ~~[(4)]~~ The guaranteed analysis of the feed as required under the provisions of KRS 250.521(1)(c) and stipulated in 12 KAR 2:018. ~~[include the following items, unless exempted in paragraph (h) of this~~

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subsection, and in the order listed:

- (a) Minimum percentage of crude protein.
- (b) Maximum or minimum percentage of equivalent protein from nonprotein nitrogen as required in 12 KAR 2:021, Section 5.
- (c) Minimum percentage of crude fat.
- (d) Maximum percentage of crude fiber.
- (e) Minerals, to include, in the following order:
 - 1. Minimum and maximum percentages of calcium (Ca);
 - 2. Minimum percentage of phosphorus (P);
 - 3. Minimum and maximum percentages of salt (NaCl); and
 - 4. Other minerals.
- (f) Vitamins in such terms as specified in 12 KAR 2:021, Section 3.

(g) Total sugars as invert on dried molasses products or products being sold primarily for their molasses content.

(h) Exemptions:

1. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half (6 1/2) percent of mineral elements.

2. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

3. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances and is represented as such or they are of minor significance relating to the primary purpose of the product such as drug premixes, mineral or vitamin supplements, and molasses.

(5) Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of KRS 250.521(1)(d).

(a) The name of each ingredient as defined in the official definitions of feed ingredients published in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the director.

(b) Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that:

1. When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

2. The manufacturer shall provide the Director of Regulatory Services, upon request, with a listing of individual ingredients, within a defined group, that are or have been used in manufacturing facilities distributing in or into the state.]

(6) Listing of feed ingredients as stipulated in 12 KAR 2:026.

(7) Directions for use and precautionary statements as stipulated in 12 KAR 2:031 and 12 KAR 2:036.

(8) Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory of the city or county wherein the manufacturer or distributor maintains his principal place of business.

(9) Quantity statement of the net weight, net volume or count.

Section 2. [(7)] The information required in Section 1(1)-(6) and (8)-(9) of this administrative regulation [KRS 250.521(1)(a) to (e)] must appear in its entirety on one (1) side of the label or on one (1) side of the container. The information required by Section 1(7) of this administrative regulation [KRS 250.521(1)(f) to (g)] shall be displayed in a prominent place on the label or container but not necessarily on the same side as the above information. When the information required by Section 1(7) of this administrative regulation [KRS 250.521(1)(f) to (g)] is placed on a different side of the label or

container, it must be referenced on the front side with a statement such as "see back of label for directions for use." None of the information required by this administrative regulation [KRS 250.521] shall be subordinated or obscured by other statements or designs.

Section 3. Customer-formula feed shall be accompanied with the information prescribed in this administrative regulation using labels, invoice, delivery ticket, or other shipping document bearing the following information:

(1) The name and address of the manufacturer.

(2) The name and address of the purchaser.

(3) The date of sale or delivery.

(4) The customer-formula feed name and brand name, if any.

(5) The product name and net quantity of each registered commercial feed and each other ingredient used in the mixture.

(6) The direction for use and precautionary statements as required by 12 KAR 2:031 and 12 KAR 2:036.

(7) If a drug containing product is used:

(a) The purpose of the medication (claim statement).

(b) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with 12 KAR 2:021.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:011, Label format, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies that manufacture livestock feed. Does not affect pet food manufacturers.

(a) Direct and indirect costs or savings to those affected:

1. First year: A minimal cost for revising label is estimated at \$32/feed. Many firms have already begun or completed change to nationally recommended format.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): Companies have received advanced notice of anticipated changes to enable label revision as old label supply is exhausted, revised or new product labeling developed.

(b) Reporting and paperwork requirements: Minimal. One time registration revision.

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs and savings: None

1. First year: Minimal. Will require some reallocation of time to work with regulated industry to achieve transition. Considerable amount of conversion is already achieved or ongoing.

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2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Many alternatives were considered by a national task force comprised of feed industry representatives and state and federal feed control officials.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Uniform labeling requirements are equally applicable to all manufacturers and necessary for purchasers of feed.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:016. Brand and product names.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: The function of this administrative regulation is to establish uniformity in the use of brand and product names so as to inform and not mislead the purchaser.

Section 1. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "dairy feed," for example, must be suitable for that purpose.

Section 2. Commercial, registered brand or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such name.

Section 3. The name of a commercial feed shall not be derived from one (1) or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand name or product name is not otherwise false or misleading.

Section 4. The word "protein" shall not be used in the product name of a feed that contains added nonprotein nitrogen.

Section 5. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein"; provided, that other percentage values may be permitted if they are followed by the proper description and the labeling is not false or misleading. When a figure is used in the brand name (except in mineral, vitamin, or other products where the protein guarantee is

nil or unimportant), it shall be preceded by the word "number" or some other suitable designation. Digital numbers shall not be used in such a manner as to be misleading or confusing to the purchaser.

Section 6. Single ingredient feeds shall have a product name in accordance with designated definition of feed ingredients as published in the Official Publication of the Association of American Feed Control Officials unless the director designates otherwise.

Section 7. The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in 12 KAR 2:021, Section 3.

Section 8. The term "mineralized" shall not be used in the name of a feed, except for "trace mineralized salt." When so used the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition by an authority on animal nutrition such as the National Research Council.

;

Section 9. The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are from cattle, swine, sheep, and goats.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:016, Brand and product names, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 900 feed companies.

(a) Direct and indirect costs or savings to those affected: None. Includes language to enable firms to list ingredient trade name for ingredients they hold the rights to.

1. First year: None

2. Continuing costs or savings: None

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: None

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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None

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

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Equally applicable to labeling of feeds produced by large and small firms and impact is negligible.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:021. Guarantees.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish uniformity in the expression of guarantees so the purchaser is better informed as to the composition of the feed.

Section 1. The guarantees for crude protein, equivalent crude protein from nonprotein nitrogen; lysine, methionine, and other amino acids; crude fat; crude fiber; and acid detergent fiber shall be [mineral guarantees (when required) will be] in terms of percentage [by weight].

Section 2. Mineral Guarantees. (1) ~~[Commercial feeds containing six and one-half (6 1/2) percent or more mineral elements shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element.]~~ When the calcium, [and/or] salt, and sodium guarantees are given in the guaranteed analysis such shall be stated and conform to the following:

(a) When the minimum is below two and one-half (2.5) percent, the maximum shall not exceed the minimum by more than one-half (0.5) percentage point.

(b) ~~[(+)]~~ When the minimum is two and one-half (2.5) percent but five (5) percent ~~[or less]~~, the maximum shall not exceed the minimum by more than one (1) percentage point.

(c) ~~[(2)]~~ When the minimum is above five (5) percent, the maximum shall not exceed the minimum by more than twenty (20) percent and in no case shall the maximum exceed the minimum by more than five (5) percentage points.

(2) When stated, guarantees for minimum and maximum total sodium; minimum potassium, magnesium, sulfur, and phosphorus; and maximum fluoride shall be stated in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (one (1) percent) or greater.

(3) Products labeled with a quantity statement (e.g., tablets, capsules, granules, or liquids) may state mineral guarantees in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with the quantity statement and directions for use.

Section 3. Guarantees for minimum vitamin content of commercial feeds in the following general order in the unit of measure per weight specified or expressed in terms of a quantity such as tablets, capsules, granules or liquid volume consistent with the quantity statement and directions for use ~~[and feed supplements, when made,]~~

shall be stated ~~[on the label in milligrams per pound of feed except that:]~~

(1) Vitamin A, other than precursors of vitamin A, shall be stated in international ~~[or USP]~~ units per pound.

(2) Vitamin D₃, in products offered for poultry feeding, shall be stated in international chick units per pound.

(3) Vitamin D for other uses shall be stated in international ~~[or USP]~~ units per pound.

(4) Vitamin E shall be stated in international ~~[or USP]~~ units per pound.

~~[(5) Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine Hydrochloride, Choline Chloride, Thiamine, and d-Pantothenic Acid.]~~

(5) Vitamin B-12, in milligrams or micrograms per pound.

(6) All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B-6, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid and carotene, except that concentrate feed additive sources used for further manufacturing purposes may, at the option of the distributor, express the vitamin guarantee in grams per pound or other unit of weight when this expression is more meaningful and consistent with its use.

(7) Concentrated ~~[(6)]~~ oils and feed additive premixes containing vitamin A, ~~[or]~~ vitamin D or vitamin E ~~[both]~~ may, at the option of the distributor, state guarantees in international units per gram. ~~[be labeled to show vitamin content in terms of units per gram.]~~

Section 4. Guarantees for drugs shall be stated in terms of percent by weight, except:

(1) Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

(2) Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pounds of commercial feed.

(3) ~~[Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Code of Federal Regulations, Title 21, for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.]~~

(4) The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

Section 5. Commercial feeds containing any added nonprotein nitrogen shall be labeled as follows:

(1) For ruminants:

(a) Complete feeds, supplements, and concentrates containing added nonprotein nitrogen and containing more than five (5) percent protein from natural sources shall be guaranteed as follows: Crude Protein, minimum, _____% (this includes not more than _____% equivalent protein from nonprotein nitrogen).

(b) ~~[(2)]~~ Mixed feed concentrates and supplements containing five (5) percent or less protein from natural sources may be guaranteed as follows: Equivalent Crude Protein from Nonprotein Nitrogen, minimum _____%.

(3) Ingredient sources of nonprotein nitrogen such as Urea, Di-Ammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic nonprotein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows: Nitrogen, minimum _____%. Equivalent Crude Protein from Nonprotein Nitrogen, minimum _____%.

(2) For nonruminants:

(a) Complete feeds, supplements and concentrates containing

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crude protein from all forms of nonprotein nitrogen, added as such shall be labeled as follows:

Crude protein, minimum -----%.

(This includes not more than -----% equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).

(b) Premixes, concentrates or supplements intended for nonruminants containing more than 1.25 percent equivalent crude protein from all forms of nonprotein nitrogen, added as such, must contain adequate directions for use and a prominent statement:

WARNING: This feed must be used only in accordance with directions furnished on the label.

Section 6. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

Section 7. Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as: Protease (Bacillus subtilis) five and five-tenths (5.5) mg amino acids liberated/min./milligram. If two (2) or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

Section 8. [6-] Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:021, Guarantees, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies that manufacture livestock feed. Does not apply to pet food.

(a) Direct and indirect costs or savings to those affected:

1. First year: A minimal cost to revise labels estimated at \$32 per label.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: One time re-registration.

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs and savings: None

1. First year: Minimal. Will require some reallocation of time to work with regulated industry to achieve label revision. Considerable progress has already been achieved.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Requirements were a consensus developed nationally by feed control officials and feed industry representatives.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Uniform labeling requirements are equally applicable to all manufacturers and necessary for purchasers of feed.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:026. Ingredients.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish a systematic nomenclature for feed ingredients.

Section 1. Commercial feeds, other than customer formula feeds, shall have an ingredient statement listing the feed ingredients, collective terms for the grouping of feed ingredient or other appropriate statement as provided under provisions of KRS 250.521(1)(d).

(1) The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the "Official Definitions of Feed Ingredients" as published in the Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the director.

(2) Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that:

(a) When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

(b) The manufacturer shall provide the Director of Regulatory Services, upon request, with a listing of individual ingredients within a defined group, that are or have been used in manufacturing facilities distributing in or into the state. The manufacturer shall be specific in its response when the request is made of a particular facility or production.

Section 2. The name of each ingredient must be shown in letters or type of the same size.

Section 3. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

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Section 4. The term "dehydrated" may precede the name of any product that has been artificially dried.

Section 5. A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.

Section 6. Tentative definitions for ingredients shall not be used until adopted as official, by the Association of American Feed Control Officials, unless no official definitions exist.

Section 7. Commercial, registered brand or trade names are not permitted in the ingredient listing.

Section 8. The percentage of rice hulls shall be listed in the ingredient statement of a formula feed intended to supply energy to the animal when the amount added exceeds three (3) percent by weight. This shall not apply to feed products where rice hulls are used as a carrier such as for dried molasses products, Type A medicated articles, vitamins, trace mineral and other premix additives. The percentage of rice hulls contributed from carrier sources shall be excluded from the determination of percentage of rice hulls in formula feeds such as a sixteen (16) percent dairy or beef feed.

Section 9. The potential for death of cattle due to hypomagnesemia, especially for cattle consuming lush pastures, has lead to the routine supplementation of magnesium with high magnesium mineral and other supplement products. A magnesium source with a highly available form of magnesium is critical for digestion and absorption by cattle. Products that are labeled, represented or intended to provide a substantial amount of magnesium to cattle shall be formulated utilizing magnesium ingredients with a biological value of seventy (70) percent or greater when compared to standard reference of feed grade magnesium oxide with a biological value of 100 percent. For the feeding purposes described, dolomitic limestone is an unacceptable source of magnesium unless data substantiates the source of dolomitic limestone has a biological value of seventy (70) percent or greater.

Section 10. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007 percent iodine, uniformly distributed.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:026, Ingredients, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies that manufacture livestock feed. Does not apply to pet food.

(a) Direct and indirect costs or savings to those affected:

1. First year: Minimal. Will apply to very few feed products requiring label change.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: One time re-registration.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs and savings:

1. First year: Minimal. During routine feed microscopy, the feed microscopist will monitor feed samples for rice hull content to ensure compliance with labeling requirements.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Uniform labeling is essential for all feeds to properly advise the purchaser.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:036. Nonprotein nitrogen.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To provide for the safe use of nonprotein nitrogen in ruminant ration.

Section 1. Urea and other nonprotein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein ~~and are not to be used in commercial feeds for other animals and birds~~.

Section 2. ~~{(1)}~~ If the commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of nonprotein nitrogen, added as such, or the equivalent crude protein from all forms of nonprotein, added as such, exceeds one-third (1/3) of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "Caution: Use as Directed".

Section 3. Nonprotein nitrogen defined in the Official Publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed to nonruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from nonprotein nitrogen sources when used in nonruminant rations shall not exceed

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1.25 percent of the total daily ration.

Section 4. ~~[(2)]~~ The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

Section 5. ~~[3-]~~ On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added nonprotein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of nonprotein nitrogen.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:036, Nonprotein nitrogen, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies that manufacture livestock feed. Not applicable to pet food.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Regulation incorporates presently accepted national practice.

2. Continuing costs or savings: None

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: None

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Regulatory requirement recognizes nationally accepted practice which can benefit all feed

manufacturers.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:041. Additives.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To assure that commercial feeds which contain additives are safe and effective when used according to label directions.

Section 1. Prior to approval of a registration application and/or approval of a label for commercial feed which contains additives (including drugs, other special purpose additives, or nonnutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

Section 2. Satisfactory evidence of safety and efficacy of a commercial feed may be:

(1) When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" according to the Food and Drug Administration for such use; or

(2) When the commercial feed is itself a drug as defined in KRS 205.501(7) and is generally recognized by the Food and Drug Administration as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 USC 360(b).

(3) When one (1) of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, as amended.

(4) When the commercial feed is a direct-fed microbial product; and

(a) The product meets the particular fermentation product definition; and

(b) The microbial content statement, as expressed in the labeling, is limited to the following: "Contains a source of live (viable) naturally occurring microorganisms". This statement shall appear on the label.

(5) When the commercial feed is an enzyme product; and

(a) The product meets the particular enzyme definition defined by the Association of American Feed Control Officials; and

(b) The enzyme is stated with a corresponding guarantee expressed in accordance with 12 KAR 2:018.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:041, Additives, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made

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unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

- (1) Type and number of entities affected: 900 feed companies.
- (a) Direct and indirect costs or savings to those affected:
 1. First year: None. Incorporates existing national regulatory processes for USDA and FDA approved additives.
 2. Continuing costs or savings: None
 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: None
- (a) Direct and indirect costs and 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
- (3) Assessment of anticipated effect on state and local revenues: None
- (4) Assessment of alternative methods; reasons why alternatives were rejected:
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

TIERING: Was tiering applied? No. Additives approved by USDA and FDA are available for use by all size firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:046. Poisonous or deleterious substances.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish safeguards and limits for the use of substances which may have deleterious effects when used otherwise.

Section 1. For the purpose of KRS 250.541(1)(a), the terms "poisonous or deleterious substances" include but are not limited to the following:

(1) Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20 percent for breeding and dairy cattle; 0.30 percent for slaughter cattle; 0.30 ~~[0.35]~~ percent for sheep; 0.35 percent for lambs; 0.45 percent for swine; and 0.60 percent for poultry.

(2) Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration exclusive of roughage above the following amounts: 0.004 percent for breeding and dairy cattle; 0.009 percent for slaughter cattle; 0.006 ~~[0.04]~~ percent for sheep; 0.01 percent for lambs; 0.015 ~~[0.04]~~ percent for swine; and

0.03 ~~[0.035]~~ percent for poultry.

(3) Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of fifty (50) milligrams of fluorine per 100 pounds of body weight.

(4) Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.

(5) ~~[(4)]~~ Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B₁ (thiamine).

Section 2. All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product contains no more than zero viable prohibited weed seeds per pound and not more than 480 viable restricted weed seeds per pound.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:046, Poisonous or deleterious substances, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

- (1) Type and number of entities affected: 650 feed companies manufacturing livestock feed.
- (a) Direct and indirect costs or savings to those affected:
 1. First year: None
 2. Continuing costs or savings: None
 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: None
- (a) Direct and indirect costs and 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
- (3) Assessment of anticipated effect on state and local revenues: None
- (4) Assessment of alternative methods; reasons why alternatives were rejected:
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Definition of deleterious or toxic levels of fluorine applicable to all size firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:051. Manufacturing conditions.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To ensure that feeds containing drugs and antibiotics are manufactured under conditions conducive to the production of a feed which, when fed as directed, is both safe and effective to the consuming animal and safe to the consumer of livestock products.

Section 1. For the purpose of enforcement of KRS 250.541(4) the director adopts the following as current good manufacturing practices:

(1) The regulations prescribing good manufacturing practices for Type B and Type C medicated feeds as published in the Code of Federal Regulations, Title 21, Part 225, Sections 225.1-225.202. [~~433, Sections 133.100-133.110.~~]

(2) The regulations prescribing good manufacturing practices for Type A medicated articles [~~premises~~] as published in the Code of Federal Regulations, Title 21, Part 226, Sections 226.1-226.115. [~~433, Sections 133.200-133.210.~~]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:051, Manufacturing conditions, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies that manufacture livestock feed.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

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: None

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Revision adopting current Code of Feed Regulation references applicable to all size firm.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 2:061. Registration.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish uniformity in the registration of commercial feeds. Require registration of manufacturers of custom-formula feed to assure compliance with provisions of the Kentucky Commercial Feed Law.

Section 1. For purpose of enforcement of KRS 250.511(2) each manufacturer will register, on forms available from the director, each feed distributed in Kentucky. The director may grant an exemption to the requirement for registering each commercial feed to the firm named on the label provided the owner or other responsible individual with authority to execute this act for the firm shall submit to the director a notarized affidavit certifying and subject to the following:

(1) Name and mailing address of the firm and statement acknowledging the firm's responsibility to comply with provisions of the Kentucky Commercial Feed Law including payment of the inspection fee.

(2) The person requesting exemption certifies to having appropriate knowledge of the labeling requirements of the Kentucky Commercial Feed Law or that a qualified individual is employed to ensure that feeds are labeled in accordance with provisions of the Kentucky Commercial Feed Law. The name(s) and address of the person responsible for product labeling shall be provided if different than the affiant.

(3) The affiant certifies that all feeds distributed in the state are suitable for their intended purpose in accordance with 12 KAR 2:066, Sections 1, 2 and 6.

(4) The firm has a record of satisfactory compliance with labeling requirements or can demonstrate through submission of product labeling or other appropriate means such as Type A article labeling approved by FDA.

(5) The affiant agrees to provide within thirty (30) days of notification a label for each feed or a specifically designated feed or feed type(s) distributed in the state for the purpose of determining compliance with labeling requirements. Such request shall not be construed as a registration process.

(6) For commercial feed which is distributed in the state to the final purchaser only in an immediate container package weight of ten (10) pounds or less, the person whose name appears on the label as the guarantor or distributor shall provide the director with the name of

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each product, on forms provided by the director, prior to distribution within the state and pay an annual inspection fee of fifty (50) dollars per product in accordance with KRS 250.561.

(7) The affiant agrees to resume registration of each commercial feed when notified by the director of unsatisfactory compliance with labeling requirements or of the failure to provide requested labels within thirty (30) days. The firm will have thirty (30) days from receipt of the notice to complete registration of feed products offered for sale. During this period, the affiant may request a hearing with the director to resolve labeling violations and seek reinstatement or modification of registration exemption.

Section 2. An exemption from registration shall not be construed as preventing the director from enforcing any provision of the Kentucky Commercial Feed Law. For the purposes of this act, a feed, other than a customer formula feed, of a firm granted an exemption from registration shall be considered "registered."

Section 3. ~~[2-]~~ Under authority of KRS 250.571(1) a distributor of ~~customer~~ ~~[eustom]~~ formula feed will register as a custom formula feed distributor. Registration as a ~~customer~~ ~~[eustom]~~ formula feed distributor will be dependent on agreement by the manufacturer to abide by labeling requirements of KRS 250.521(2) and maintenance by the manufacturer at the mill where formula feed is manufactured, of a file of custom formula mixes.

Section 4. ~~[3-]~~ Registration of a ~~customer~~ ~~[eustom]~~ formula feed distributor shall be subject to cancellation under the same conditions as outlined for registered feeds under KRS 250.511(3) and 250.561(2)(b).

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:061, Registration, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 900 feed companies manufacturing commercial feed.

(a) Direct and indirect costs or savings to those affected:

1. First year: Provides exemption from product registration for qualified firms resulting in substantial savings to feed companies. Permits more rapid introduction of new products.

2. Continuing costs or savings: Yes

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Reduction to qualified firms as a result of reduced administrative time.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs and savings:

1. First year: Moderate saving in administrative time resulting from reduced product registrations to process.

2. Continuing costs or savings: Yes

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Registration exemption applicable to all firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 3:012. Uniform labeling format.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish a uniform format for presentation of labeling and delineate criteria for declaring product claims.

Section 1. The quantity statement ~~(of net content)~~ and product name must be shown on the principal display panel. All other required information may be placed elsewhere on the label but shall be sufficiently conspicuous as to render it easily read by the average purchaser under ordinary conditions of purchase and sale.

Section 2. The quantity statement ~~(declaration of the net content)~~ shall be made in conformity with the United States "Fair Packaging and Labeling Act" and the regulations promulgated thereunder.

Section 3. (1) The information which is required to appear in the "Guaranteed Analysis" shall be listed in the following order:

(a) Crude protein (minimum percentage ~~[amount]~~);

(b) Crude fat (minimum percentage ~~[amount]~~);

(c) Crude fiber (maximum percentage ~~[amount]~~);

(d) Moisture (maximum percentage ~~[amount]~~).

(2) Additional guarantees shall follow moisture.

Section 4. The label of a pet food shall specify the name and address of the manufacturer, packer, or distributor of the pet food. The statement of the place of business should include the street address, if any, of such a place unless such street address is shown in a current city directory or telephone directory of the city represented on the label as the manufacturer's or distributor's address.

Section 5. If a person manufactures, packages, or distributes a pet food in a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food was manufactured or packaged or is to be distributed, if such statement is not misleading in any particular.

Section 6. A vignette, graphic, or pictorial representation of a

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product on a pet food label shall not misrepresent the contents of the package.

Section 7. The use of the word "proven" in connection with label claims for a pet food is improper unless scientific or other empirical evidence establishing the claim represented as "proven" is available.

Section 8. No statement shall appear upon the label of a pet food which makes false or misleading comparisons between that pet food and any other pet food.

Section 9. Personal or commercial endorsements are permitted on pet food labels where said endorsements are factual and not otherwise misleading.

Section 10. When a pet food is enclosed in an outer container or wrapper which is intended for retail sale, all required label information must appear on such outside wrapper or container ~~[unless all of the required label information is readily legible through apertures or transparencies in such outside container or wrapper].~~

Section 11. The words "dog food," "cat food" or similar designations must appear conspicuously upon the principal display panels of the pet food labels.

Section 12. The label of a pet food shall not contain an unqualified representation or claim, directly or indirectly, that the pet food therein contained or a recommended feeding thereof, is or meet the requisites of a complete, perfect, scientific or balanced ration for dogs or cats unless such product or feeding:

(1) Contains ingredients in quantities sufficient to meet the [provide the estimated] nutrient requirements for all life stages established by the Association of American Feed Control Officials (AAFCO) Dog or Cat Food Nutrient Profiles, as the case may be, or some other AAFCO recognized authority on animal nutrition. [of the life of a dog or cat, as the case may be, which have been established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences.] (To the extent that the product's ingredients provide nutrients in amounts which substantially deviate from those nutrient requirements estimated by such a recognized authority on animal nutrition, or in the event that no estimation has been made by a recognized authority on animal nutrition of the requirements of animals for one (1) or more stages of said animals' lives, the product's represented capabilities in this regard must have been demonstrated by adequate testing.)

(2) Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment in accordance with the testing procedures established by AAFCO, meets the criteria of such testing procedures for the appropriate life stage or stages. [will provide satisfactorily for fertility of females, gestation and lactation, normal growth from weaning to maturity without supplementary feeding and will maintain the normal weight of an adult animal whether working or at rest and has had its capabilities in this regard demonstrated by adequate testing.]

Section 13. Labels for products which are compounded for or which are suitable for only a limited purpose (i.e., a product designed for the feeding of puppies) may contain representation that said pet food product or recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats only:

(1) In conjunction with a statement of the limited purpose for which the product is intended or suitable (as, for example, in the statement "a complete food for puppies"). Such representations and such required qualification therefore shall be juxtaposed on the same panel and in the same size, style and color print; and

(2) Such qualified representations may appear on pet food labels only if:

(a) The pet food contains ingredients in quantities sufficient to meet [satisfy] the [estimated] nutrient requirements established by the AAFCO Dog or Cat Food Nutrient Profiles, as the case may be, or some other AAFCO recognized authority on animal nutrition, [a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences] for such limited or qualified purpose; or

(b) The pet food product contains a combination of ingredients which when fed for such limited purpose will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing.

Section 14. Except as specified by 12 KAR 3:017, Section 1(1), the name of any ingredient which appears on the label other than in the product name shall not be given undue emphasis so as to create the impression that such an ingredient is present in the product in a larger amount than is the fact, shall constitute at least three (3) percent of the total ingredients (exclusive of water sufficient for processing) when preceded by the designation "with" or like term, shall be in the same size, style and color print and if the names of more than one (1) such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product.

Section 15. The label of a dog or cat food, other than one prominently identified as a snack or treat as part of the designation required upon the principal display panel under Section 11 of this administrative regulation, shall bear, on either the principal display panel or the information panel (as those terms are defined in 21 CFR 501.1 and 501.2, respectively), in type of a size reasonably related to the largest type on the panel, a statement of the nutritional adequacy or purpose of the product. Such statement shall consist of one (1) of the following:

(1) A claim that the pet food meets the requirements of one (1) or more of the recognized categories of nutritional adequacy: gestation, lactation, growth, maintenance, and complete for all life stages, as those categories are set forth in Sections 12 and 13 of this administrative regulation. The claim shall be stated as one (1) of the following:

(a) (Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for ----
-- (Blank is to be completed by using the stage or stages of the pet's life, such as gestation, lactation, growth, maintenance or the words "All Life Stages.")

(b) Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for -
----- (Blank is to be completed by using the stage or stages of the pet's life tested, such as gestation, lactation, growth, maintenance or the words "All Life Stages.")

(2) A nutrition or dietary claim for purposes other than those listed in Sections 12 and 13 of this administrative regulation if the claim is scientifically substantiated.

(3) The statement: "This product is intended for intermittent or supplemental feeding only", if a product does not meet either the requirements or Sections 12 and 13 of this administrative regulation or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

(4) The statement: "Use only as directed by your veterinarian", if it is a pet food product intended for use by, or under the supervision or direction of a veterinarian and shall make a statement in accordance with subsection (1) or (3) of this section.

Section 16. The use of claims on pet food labels stating improvement or newness shall be sufficiently substantiated by the manufacturer and limited to six (6) months production. The use of claims stating preference or comparative attribute claims shall be sufficiently

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substantiated by the manufacturer and limited to one (1) year production after which the claim must be removed or resubstantiated.

Section 17. Dog and cat foods labeled as complete and balanced for any or all life's stages as provided in Section 15(1) of this administrative regulation, except those pet foods labeled in accordance with Section 15(4) of this administrative regulation, shall list feeding directions on the product label. These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state "Feed (weight/unit of product) per (weight unit) of dog (or cat)".

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 3:012, Uniform labeling format, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 250 pet food manufacturers.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Bring Kentucky Commercial Feed Law in conformity with the U. S. Fair Packaging and Labeling Act relative to statement of net contents on the label, designates that a crude protein, crude fat, crude fiber and moisture be stated as percent as is common labeling practice rather than amount, adopts nationally recognize and currently used Association of American Feed Control Officials Nutrient Profiles as the basis for demonstrating nutritional adequacy of pet foods for dogs and cats, establishes six month limit for labeling products as new or improved and requires feeding directions for dog and cat foods labeled as complete and balanced. These changes are consistent with current national labeling practices.

2. Continuing costs or savings: Yes. Maintains uniformity in labeling requirements.

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: None

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Adopts nationally recognized labeling practices.

(5) Identify any statute, administrative regulation or government

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Labeling requirements equally applicable and equitable to all size firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 3:017. Brand and product names.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To provide for informative use of brand and product names without being misleading.

Section 1. (1) No flavor designation shall be used on a pet food label unless the designated flavor is detectable by a recognized [scientific] test method, or is one (1) the presence of which provides a characteristic distinguishable by the pet. Any flavor designation on a pet food label must either conform to the name of its source as shown in the ingredient statement or the ingredient statement shall show the source of the flavor. The word "flavor" shall be printed in the same size type and with an equal degree of conspicuousness as the ingredient term(s) from which the flavor designation is derived.

(2) Distributors of pet food employing such flavor designation or claims on the labels of the product distributed by them shall, upon request, supply verification of the designated or claimed flavor to the director [appropriate control official].

Section 2. The designation "100 percent" or "all" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one (1) ingredient. However, for the purpose of this provision, water sufficient for processing, required decharacterizing agents and trace amounts of preservatives and condiments shall not be considered ingredients.

Section 3. The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products are derived unless the meat and meat by-products are from cattle, swine, sheep, and goats. For example, "horsemeat" and "horsemeat by-products".

Section 4. The name of the pet food shall not be derived from one (1) or more ingredients of a mixture to the exclusion of other ingredients and shall not be one (1) representing any components of a mixture of a pet food product unless all components or ingredients are included in the name except as specified by Sections 1, 5, and 6 of this administrative regulation; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is significant to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the name of the pet food if:

(1) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser;
or

(2) It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients; and

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(3) It is not otherwise false or misleading.

Section 5. When an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes ninety-five (95) percent or more of the total weight of all ingredients of a pet food mixture, the name or names of such ingredient(s) may form a part of the product name of the pet food; provided, that where more than one (1) ingredient is part of such product name, then all such ingredient names shall be in the same size, style and color print. For the purposes of this provision, water sufficient for processing shall be excluded when calculating the percentage of the named ingredient(s). However, such named ingredients shall constitute at least seventy (70) percent of the total product.

Section 6. When an ingredient or a combination of ingredients ~~[derived from animals, poultry or fish]~~ constitutes at least twenty-five (25) percent but less than ninety-five (95) percent of the total weight of all ingredients of a dog or cat ~~[pet]~~ food mixture, the name or names of such ingredient or ingredients may form a part of the product name of the pet food if each of the ingredients constitutes at least three (3) percent of the product weight excluding water used for processing and only if the product name also includes a primary descriptive term such as "dinner", "platter", or similar designation ["meatballs" or "fischeakes"] so that the product name describes the contents of the product in accordance with an established law, custom or usage or so that the product name is not misleading. If the names of more than one (1) such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product. All such ingredient names and the primary descriptive term shall be in the same size, style and color print. For the purpose of this provision, water sufficient for processing shall be excluded when calculating the percentage of the named ingredient(s). However, such named ingredient(s) shall constitute at least ten (10) percent of the total product.

Section 7. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food unless it s in compliance with Sections 1, 4, 5, or 6 of this administrative regulation.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 3:017, Brand and product name, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 250 pet food manufacturers.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Adopts clarifying language for currently accepted national practice to exclude water sufficient for processing from the calculation of the percentage of ingredients named in the product name.

2. Continuing costs or savings: Yes. Maintains uniformity in labeling requirements.

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: None

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Adopts nationally recognized labeling practices.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Uniformity in labeling equally appropriate to all size firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 3:022. Guarantees.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish a uniform format for the expression of guarantees for pet foods.

Section 1. The sliding scale method of expressing a guaranteed analysis (for example, "protein 15-18 percent") is prohibited.

Section 2. Pursuant to KRS 250.521(1)(c) of the Kentucky Commercial Feed Law of 1972, the label of a pet food which is formulated as and represented to be a mineral supplement [pet foods containing six and one-half (6 1/2) percent or more of added mineral elements,] shall include in the guaranteed analysis the minimum and maximum percentages of calcium [Ca], the minimum percentage of phosphorus [P], and [if added,] the minimum and maximum percentages of salt [NaCl]. The minimum content of all other essential nutrient elements recognized by the AAFCO Dog or Cat Food Nutrient Profile or other recognized nutrient profile from sources declared in the ingredient statement shall be expressed as the element in units specified in the recognized nutrient profile. Products labeled as per 12 KAR 3:012, Section 2, may express the mineral guarantees in milligrams (mg) per unit (e.g., tablets, capsules, granules or liquids) consistent with those employed in the quantity statement and directions for use. Liquids expressed as volume must also list a weight equivalent (e.g., 1 fl. oz. = 28 grams). All other minerals, when quantitatively guaranteed, shall be expressed as the element in units of measurement established by a recognized authority on animal nutrition such as the National Research Council.

Section 3. Vitamins guaranteed on pet foods shall be stated in international units per kilogram (IU/kg) for vitamins A, D, and E. All

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other vitamins shall be stated in milligrams per kilogram (mg/kg) except vitamin B-12 which may be guaranteed in micrograms per kilogram (ug/kg).

Section 4. [Pursuant to KRS 250.521(1)(c) of the Kentucky Commercial Feed Law of 1972:] The label of pet food which is formulated as and represented to be a vitamin supplement shall include a guarantee of the minimum content of each vitamin declared in the ingredient statement. Vitamin guarantees may be stated in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use. Liquids expressed as volume must also list a weight equivalent (e.g., 1 fl. oz. = 28 grams). [Such guarantees shall be stated in units of measurements established by a recognized authority on animal nutrition such as the National Research Council.]

Section 5. [4-] The vitamin potency of pet food products distributed in containers smaller than one (1) pound may be guaranteed in approved units per ounce or per unit consistent with those employed for the quantity statement.

Section 6. [5-] If the label of a pet food does not represent the pet food to be either a vitamin or a mineral supplement, but does include a table of comparison of a typical analysis of the vitamin, mineral or nutrient content of the pet food with levels recommended in the AAFCO Dog and Cat Nutrient Profiles, then [by a recognized animal nutrition authority,] such comparison may be stated in the units of measurement used [by the recognized authority on animal nutrition such as the National Research Council]. The statement in a table of comparison of the vitamin, mineral, or nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis. Such table of comparison may appear on the label separate and apart from the guaranteed analysis.

Section 7. The use of percentages or words of similar import when referring to nutrient levels established by the AAFCO Dog or Cat Food Nutrient Profile or other recognized nutrient profile shall not be permitted on pet food labels, except that such direct comparisons in whole or part of the individual nutrient contents of a pet food with those recommended by the recognized nutrient profile may be made where the comparisons are expressed in the same quantitative units as those used by the cited nutrient profile; and

(1) The product in question meets the nutrient profile recommended by the authority; and

(2) The comparison is preceded by a statement to that effect.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 3:022, Guarantees, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of

Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 50 specialty pet food manufacturers.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Provides that vitamins and minerals, other than calcium, phosphorus and salt, present in vitamin or mineral supplements for pets be guaranteed in units consistent with that in the recognized Association of American Feed Control Officials Nutrient Profile or in milligrams per unit consistent with the quantity statement (e.g., tablets, capsules, granules or liquid volume).

2. Continuing costs or savings: Yes. Eliminates potential for dual labeling and maintains uniformity with nationally recognized and current labeling practices for pet supplements.

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: None

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Adopts nationally recognized and accepted labeling practices.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Broadens labeling options to the manufacturer and is equally advantageous to all firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 3:027. Ingredients.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish uniformity in the listing of ingredients on the label of pet foods.

Section 1. The maximum moisture in all pet foods shall be guaranteed and shall not exceed seventy-eight (78) percent or the natural moisture content of the constituent ingredients of the product, whichever is greater. Pet foods such as those consisting principally of stew, gravy, sauce, broth, [or] juice or a milk replacer which are so labeled, may contain moisture in excess of seventy-eight (78) percent.

Section 2. Each ingredient of the pet food shall be listed in the ingredient statement, and names of all ingredients in the ingredient statement must be shown in letters or type of the same size. The ingredients of a pet food shall be listed in descending order by their predominance by weight. Any ingredient for which the Association of American Feed Control Officials has established a name and definition shall be identified by the name so established. Any

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ingredient for which no name and definition has been so established shall be identified by the common or usual name of the ingredient. Brand or trade names shall not be used in the ingredient statement.

Section 3. The term "dehydrated" may precede the name of any ingredient in the ingredient list that has been artificially dried.

Section 4. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a pet food unless the designation of quality, nature, form, or other attribute of an ingredient is accurate and unless the ingredient imparts a distinctive characteristic to the pet food because it possesses that attribute.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 3:027, Ingredients, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 250 pet food manufacturers.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Minor change to include milk replacer as example of product that may contain greater than 78% moisture.

2. Continuing costs or savings: No

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: None

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Equally advantageous to all firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 3:037. Additives.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To ensure that drugs and additives employed in pet foods are safe and effective for their intended purpose.

Section 1. An artificial color may be used in a pet food only if it has been shown to be harmless to pets. The permanent or provisional listing of an artificial color in the United States Food and Drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets.

Section 2. Prior to approval of a registration application and/or approval of a label for pet food, which contains additives (including drugs, other special purpose additives, or nonnutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the pet food, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food may be:

(1) When the pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use according to Food and Drug Administration; or

(2) When the pet food itself is a drug as defined in KRS 250.501(7) and is generally recognized by the Food and Drug Administration as safe and effective for label use or is marketed subject to an application approved by the Food and Drug Administration under Title 21, U.S.C. 360(b) [~~355 or 357~~].

Section 3. The medicated labeling format recommended by the Association of American Feed Control Officials shall be used to insure that adequate labeling is provided.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 3:037, Additives, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

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REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Updates cite to U.S. Food & Drug Administration 21 USC 360(b) for approved drug use in pet food.

2. Continuing costs or savings: None

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: None

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Updates federal statute reference.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 3:022. License, tag and permit fees.

RELATES TO: KRS 150.175, ~~[450.180,]~~ 150.195, 150.225, 150.235, 150.240, 150.280, 150.290, 150.485, 150.525, 150.603, 150.520, ~~[450.630,]~~ 150.660, 1996 Ky. Acts ch. 268 ~~[450.670, 450.990]~~

STATUTORY AUTHORITY: KRS ~~[43A.350, 450.015, 450.021, 450.170, 450.175, 450.180,]~~ 150.195(4)(f), 150.225~~[, 450.240, 450.280, 450.485, 450.525, 450.603, 450.620, 450.660, 450.670]~~

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to set fees and terms for licenses as authorized by KRS 150.225 and 150.195(4)(f). This amendment is necessary to add migratory bird, Peabody, and Cyprus-AMAX fees; to change the expiration date for musseling licensing and commercial pet and propagation permits; to add the fee for fall turkey permit, to delete the conservation education camp fee, and to delete provisions which repeat statutory language. [The commissioner, with the concurrence of the Fish and Wildlife Resources Commission, finds it necessary to establish the fee schedule in this administrative regulation to generate the necessary funds to finance programs to protect, manage, and conserve the fish and wildlife resources of the state so a permanent and continued supply will be maintained for the benefit of present and future generations. This amendment is necessary to reduce the commercial wildlife and fisheries pet and propagation permit fees, eliminate the fish transportation permit fee, add waterfowl stamp and pond stocking fees and eliminate the fishery pet permit fee.]

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:

(a) Statewide fishing license (resident): \$12.50.

(b) Statewide fishing license (nonresident): \$30.

(c) Joint statewide fishing license (resident): \$22.50.

(d) Trout permit (resident or nonresident): \$5.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$100.

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$500.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of 10 tags: \$10.

(b) Commercial fishing gear tags (nonresident) block of 10 tags: \$75.

(4) Hunting licenses:

(a) Statewide hunting license (resident): \$12.50.

(b) Statewide hunting license (nonresident): \$95.

(c) Statewide junior hunting license (resident or nonresident): \$6.25.

(d) Statewide waterfowl permit (resident or nonresident): \$7.50.

(e) Migratory game bird permit (resident or nonresident): \$4.

(5) Combination hunting and fishing license (resident): \$20.

(6) Trapping licenses:

(a) Trapping license (resident): \$15.

(b) Trapping license (resident landowner/tenant): \$7.50.

(c) Trapping license (nonresident): \$115.

(7) Big game permits:

(a) Big game permit, deer (resident or nonresident): \$21.

(b) Junior big game permit, deer (resident or nonresident): \$12.50.

(c) Big game permit, turkey (resident or nonresident): \$17.50.

(d) Big game permit, fall turkey (resident or nonresident): \$10.

(8) Peabody or Cyprus AMA-Robinson Forest individual permit: \$10.

(9) Commercial mussel licenses:

(a) Musseling license (resident): \$300.

(b) Musseling license (nonresident): \$1,500.

(c) Mussel buyer's license (resident): \$500.

(d) Mussel buyer's license (nonresident): \$1,500.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): \$30.

(b) Live fish and bait dealer's license (nonresident): \$60.

~~(2) [Commercial mussel licenses:~~

~~(a) Musseling license (resident): \$300.~~

~~(b) Musseling license (nonresident): \$1500.~~

~~(c) Mussel buyer's license (resident): \$500.~~

~~(d) Mussel buyer's license (nonresident): \$1500.~~

~~(3) [(4)] Commercial taxidermist license: \$100.~~

~~(3) [(4)] Commercial guide licenses:~~

(a) Commercial guide license (resident): \$100.

(b) Commercial guide license (nonresident): \$250.

~~[(5) Fur dealer's licenses:~~

~~(a) Fur processor's license (resident): \$150.~~

~~(b) Fur buyer's license (resident): \$50.~~

~~(c) Fur buyer's license (nonresident): \$230.]~~

~~(4) [(6)] Nonresident hunting preserve license: \$10.~~

~~(5) [(7)] Shooting preserve permit: \$100.~~

~~(6) [(8)] Commercial fox hound training enclosure permit: \$250.~~

~~(7) [(9)] Collecting permits:~~

(a) Educational wildlife collecting permit: \$10.

(b) Scientific wildlife collecting permit: \$200.

~~(8) [(10)] Food permits:~~

(a) Food permit for selling bobwhite quail from propagation farms only: \$150.

(b) Retail food permit for propagated quail: \$5.

(9) [(11)] Pay lake license:

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- (a) First two (2) acres or less: \$100.
- (b) Per additional acre or part of acre: \$20.
- ~~[(12) Bird dog training device permit: \$10.~~

~~Section 3. Licenses, tags and permits listed in this section shall be valid for one (1) year from the date of issue:]~~

- ~~[(10) [(1)] Commercial wildlife pet and propagation permit: \$50.~~
- ~~[(11) [(2)] Commercial fish propagation permit: \$50.~~

Section 3. ~~[(4)]~~ Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue.

- (1) Falconry permit: \$45.
- (2) Noncommercial wildlife pet and propagation permit: \$75.

Section 4. ~~[(5-)]~~ Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each.

- (1) Short-term nonresident licenses:
 - (a) Three (3) day fishing license: \$12.50.
 - (b) Fifteen (15) day fishing license: \$20.
 - (c) Five (5) day hunting license (not valid for big game): \$27.50.
 - (d) Three (3) day fur bearer's license: \$40.
- (2) Wildlife transportation permit: \$25.
- (3) Special commercial fishing permit: \$500.
- (4) Commercial waterfowl shooting area permit: \$100.
- (5) Shoot to retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): \$50.
 - (b) Single day: \$15.
- (6) Boat dock permits (per year): \$5.
- (7) Peabody or Cyprus AMAX-Robinson Forest event permit: \$25.

Section 6. Licenses, tags and permits listed in this section shall be valid on a per unit basis as specified.

- (1) Bird bands (each): \$.25.
- (2) Ballard waterfowl hunt (per person, per day): \$15.
- (3) Horse stall rental (per space, per day): \$2.
- (4) Dog kennel rental (per dog, per day): \$.50.
- ~~(5) [Conservation education camp fee: \$50.~~
- ~~[(6)] Pond stocking fee (per stocking): \$25.~~

Section 7. The following licenses shall be valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150.
- (2) Fur buyer's license (resident): \$50.
- (3) Fur buyer's license (nonresident): \$230. [Except for scientific or educational collecting permits as specified in 301 KAR 4:070 the licenses, tags and permits authorized by this administrative regulation shall not be changed, altered, or defaced in any manner. All licenses, tags and permits are nontransferable.]

Section 8. These fees shall apply to all licenses, tags and permits issued with an effective beginning date on or after January 1, 1997 ~~[(1996)]~~.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: September 12, 1996 at 11 am.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, 1996, at 9 a.m. at The Department of Fish and Wildlife Resources Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A

transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Assistant Director, Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, Phone (502) 564-3400, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately one million sport and commercial license and permit buyers will be affected by this administrative regulation. This amendment affects only a small number of these, with the largest group being an estimated 80,000 migratory bird hunters upon whom this amendment imposes a \$4 permit fee.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment received. This administrative regulation as amended should have no impact on costs of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation as amended should have no impact on 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: The amendments to this administrative regulation impose 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: This administrative regulation should have no direct or indirect impact on either costs or savings for the department.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: No additional factors have been identified.

(b) Reporting and paperwork requirements: This administrative regulation imposes no reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

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

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

(b) Kentucky: No public comments received. This administrative regulation imposes a \$4 fee for migratory bird hunting. It is estimated that the department may sell as many as 80,000 of these permits.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Keeping periods of permit validity the same was rejected because it would perpetuate an inefficient system. Fees from \$2 to \$5 were considered for the migratory bird permit, and other alternatives were rejected because the \$4 fee would cover the cost of the program and provide extra funds for migratory bird conservation and management programs. The alternative of charging waterfowl hunters an additional fee was rejected and existing waterfowl permits will include authorization to hunt migratory birds.

(8) Assessment of expected benefits: The changes in periods of validity of various licenses was made to make it easier for constituents to renew these licenses, or in the case of the furbuyer licenses, to make the license period correspond better to the business "year" of furbuyers and fur processors. The fee for migratory bird hunting will generate funds for additional management and conservation of migratory game bird species.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No identified effects on public health or environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: The fees for Peabody WMA and Robinson Forest/Cyprus-AMAX WMA, as well as the boat dock permit fees, are contained in other administrative regulations. Their addition here is to place all fees under one administrative regulation. These fees will be removed from the other existing administrative regulations the next time they are amended.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)**

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 33 USC 1288, 1313(e), 1314(b), 1342, 40 CFR Parts 35, 116, 130, 136, 401-471

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 224A.111, 224A.112, 224A.113, 33 USC 1288, 1313(e), 1314(b), 1342, 40 CFR Parts 116, 130, 136, 401-471

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. This chapter establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms and acronyms, abbreviations, and symbols used in 401 KAR Chapter 5, relating to the issuance of those permits. Where applicable, these definitions are the same as definitions used for the federal National Pollutant Discharge Elimination System program in 40 CFR Parts 116, 136, 401 - 471, and the planning requirements in 40 CFR Part 130; there are no definitions that are more stringent than federal requirements.

Section 1. Definitions. The definitions established in this administrative regulation govern the subject matter of this chapter. Terms not defined in this administrative regulation shall have the meanings given them by KRS 224.01-010.

(1) "Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

(2) "Activity" means, for purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with facility, any KPDES point source, or any other activity, including land or appurtenances thereto, that is subject to regulation under the KPDES program.

(3) "Administrator" means the administrator of the United States Environmental Protection Agency, or the administrator's authorized representative.

(4) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from a concentrated animal feeding operation prior to land application.

(5) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 401 KAR 5:055.

(6) "Animal feeding operation" means, for purposes of 401 KAR 5:050 to 5:080, a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(a) 1. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(7) "Animal unit" means, for purposes of 401 KAR 5:050 to 5:080, the unit of measurement for any animal feeding operation, calculated according to the following equation:

$$\text{Animal Unit} = (N_1 \times 1.0) + (N_2 \times 1.4) + (N_3 \times 0.4) + (N_4 \times 0.1) + (N_5 \times 2.0)$$

Where:

N_1 = Number of slaughter and feeder cattle;

N_2 = Number of mature dairy cattle;

N_3 = Number of swine weighing over twenty-five (25) kg;

N_4 = Number of sheep; and

N_5 = Number of horses.

(8) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and administrative regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.

(9) "Application" means the document submitted by an applicant to the cabinet which provides information used by the cabinet in the issuance of a permit or approval. The application may have several different forms, depending on the type of permit which is requested. The specific forms are required in the applicable administrative regulation.

(10) "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:057 and which has been approved by the cabinet.

(11) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(12) "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.

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(13) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(14) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(15) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(16) "Available" means located within the planning area and:

(a) Located within one and zero-tenths (1.0) mile of a regional facility for WWTPs with an average daily design capacity larger than 1,000 gpd. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect.

(17) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(18) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(19) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. Such a community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(20) "Barrel" means forty-two (42) U.S. gallons.

(21) "BAT" means best available technology economically achievable.

(22) "BCT" means best conventional pollutant control technology.

(23) "Best management practices" or "BMPs" means, for purposes other than agriculture operations, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(24) "Biochemical oxygen demand", "BOD", or "BOD₅" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(25) "BMPs" means best management practices.

(26) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(27) "BOD" or "BOD₅" means biochemical oxygen demand.

(28) "BPT" means best practicable technology currently available.

(29) "Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys its discharge to the building sewer which begins two (2) feet outside the building wall.

(30) "Building sewer" means that part of the drainage system which extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(31) "Bypass" means the intentional diversion of sewage or waste streams from a portion of a facility or industrial user's treatment facility.

(32) "°C" means degrees Celsius.

(33) "CAH" means cold water aquatic habitat.

(34) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(35) "CBOD" means carbonaceous biochemical oxygen demand.

(36) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 USC 9601 et seq.).

(37) "Certificate" means the certificate of competency issued by the secretary or the secretary's designated agent stating that the operator has met the requirements for the specified operator classification as set by 401 KAR 5:010.

(38) "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401 KAR 5:010.

(39) "cfm" means cubic feet per minute.

(40) "CFR" means Code of Federal Regulations.

(41) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 USC Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.

(42) "Coal remining operation" means a surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(43) "COD" means chemical oxygen demand.

(44) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(45) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water run-off as well as sanitary wastewater.

(46) "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(47) "Composite sample" means:

(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow:

(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow:

(c) An effluent portion collected continuously over a period of

twenty-four (24) hours at a rate proportional to the flow; or

(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.

(48) [(45)] "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:050 to 5:080, an animal feeding operation where:

(a) More than the following numbers of indicated animals are confined:

1. 1,000 slaughter and feeder cattle;
2. 700 mature dairy cattle, whether milked or dry cows;
3. 2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);
4. 500 horses;
5. 10,000 sheep or lambs;
6. 55,000 turkeys;
7. 100,000 laying hens or broilers if the facility has continuous overflow watering;
8. 30,000 laying hens or broilers if the facility has a liquid manure system;
9. 5,000 ducks; or
10. 1,000 animal units; or

(b) 1. More than the following number and types of animals are confined:

- a. 300 slaughter or feeder cattle;
- b. 200 mature dairy cattle, whether milked or dry cows;
- c. 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers if the facility has continuous overflow watering;
- h. 9,000 laying hens or broilers if the facility has a liquid manure system;
- i. 1,500 ducks; or
- j. 300 animal units; and

2. Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(c) If an animal feeding operation discharges only during a twenty-five (25) year, twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentrated animal feeding operation.

(49) [(46)] "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401 KAR 5:060.

(50) "Consolidation sewer" means a conduit, without direct sanitary connections, which intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.

(51) [(47)] "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(52) [(48)] "Control authority" means the POTW if the POTW has an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.

(53) [(49)] "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(54) [(60)] "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N),

bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(55) [(61)] "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.

(56) [(62)] "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(57) [(63)] "CSO" means combined sewer overflow.

(58) [(64)] "CWA" means the Clean Water Act, as amended.

(59) [(65)] "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(60) [(66)] "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402 (33 USC Section 1342).

(61) [(67)] "Day" means a twenty-four (24) hour period.

(62) [(68)] "Designated project area" means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(63) [(69)] "Direct discharge" means the discharge of a pollutant into waters of the Commonwealth if the discharge is not included under the definition of indirect discharger.

(64) [(60)] "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This definition includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface run-off which is collected or channelled by human effort; discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

(65) [(61)] "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(66) "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(67) [(62)] "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted to be used, for the sole purpose of disposing of any water, gas, produced water, or other fluid by injection or other method into a subsurface zone.

(68) [(63)] "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(69) [(64)] "DMR" means discharge monitoring report.

(70) [(65)] "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(71) [(66)] "Domestic sewage" means sewage devoid of industrial or other wastes and which is typical of waste received from residential facilities. It may include wastes from commercial developments,

schools, restaurants, and other similar developments.

(72) ~~[(67)]~~ "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in any food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 USC 300f - 300j.

(73) ~~[(68)]~~ "Draft permit" means a document prepared under 401 KAR 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:075. It does not include a proposed permit; a denial of a request for modification, renovation, and reissuance; or a denial of a request for revocation.

(74) ~~[(69)]~~ "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.

(75) ~~[(70)]~~ "Dry gas well" means a gas well producing one (1) barrel or less of produced water at maximum production conditions during a given twenty-four (24) hour period.

(76) ~~[(71)]~~ "DWS" means domestic water supply.

(77) ~~[(72)]~~ "Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to surface waters of the Commonwealth.

(78) ~~[(73)]~~ "Effluent lagoon" means a treatment lagoon.

(79) ~~[(74)]~~ "Effluent limitation" means any restriction imposed by the cabinet on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth.

(80) ~~[(75)]~~ "Effluent limitations guideline" means a federal regulation published by the administrator under CWA Section 304(b) (33 USC Section 1314(b)) to adopt or revise technology-based effluent limitations.

(81) "Engineer" means a professional engineer.

(82) ~~[(76)]~~ "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(83) ~~[(77)]~~ "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(84) "Establishment" means a manufacturing or industrial works or facility in the operation of which sewage, industrial wastes, or other wastes are generated or stored including but not limited to an industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, or oil refinery.

(85) "Excessive infiltration" means a high groundwater period induced peak infiltration rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

(86) "Excessive inflow" means a rainfall induced peak inflow rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. For combined sewer systems, inflow shall not be excessive if it overflows at a KPDES permitted overflow point in compliance with permit requirements. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

~~[(78)] "EPA" means the United States Environmental Protection Agency.]~~

(87) ~~[(79)]~~ "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(88) ~~[(80)]~~ "°F" means degrees Fahrenheit.

(89) ~~[(81)]~~ "Facility" means:

(a) For purposes of 401 KAR 5:005 or 5:006, a sewage system as defined in KRS 224.01-010 except for septic tanks, pretreatment

facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090;

(b) For purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with activity, any KPDES point source, or any other facility, including land or appurtenances thereto, that is subject to regulation under the KPDES program; or

(c) ~~[(82)]~~ For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for treating, storing, or disposing of produced water.

(90) ~~[(82)]~~ "Facilities or equipment" means buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(91) ~~[(83)]~~ "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

(92) "Flood relief sewer" means a conduit, without direct sanitary connections, that is used to transport sewage when a flood control structure or overflow detention basin is in operation.

(93) "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(94) ~~[(84)]~~ "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(95) ~~[(85)]~~ "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.

(96) ~~[(86)]~~ "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and free of any unprotected wells within the area of review.

(97) ~~[(87)]~~ "GPD" or "gpd" means gallons per day.

(98) ~~[(88)]~~ "Grab sample" means:

(a) For purposes of 401 KAR 5:045, a single instantaneous portion of the effluent; or

(b) For purposes of 401 KAR 5:050 to 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.

(99) "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, and solution conduits.

(100) ~~[(89)]~~ "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(101) ~~[(90)]~~ "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 CFR Part 116.

(102) ~~[(91)]~~ "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(103) ~~[(92)]~~ "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a KPDES permit, other than the KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting from fire fighting activities.

(104) ~~[(93)]~~ "Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner or operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(105) ~~(94)~~ "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(106) ~~(96)~~ "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5:057, the introduction of pollutants into a POTW from a nondomestic industrial source regulated by the program.

(107) ~~(96)~~ "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(108) ~~(97)~~ "Industrial user" or "user" means a source of indirect discharge.

(109) "Industrial wastes" means any liquid or other waste resulting from a process of industry, manufacture, trade, or business; or from the depletion of a natural resource.

(110) "Industrial wastewater treatment plant" or "IWWTP" means a privately owned WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

(111) "Infiltration" means water other than wastewater that enters a sewer system from the ground through means such as defective pipes, pipe joints, connections, or manholes.

(112) "Inflow" means water other than wastewater that enters a sewer system from means such as roof leaders, yard drains, area drains, drains from springs or swampy areas, openings in manhole covers, cross connections with storm sewers, catch basins, cooling towers, storm waters, source runoff, street wash waters, drainage, or any other source which directs rainwater into the sewer system.

(113) "Intended use plan" means that document developed by the cabinet annually or biennially, as necessary, which contains a project priority list that prioritizes the cabinet's projects qualifying for federally assisted wastewater revolving fund monies pursuant to KRS Chapter 224A.

(114) ~~(98)~~ "Interference" means a discharge which, alone or in conjunction with discharges from other sources:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and

(b) Therefore, is a cause of a violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and administrative regulations or permits issued thereunder or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including RCRA, and including any administrative regulations contained in a sludge management plan prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act as amended, and the Toxic Substances Control Act as amended.

(115) ~~(99)~~ "Intermediate facility" means a WWTP with an average daily design capacity of 10,000 to 49,999 gallons per day (GPD) or sewer lines of 2,500 feet to 5,000 feet in length including appurtenances.

(116) ~~(100)~~ "Intermediate nonpublicly owned treatment works" means a facility which has a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(117) "Intermediate WWTP" means:

(a) A WWTP with an average daily design capacity of 10,000 to 49,999 gpd; or

(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes less than or equal to 500 tons per hour of raw coal.

(118) ~~(101)~~ "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator under the CWA or KRS Chapter 224.

(119) "IWWTP" means an industrial WWTP.

(120) ~~(102)~~ "KAR" means Kentucky administrative regulations.

(121) "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

(122) ~~(103)~~ "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements. The KPDES administrative regulations are 401 KAR 5:050 to 5:080.

(123) "Kentucky intermunicipal operational permit" or "KIMOP" means a permit issued pursuant to 401 KAR 5:005 for operating a publicly owned sewer system which has more than 5,000 linear feet of sewer line which discharges to a sewer system, or a WWTP which is owned by another person.

(124) "Kentucky no discharge operational permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP which does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(125) ~~(104)~~ "kg" means kilograms.

(126) ~~(105)~~ "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(127) ~~(106)~~ "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(128) ~~(107)~~ "KRS" means Kentucky revised statutes.

(129) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(130) ~~(108)~~ "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or sewer lines of more than 5,000 feet in length including appurtenances.

(131) ~~(109)~~ "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the latest census of the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer system, those municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(132) ~~(110)~~ "Large nonpublicly owned treatment works" means a facility which has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(133) "Large WWTP" means:

(a) A WWTP with an average daily design capacity of 50,000 GPD or more; or

(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes more than 500 tons per hour of raw coal.

(134) ~~[(144)]~~ "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 5:080, facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

(135) "Long-term CSO control plan" means a control plan which complies with the "Combined Sewer Overflow Control Policy" issued by the U.S. EPA in the "Federal Register" on April 19, 1994 (59 FR 18688).

(136) "Maintenance replacement" means replacement of:

(a) Existing component parts with component parts that have similar characteristics and capacity; or

(b) A section of sewer or force main with the same size, alignment, and slope;

(c) The term does not include replacement of an entire WWTP with a new WWTP.

(137) ~~[(142)]~~ "Major facility" means any KPDES facility or activity classified as such by the cabinet in cooperation with the regional administrator. Designation as a major industry as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(138) ~~[(143)]~~ "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(139) ~~[(144)]~~ "Major municipal separate storm sewer outfall" or "major outfall" means:

(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or

(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.

(140) ~~[(145)]~~ "Major outfall" means a major municipal separate storm sewer outfall.

(141) ~~[(146)]~~ "Manmade" means constructed by humans.

(142) ~~[(147)]~~ "Maximum daily discharge limitation" means the highest allowable daily discharge.

(143) ~~[(148)]~~ "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(144) ~~[(149)]~~ "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest census by the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal

separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(145) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(146) "mgd" or "MGD" means million gallons per day.

(147) "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(148) ~~[(1420)]~~ "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(149) ~~[(1424)]~~ "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.

(150) "Minor modification to a WWTP" means, for purposes of construction approvals required by 401 KAR 5:005, a modification which does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

~~[(122)] "µg/l" means micrograms per liter, same as ppb, assuming unit density.~~

~~[(123)] "mgd" means million gallons per day.~~

~~[(124)] "mg/l" means milligrams per liter, same as ppm, assuming unit density.]~~

(151) ~~[(1425)]~~ "Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

(a) Owned or operated by a state, city, town, county, district, association, or other public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the Commonwealth;

(b) Designed or used for collecting or conveying storm water;

(c) Which is not a combined sewer; and

(d) Which is not part of a POTW.

(152) ~~[(1426)]~~ "Municipality" means a city, district, or other public body created by or under the Kentucky revised statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under CWA Section 208 (33 USC 1288).

(153) ~~[(1427)]~~ "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(154) ~~[(1428)]~~ "National pretreatment standard", "pretreatment standard", or "standard" means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established

pursuant to 401 KAR 5:057.

(155) [(429)] "New discharger" means, for purposes of 401 KAR 5:050 to 5:080, any building, structure, facility or installation:

- (a) 1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and
4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(156) [(430)] "New source" means:

(a) For purposes of 401 KAR 5:050 to 5:080, any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

1. After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or
2. After proposal of EPA's standards of performance or pretreatment standards which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal; or

(b) 1. For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

- a. The building, structure, facility or installation is constructed at a site at which no other source is located;
- b. The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or
- c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

- (i) A placement, assembly, or installation of facilities or equipment;
- (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(157) [(434)] "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(158) [(432)] "Nonpoint" means any source of pollutants not

defined by a point source, as used in this chapter.

(159) [(433)] "Nonprocess industry" means an industry that generates and discharges only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distribution, and wholesale and retail trade. Each industry discharges nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration for fifty (50) percent mortality (ninety-six (96) LC₅₀) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(160) [(434)] "NPDES" means National Pollutant Discharge Elimination System.

(161) [(435)] "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are not the result of condensation of gas after it leaves the underground reservoir.

(162) [(436)] "O&M" means operation and maintenance.

(163) [(437)] "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(164) [(438)] "Operator" means:

- (a) Any person involved in the operation of a facility or activity;
- (b) For purposes of 401 KAR 5:010, any person involved in the operation of a wastewater system; or
- (c) For purposes of 401 KAR 5:090, any person who operates a facility.

(165) [(439)] "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(166) [(440)] "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(167) [(441)] "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(168) [(442)] "Overflow" means:

- (a) Any intentional or unintentional diversion of flow from a facility; or
- (b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(169) [(443)] "Owner" means any person who possesses any interest in:

- (a) The right to develop, operate, or produce oil or gas; or
- (b) Any facility or activity.

(170) "Package WWTP" means a factory-built WWTP which is transported to and assembled or set in place at the site.

(171) [(444)] "Pass through" means a discharge which exits the POTW into waters of the Commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation.

(172) [(445)] "pCi/l" means picocuries per liter.

(173) [(446)] "PCR" means primary contact recreation.

(174) [(447)] "Permit" means:

- (a) For purposes of 401 KAR 5:005 or 5:006, a document issued

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by the cabinet which authorizes the permittee to construct, modify, or operate a facility; or

(b) For purposes of 401 KAR 5:050 to 5:080, a KPDES permit.

(175) "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5:006, Section 4: planning area maps; a discussion of the need for sewer service in the area; population projections; and an estimation of the twenty (20) year cost by category.

(176) "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(177) ~~[(149)]~~ "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, or concentrated animal feeding operation, from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(178) ~~[(149)]~~ "POTW" means publicly owned treatment works as defined in KRS 224.01-010.

(179) ~~[(150)]~~ "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste.

(180) ~~[(151)]~~ "ppb" means parts per billion; assuming unit density, same as µg/l.

(181) ~~[(152)]~~ "ppm" means parts per million; assuming unit density, same as mg/l.

(182) ~~[(153)]~~ "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 5:040.

(183) ~~[(154)]~~ "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 401 KAR 5:057. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.

(184) ~~[(155)]~~ "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(185) ~~[(156)]~~ "Pretreatment standard" means a national pretreatment standard.

(186) ~~[(157)]~~ "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(187) ~~[(158)]~~ "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(188) ~~[(159)]~~ "Primary responsibility" means having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the Commonwealth, or to supervise others in conducting these practices.

(189) ~~[(160)]~~ "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

(190) ~~[(161)]~~ "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(191) ~~[(162)]~~ "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(192) ~~[(163)]~~ "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(193) "Project priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A which includes a priority ranking of applicants for the construction of wastewater treatment works under 33 USC 1313(e)(3)(H).

(194) ~~[(164)]~~ "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(195) ~~[(165)]~~ "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(196) ~~[(166)]~~ "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

(197) ~~[(167)]~~ "Recommencing discharger" means a source which recommences discharge after terminating operations.

(198) ~~[(168)]~~ "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(199) "Regional facility" means a facility designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area. This facility shall be owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(200) "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Section 201, 205, and 208 of the CWA to control point sources of pollution within a planning area.

(201) "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 USC 1288 of the CWA and 40 CFR Part 130 to provide planning for the treatment of wastewater and for controls and recommendations relating to wastewater for a particular area. Those existing agencies that have developed plans pursuant to Section 201, 205, 208, and 303(b) of the CWA shall be considered the regional planning agency for the area.

(202) "Regional sewage collection system" means a sewage collection system designated by a regional planning agency which is owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(203) ~~[(169)]~~ "Register" means to file forms with the division which contain information as to oil and gas well geographic location, production, produced water production, methods used for treating, storing, or disposing of produced water, and other information deemed necessary by the division.

(204) ~~[(170)]~~ "Remined area" means only that area of any coal remaining operation on which a coal mining operation was conducted before August 3, 1977.

(205) ~~[(171)]~~ "Removal" means, for purposes of 401 KAR 5:057, a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

(206) ~~[(172)]~~ "Representative important species" means species which are representative, in terms of their biological needs, of a

balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(207) [(473)] "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(208) [(474)] "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(209) [(475)] "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(210) [(476)] "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(211) [(477)] "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(212) [(478)] "SCR" means secondary contact recreation.

(213) [(479)] "Secondary contact recreation waters" means those waters that are suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(214) [(480)] "Secondary industry category" means any industry category which is not a primary industry category.

(215) [(481)] "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(216) "Service area" means that geographic area currently being served by a regional facility.

(217) [(482)] "Seven-Q-ten" or "7Q₁₀" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(218) [(483)] "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage shall not mean economic loss caused by delays in production.

(219) [(484)] "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(220) [(485)] "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run-off, that are discharged to or otherwise enter a wastewater treatment plant.

(221) [(486)] "Sewer line" means those devices used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer which serves an individual building. A sewer line begins at the junction of two (2) building sewers which serve different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(222) "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(223) "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(224) [(487)] "SIC" means Standard Industrial Classification.

(225) [(488)] "Significant industrial user" means:

(a) Except as provided in paragraph (b) of this subsection:

1. Industrial users subject to categorical pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Parts 401 through 471); and

2. Any other industrial user that:

a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

b. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

c. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement, the control authority may, on its own initiative or in response to a petition received from an industrial user or a POTW, and in accordance with 401 KAR 5:057, determine that the industrial user is not a significant industrial user.

(226) [(489)] "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(227) [(490)] "Silvicultural point source" means, for purposes of 401 KAR 5:050 to 5:080, any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off.

(228) "Sinkhole" means a naturally occurring topographic depressing 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.

(229) [(491)] "Site" means, for purposes of 401 KAR 5:050 to 5:080, the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(230) [(492)] "Sludge requirements" means the following statutory provisions and administrative regulations or permits issued thereunder, or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended; the Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA) and administrative regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as amended; the Clean Air Act, as amended; and the Toxic Substances Control Act, as amended.

(231) [(493)] "SMCRA" means the Surface Mining Control and Reclamation Act, as amended (33 USC 1201 et seq.).

(232) [(494)] "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or sewer lines of less than 2,500 feet in length including appurtenances.

(233) [(495)] "Small nonpublicly owned treatment works" means a facility which has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(234) "Small WWTP" means:

(a) A WWTP with an average daily design capacity of less than 10,000 gpd; or

(b) For coal washing facilities, a WWTP which serves a portable coal processing facility.

(235) [(496)] "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(236) ~~[(497)]~~ "SPCC" means spill prevention control and counter-measure.

(237) ~~[(498)]~~ "Standard" means:

(a) For purposes of 401 KAR 5:026, 5:029 or 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(238) ~~[(499)]~~ "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

~~[(200)] "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.]~~

(239) ~~[(204)]~~ "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in paragraphs (a) to (j) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (k) of this subsection, the term includes only storm water discharges from all the areas except access roads and rail lines, that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this subsection, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in this subsection, include those facilities designated under 401 KAR 5:060, Section 12(1)(a). The following categories of facilities are considered to be engaging in an industrial activity for purposes of this subsection:

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;

(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;

(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate

products, finished products, by-products, or waste products located on the site of these operations;

(d) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under Subtitle D of RCRA;

(f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(g) Steam electric power generating facilities, including coal handling sites;

(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with industrial activity;

(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one (1.0) mgd or more, or required to have an approved pretreatment program under 401 KAR 5:057. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA;

(j) Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale;

(k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, 4221-4225, and which are not otherwise included within categories of paragraphs (b) to (j) of this subsection.

(240) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(240) ~~[(202)]~~ "Submission" means, for purposes of 401 KAR 5:057:

(a) A request by a POTW to the cabinet for approval of a pretreatment program; and

(b) A request by a POTW to the cabinet for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

(242) ~~[(209)]~~ "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(243) ~~[(204)]~~ "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. 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.

(244) ~~[(205)]~~ "SWDA" means the Solid Waste Disposal Act, as amended (42 USC 6901 et seq.).

(245) ~~[(206)]~~ "Tank battery" means an installation where oil is

collected from wellheads and is separated from produced water.

(246) [(207)] "TDS" means total dissolved solids.

(247) [(208)] "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 CFR Part 136.

(248) [(209)] "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 CFR Part 136.

(249) [(210)] "Toxic pollutant" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant listed as being toxic in 401 KAR 5:080.

(250) [(211)] "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029 and as applied to facilities subject to 401 KAR 5:090, a secondary recovery or water-flood impoundment on which on-site construction commenced before May 19, 1980; owned or operated by a person eligible to receive a KPDES permit for a discharge from that impoundment, if used for the purpose of diluting produced water, and if the owner or operator received approval from the cabinet of its request for designation as such on or before September 4, 1986.

(251) [(212)] "TSS" means total suspended solids.

(252) [(213)] "Twenty-four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty-four (24) hours which are composited in proportion to flow.

(253) [(214)] "Underground injection" means a well injection.

(254) [(215)] "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or technology-based effluent limitations because of factors beyond the reasonable control of the industrial user or permittee. An upset shall not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(255) [(216)] "USC" means United States Code.

(256) [(217)] "U.S. EPA" means the United States Environmental Protection Agency.

(257) [(218)] "USGS" means the United States Geological Survey.

(258) [(219)] "Variance" means any mechanism or provision under the KPDES administrative regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(259) [(220)] "WAH" means warm water aquatic habitat.

(260) [(221)] "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(261) [(222)] "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(262) [(223)] "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(263) "Water quality management plan" or "WQM plan" means:

(a) A plan consisting of initial plans produced in accordance with Sections 208 and 303(e) of the CWA and certified and approved updates to those plans; or

(b) A state or areawide waste treatment management plan developed and updated in accordance with Sections 201, 205(i), 208, and 303(e) of the CWA and 40 CFR Part 130.

(264) [(224)] "Water quality standard" means an administrative regulation promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

(265) [(225)] "Well" or "water well" means:

(a) For purposes of 401 KAR 5:005, 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 household purposes, animal consumption, food manufacture, use of geothermal resources

for domestic heating purposes, and industrial, irrigation, and dewatering purposes;

(b) For purposes of 401 KAR 5:050 to 5:080, a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; or

(c) [(226)] For purposes of 401 KAR 5:090, a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water, or other fluid therein or one into which any water, gas, produced water, or other fluid is being injected.

(266) "Wellhead protection area" means:

(a) 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

(b) An area defined as a wellhead protection area in a county water supply plan.

(267) [(226)] "Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(268) [(227)] "Wetlands" 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.

(269) [(228)] "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(270) [(229)] "WWTP" means wastewater treatment plant.

(271) [(230)] "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(272) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

Section 2. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.:

(1) 40 CFR Part 116, "Designation of Hazardous Substances under the Federal Water Pollution Control Act", U.S. Environmental Protection Agency, as of August 25, 1993;

(2) 40 CFR Part 136, "Test Procedures for the Analysis of Pollutants", U.S. Environmental Protection Agency, as of September 11, 1992; and

(3) 40 CFR Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards", U.S. Environmental Protection Agency, as of July 1, 1993.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for October 28, 1996, at 1:30 p.m. (eastern time), in the Auditorium of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by October 21, 1996 of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed amended regulation. Persons testifying at the hearing are asked to provide the Cabinet with a written copy of

their testimony, if available. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on October 28, 1996. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before October 21, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation defines the terms used by regulations in 401 KAR Chapter 5. It is being amended to add the terms that are used in 401 KAR 5:005 and 5:006, relating to the construction or modification of wastewater treatment facilities and planning requirements for regional facilities. 401 KAR 5:005 is being amended in this package of regulations and 401 KAR 5:006 is being proposed as a new regulation, and it appears elsewhere in this issue of the Administrative Register of Kentucky. Some terms are just being moved from 401 KAR 5:005; other terms are being added, or their definitions are being changed from what they had been in 401 KAR 5:005. In 401 KAR 5:005, all of the definitions are also being deleted from Section 1 of that regulation. Any impact of these regulations on the entities affected would occur in the specific regulation where the term is actually used. This regulation is being amended to comply with KRS 13A.222(4)(e) and to provide one central location where terms used in Chapter 5 are defined.

(2) Direct and indirect costs or savings on the affected entities: There are no direct or indirect costs or savings on the affected entities due to the amendment of this regulation; any direct or indirect costs or savings would occur in the regulation where the term is used.

(a) Effect on the 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 known or expected impacts; no public comments were received.

(b) Effect on the 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 known or expected impacts; no public comments were received.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

(3) Effects on the promulgating administrative body: There are no effects on this agency from defining these terms; any impact would occur when the terms are used in a particular regulation.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting

and paperwork requirements imposed by the terms defined in this regulation.

(4) Assessment of anticipated effect on state and local revenues: None. This regulation defines terms used in 401 KAR Chapter 5; it will not impact state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: One alternative method would have been to define all terms in Section 1 of each regulation that is being amended, but that would have required that terms be duplicated in both regulations. That would have generated longer regulations, requiring more printing time, paper, and other resources. Also, if a definition changed, each regulation would have to be amended. Therefore to save time and expenses of amending and printing each regulation, the Division of Water is amending this regulation to include the terms that are used in 401 KAR 5:005 and 5:006. Eventually, as other regulations in this chapter are amended, all the definitions will be moved to this regulation.

(8) Assessment of expected benefits of the administrative regulation: None

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None; any effect on public health and environmental welfare would occur where the term is used in a regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on environment and public health if the regulations were not implemented.

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

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known statute, regulation, or government policy is in conflict, overlapping, or duplication.

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

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

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. Tiering is not applicable to definitions; the individual regulations where the terms are used may be tiered.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to city, county, or other municipal governments which construct, modify, or operate wastewater facilities. These local governments will apply these definitions to their facilities, but any impact will occur where the term is actually applied in a particular regulation. The terms being added relate to the construction of wastewater facilities and regional

planning activities in 401 KAR 5:005 and 5:006.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

None; since this regulation merely defines terms, it does not impact the expenditures or revenues of a local government.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Sections 208 and 303 of the Clean Water Act and 40 CFR Part 130, for the definitions relating to regional planning requirements; 40 CFR 35.2005 for the terms infiltration and inflow.

2. State compliance standards. 401 KAR 5:005 and 5:006 use the terms that are defined in 401 KAR 5:001.

3. Minimum or uniform standards contained in the federal mandate. The terms used are infiltration, inflow (40 CFR 35.2005), and water quality management plan (40 CFR 130.2).

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.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:005. Permits to construct, modify, or operate a facility. [~~discharge sewage; industrial and other wastes; definitions.~~]

RELATES TO: KRS 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation provides [definitions and] administrative procedures [authorized] for the issuance of permits for the construction, modification, and operation of facilities [sewage systems] authorized under KRS Chapter 224 and establishes conditions for construction of facilities under this chapter. The administrative regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits. There is no federal law or regulation relating to construction requirements for wastewater treatment plants or the operational requirements for no discharge operations, therefore this administrative regulation is not more stringent than the federal requirements. The operational permit requirements are contained in the KPDES administrative regulations in 401 KAR 5:050 through 5:080 which are the same as the federal requirements.

Section 1. [Definitions. (1) "Agricultural wastes handling system" means a no discharge structure or equipment that conveys, stores, or treats manure from a concentrated animal feeding operation prior to land application.

(2) "Cabinet," means the Natural Resources and Environmental Protection Cabinet.

(3) "Division" means the Division of Water.

(4) "Establishment" means any industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, oil refinery, boat, vessel or other type of commercial, manufacturing or industrial works or facility in the operation of which sewage, industrial wastes or other wastes are produced or stored.

(5) "Facility" for the purpose of this administrative regulation means a sewage system as defined in KRS 224.01-010 except for septic tanks, pretreatment facilities, and disposal wells as defined in 401 KAR 5:090.

(6) "Industrial wastes" means any liquid, or other waste resulting from any process of industry, manufacture, trade or business, or from the depletion of any natural resource.

(7) "Intermediate facility" means a treatment facility with an average daily design flow of 10,000 to 40,000 gallons per day or of sewer lines of more than 2,500 feet to 5,000 feet in length including appurtenances.

(8) "Large facility" means a treatment facility with an average daily design flow of 50,000 gallons per day or more or of sewer lines of more than 5,000 feet in length including appurtenances.

(9) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, effal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and all other foreign substances not included within the above definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(10) "Permit" means written permission in whatever form by the cabinet to construct and operate a facility.

(11) "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(12) "Publicly owned treatment works" for the purpose of this administrative regulation means treatment facilities eligible for funding under United States Environmental Protection Agency's 205(g) (33 USC Section 1285(g)) Construction Grants program as provided in 40 CFR Parts 30, 33, and 36.

(13) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places together with such industrial wastes, underground, surface, storm or other water, as may be present.

(14) "Sewer line" means those devices used for collecting, pumping, and disposing of sewage, but not those devices used for tap ons by individual discharges.

(15) "Small facility" means a treatment facility with an average daily design flow less than 10,000 gallons per day or a sewer line of less than 2,500 feet in length including appurtenances.

Section 2. Applicability. (1) This administrative regulation shall apply to owners and operators of facilities subject to the administrative regulations of this chapter.

(2) No person shall construct, modify or operate a facility without having received a permit from the cabinet. A construction permit is not required for maintenance replacement for components of an existing facility or for changes which do not affect the treatment processes of the facility, but is required for replacement of an entire wastewater treatment plant (WWTP). [However, the cabinet may exempt from this administrative regulation any facility which it determines will not at any time discharge into waters of the Commonwealth. In addition,] The operational permit provisions of Section 27 this administrative regulation shall be satisfied [will be deemed met] by those facilities which have a valid KPDES permit issued pursuant to [as defined in] 401 KAR 5:050 to 401 KAR 5:080.

(3) Only Sections 2, 24, 25, 27, and 29 of this administrative regulation shall apply to agricultural waste handling systems.

(4) This administrative regulation shall not apply to industrial wastewater treatment plants (IWWTPs), except that IWWTPs shall

comply with the "Five Mile Limit Policy", incorporated by reference in Section 29 of this administrative regulation, and the KPDES regulations in 401 KAR 5:050 through 5:080.

(5) This administrative regulation shall not apply to WWTPs which collect, convey, or treat only storm water.

~~[Section 2. The Permit. (1) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned. If construction is not commenced within the twelve (12) months following a permit's issuance, a new permit shall be obtained prior to any construction.~~

~~(2) A permit to construct a facility shall automatically become an operational permit when:~~

~~(a) The applicant notifies the cabinet that the facility has been properly constructed; and,~~

~~(b) A cabinet representative inspects the site and determines that the facility is properly operating.~~

~~(3) The applicant shall notify the cabinet in writing within thirty (30) days of completed construction and commencement of trial operation.~~

~~(4) Permits may contain special conditions not found in this administrative regulation. Such conditions shall be in writing and treated as a part of a permit.~~

~~(5) Issuance of a permit represents a judgment of the cabinet that a proposed facility will protect water quality or achieve certain effluent reductions if constructed in accordance with approved plans and specifications. Construction shall be in accord with approved plans and specifications.]~~

Section 2. [4. Permit] Application Submittal. (1) An application to construct, modify, operate, or renew the operational permit shall be submitted on the following applicable forms, incorporated by reference in Section 29 of this administrative regulation, and shall include the applicable supporting information required by Section 3 of this administrative regulation, applicable fees required by Section 5 of this administrative regulation, and plans and specifications for the proposed construction or modification required by Section 6 of this administrative regulation.

(a) For sewer line extensions, the applicant shall submit a completed Construction Permit Application for Sewer Line Extension, Form S-1, and a fee in accordance with Section 5 of this administrative regulation.

(b) For construction projects for WWTPs or WWTPs with sewer lines with a direct discharge, the applicant shall submit or shall have submitted the completed KPDES applications required by 401 KAR 5:060 and a completed Construction Permit Application for Wastewater Treatment Plant, Form W-1. The applicant shall also submit a construction permit fee in accordance with Section 5 of this administrative regulation and a KPDES permit fee in accordance with KRS 224.70-120.

(c) For WWTP construction projects without a discharge other than agricultural waste handling systems, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant, Form W-1, a completed Kentucky No Discharge Operational Permit Application, Form ND, and a construction permit fee in accordance with Section 5 of this administrative regulation.

(d) For renewals of Kentucky No Discharge Operational Permits (KNDOPs) other than agricultural waste handling systems, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application, Form ND.

(e) For construction, renewal, modification, or operation of agricultural wastes handling systems, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B. For construction approvals, applicants shall also submit a completed Site Survey Request.

(f) For minor modifications to a WWTP, the applicant shall submit a completed Construction Permit Application for Wastewater Treat-

ment Plant and a fee in accordance with Section 5 of this administrative regulation.

(g) For WWTP construction projects with a discharge for an individual residence, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant, fee in accordance with Section 5 of this administrative regulation, and the completed KPDES applications required by 401 KAR 5:060.

(h) For publicly owned sewer systems which have at least 5,000 linear feet of sewer line and which discharge to a sewer system or a WWTP which is owned by another person, the applicant shall submit a completed Kentucky Inter-Municipal Operational Permit Application.

(2) Signatures.

(a) Applications and all reports required by the permits shall be signed by the responsible corporate officer or the person having primary responsibility for the overall operation of the facility. For a municipality, state, federal or other public agency, the signer shall be a principal executive officer or ranking elected official or the designee. An application or report may be signed by a duly authorized representative, if the authorization has been made in writing by the responsible person.

(b) Certification. Any person signing a document under paragraph (a) of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."

Section 3. Application; Supporting Information. The following items shall be submitted as a part of the application or with the application required by Section 2 of this administrative regulation, any applicable fee required by Section 5 of this administrative regulation, and the plans and specifications for the construction project required by Section 6 of this administrative regulation:

(1) The applicant shall identify who will inspect and certify that the facility under construction conforms with the plans and specifications approved by the cabinet in accordance with this administrative regulation. Facilities designed by an engineer shall be inspected and certified by an engineer.

(2) The applicant shall provide an estimate for the cost of the facility.

(3) The applicant shall provide a USGS seven and one-half (7½) minute topographic map with the proposed project identified.

(4) The applicant shall provide an estimate, and the basis for the estimate, for the average daily flow added by the proposed project.

(5) Closure plan.

(a) If an existing facility or a portion of a facility will be taken out of service, the applicant shall submit a closure plan discussing the following items:

1. How the facility will be constructed and the sewage will be diverted to the new construction without a bypass to a stream. If a bypass is unavoidable during construction, the applicant shall submit:

a. An explanation of why construction cannot occur without the bypass;

b. An estimate of the shortest duration for the construction to be completed;

c. A description of all equipment, material, labor, and any other item necessary to complete the construction; and

d. An estimate of when the necessary items for the construction will be on-site.

2. How the contents of the facility will be removed and properly disposed;

3. How the abandoned facility will be removed or filled and covered; and

4. How the abandoned sewers will be plugged and manholes filled and covered.

(b) If an existing WWTP discharge is eliminated, the owner of the WWTP shall submit a completed No Discharge Certification, incorporated by reference in Section 29 of this administrative regulation, within thirty (30) days after the elimination of the discharge.

(6) Preliminary submittal. Applicants for WWTP construction permits may submit the following information prior to formal submittal of the construction application, to allow the applicant to receive a preliminary determination on the suitability of the proposed discharge location and preliminary effluent limits used in the design of the facility. If the information in this subsection is not submitted prior to the formal submittal, the information shall be submitted with the construction application. The preliminary determination shall be valid for up to one (1) year after issuance of the preliminary determination or until the issuance of the KPDES permit, whichever occurs first. The preliminary determination may be changed as a result of information presented during the public notice phase of the KPDES permitting procedure. The preliminary effluent limits are contingent upon the validity, accuracy, and completeness of the information submitted by the applicant.

(a) A reproducible copy of a USGS seven and one-half (7½) minute topographic map with the projected service area outlined, the proposed WWTP location, and the discharge point identified on the map;

(b) If a regional facility plan or water quality management plan is being or has been developed, a letter from the regional planning agency stating whether the applicant's project is compatible with the plan. The cabinet shall then make a final determination on the compatibility of the project with the plan;

(c) For a new or an expansion of an existing regional facility pursuant to 401 KAR 5:006, a regional facility plan or water quality management plan. The planning requirements of "Recommended Standards for Wastewater Facilities" ("Ten States' Standards"), incorporated by reference in Section 29 of this administrative regulation, shall be satisfied by the cabinet's approval of a regional facility plan or a water quality management plan; and

(d) For WWTP projects, a demonstration that the users of the proposed WWTP cannot be served by an existing regional facility. The applicant shall demonstrate that a connection to a regional facility is not available. The distance criteria for determining availability shall not apply to WWTPs with an average daily design capacity less than or equal to 1,000 gpd.

(7) For WWTP projects, the applicant shall submit the following design values:

- (a) Average daily flow;
- (b) Peak daily flow;
- (c) Peak hourly flow;
- (d) Influent BOD;
- (e) Influent suspended solids; and
- (f) Ammonium nitrogen (NH₄-N) of the influent.

(8) For WWTP projects, if the discharge point of a proposed WWTP fails to coincide with a stream indicated as a blue line on a USGS seven and one-half (7½) minute topographic map, the applicant shall demonstrate that the applicant has a recorded deed, recorded other right of ownership, or recorded right of easement to discharge the applicant's effluent across any land owner's property which comes between the point of discharge and a blue line stream.

(9) For WWTP projects, the applicant shall submit a copy of the plat or survey clearly indicating the property boundaries, the position of the proposed facility, and the position of the dwellings within 200 feet of the WWTP.

(10) For WWTP projects, the applicant shall provide a sludge management plan which includes the method of sludge processing and ultimate sludge disposal.

(11) For WWTP projects, the applicant shall indicate that laboratory services shall be provided for self-monitoring and process control to ensure that the WWTP operation complies with the permit.

(12) For WWTP projects, the applicant shall submit:

(a) A schematic drawing of the WWTP layout and detailed explanation of the proposed facility and its method of operation;

(b) The WWTP's reliability category and a demonstration of how the WWTP complies with the reliability requirements in Section 13 of this administrative regulation; and

(c) The design criteria used to size the unit processes. [An application for a permit shall be submitted not less than thirty (30) days prior to the date a permit is desired.]

Section 4. [6-The] Application; Preliminary Considerations. (1) No permit shall be granted to any facility which is not compatible, as determined by the cabinet, with a regional facility plan or with a water quality management plan approved by the cabinet or the U.S. EPA.

(2) A WWTP which serves an individual residence may be located within 200 feet of the dwelling that it serves. An open-top WWTP may be located within 200 feet of another dwelling which the WWTP does not serve, only if the WWTP is enclosed within a building which controls odors and dampens noise or the applicant demonstrates an equivalent method for noise and odor control will be provided.

(3) Any discharge point and direct discharges into a wellhead protection area shall comply with Water Policy Memorandum No. 84-02 (Five Mile Limit Policy), incorporated by reference in Section 29 of this administrative regulation.

(4) The initial suitability of any location for a proposed discharge point or spray irrigation field shall be determined by the cabinet after site inspection. In determining the suitability of the location, the cabinet may consider the distance to the nearest dwelling, distance to water intake used for a public water supply, downstream land use, physical characteristics and current use of the stream, physical characteristics of the proposed spray field, need for easements, location of property boundaries, and other items consistent with this administrative regulation and KRS Chapter 224.

(5) If the discharge from the WWTP enters a sinkhole directly or enters a disappearing stream, the applicant shall submit a proposal for a groundwater tracer study or results from a previously conducted study to the cabinet for approval. The results of the groundwater tracer study shall be submitted to the cabinet for approval. The cabinet will review the results to determine if a discharge is approvable.

(6) The cabinet may condition or deny a permit to construct or expand a facility based on its compatibility with a regional facility plan or the availability of a regional facility. Permits to construct, expand, or operate a sewage system shall require connection to a regional facility when one (1) becomes available and shall not be renewed, reissued, or modified to remove that requirement unless a regional facility is no longer available.

(7) Pursuant to 401 KAR 5:300, the cabinet will coordinate issuance of a construction permit for WWTPs which require a new KPDES permit or modification to a KPDES permit with the issuance of the KPDES permit to ensure that public comments received as a result of the public notice requirements of 401 KAR 5:075 are considered in the issuance of the construction permit. The cabinet will also coordinate issuance of construction approval for the associated sewer lines with the issuance of the construction permit for the WWTP. The cabinet may condition or deny the construction permit based on those public comments.

Section 5. Fees. (1) Except as specified in KRS 224.10-100, 224.16-050, and subsection (5) of this section, the applicant shall submit a construction permit fee as provided in subsection (4) of this section with the construction permit application and any applicable KPDES fee.

(2) If the cabinet denies a construction permit for a WWTP or sewer line, the fee for the construction permit shall be retained by the cabinet, unless the fee is for a WWTP which serves only an individual residence.

(3) The applicant shall make checks or money orders payable to

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the Kentucky State Treasurer.

(4) Construction permit fees shall be as shown on the following schedule, except as provided in subsection (5) of this section.

Facility Category	Construction Permit Fee
Large Facility: WWTP	\$1,800
Intermediate Facility: WWTP	\$900
Small Facility: WWTP	\$450
Minor Modification to a WWTP:	\$200
Small Facility for Nonprofit Organizations	
Pursuant to KRS 224.16-050(5):	\$50
Large Facility: Sewer Lines	\$800
Intermediate Facility: Sewer Lines	\$400
Small Facility: Sewer Lines	\$200

(5) Fees in this section shall not apply to agricultural wastes handling systems or renewals of KNDOP permits.

(6) The WWTP fee shall apply to the WWTP project and any sewers or pump stations located on the plant property. A sewer fee shall apply to all sewers, force mains, and pump stations which are bound together as one (1) set of plans. If a WWTP project includes sewers, force mains, or pump stations located off of the plant property, at least two (2) fees shall be submitted.

(7) To qualify for the reduced fee in subsection (4) of this section, nonprofit organizations shall submit proof that they are qualified under Section 501(c)(3) of the Internal Revenue Code. ~~Where a river basin plan, an area-wide waste management plan and an area-wide waste management plan have been developed with a regional or facility plan, the applicant shall provide the cabinet with a statement from the agency developing any such plan, that the applicant's proposed facility is compatible with any applicable plan.~~

~~(2) Any proposed large facility shall submit a preliminary or facilities plan to the cabinet. Said plan shall include:~~

~~(a) A seven and one half (7 1/2) minute, United States Geological Survey topographic map with the projected service area outlined and the discharge point identified thereon.~~

~~(b) A schematic of the facility layout and detailed explanation of the proposed facility and its method of operation;~~

~~(c) All wastes shall be identified in regard to the processes giving rise to the waste, the character and quantity of the waste, its treatability; and~~

~~(d) A statement regarding the expected degree of reduction in pollution load to be accomplished by the facility.~~

~~(3) Where the discharge point of a proposed facility fails to coincide with an intermittent or perennial stream as indicated by a blue line on U.S. Geological Survey topographic maps, the applicant shall demonstrate that he has a legal right to discharge his effluent across any other land owner's property which comes between the point of discharge and a blue line stream. The cabinet may require the applicant to provide it with an opinion of counsel to that effect.~~

Section 6. Plans and Specifications. (1) The applicant shall submit to the cabinet at least [Not fewer than] three (3) sets of detailed plans and specifications for the facility. Plans for gravity sewer lines and force mains shall include a plan view and a profile view [shall be submitted to the cabinet]. The submittal shall be accompanied by a completed permit application on the forms required by Section 2 of this administrative regulation and the applicable items required by this administrative regulation. [form provided by the cabinet.]

(2) The cabinet may request ~~[such]~~ additional information as is necessary [it needs] to evaluate the facility to ensure compliance with this administrative regulation.

(3) When [One] cabinet approval is obtained, no changes shall be made to the plans and specifications which would alter or affect the location, capacity, type of treatment process, discharge location,

or quality of effluent without issuance of a modified permit [prior written approval] from the cabinet.

(4) If [Where] a proposed [or existing] facility will [is part of or may] become a part of a [comprehensive] sewer system served by a regional facility or [and] has a projected average daily design capacity of 10,000 gpd [50,000 gallons per day] or more, the plans and specifications shall be prepared, stamped, signed, and dated by a professional engineer.

(5) The plans shall be accompanied by ~~[such]~~ engineering calculations ~~[as are]~~ necessary for the understanding of the basis and design of the facility.

Section 7. Design Considerations. (1)(a) Facilities, except extended aeration package WWTPs with an average daily design capacity less than 100,000 gpd, shall be designed in accordance with the "Recommended Standards for Wastewater Facilities" of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, commonly referred to as "Ten States' Standards", 1990 edition, incorporated by reference in Section 29 of this administrative regulation. Deviations from the "Ten States' Standards" requirements may be approved if the applicant submits a written request for a deviation with the basis for the request. The basis for the deviation request shall be supported by current engineering practice. [Specific design criteria for any facility shall be controlled by current engineering practice.] Some references to current engineering practice [can] be found in any "Manual of Practice" published by the Water Environment Federation and "Wastewater Engineering Treatment, Disposal, Reuse", Third Edition, by Metcalfe and Eddy, Inc.

(b) Other practices may be required by the cabinet based on the cabinet's best professional judgment that the practices are necessary for the protection of public health and the environment.

(c) Other practices may be approved by the cabinet if sufficient operational experience is available from previous similar installations to indicate no operational problems have occurred and that water quality standards have not been violated. [the following: "Guidelines for Design, Operation and Maintenance of Waste Water Treatment" by the United States Environmental Protection Agency; the latest edition of "Recommended Standards for Sewage Works of the Great Lake-Upper Mississippi River Board of Sanitary Engineers," and the Water Pollution Control Federation's "Manual of Practice No. 8 and 9-"]

(2) Extended aeration package WWTPs, with an average daily design capacity less than 100,000 gpd shall comply with Section 10 of this administrative regulation and any other applicable section. [Consideration shall be given to the treatment requirements of the United States Environmental Protection Agency for specific types of facilities and processes.]

(3) The applicant shall demonstrate to the cabinet that the effluent from a proposed facility will:

(a) Protect those minimum conditions applicable to all waters of the Commonwealth found in 401 KAR 5:031[~~Section 2~~];

(b) Not cause those waters classified by 401 KAR 5:026 or 5:030 ~~[5:035]~~ to be of lesser quality than the numeric criteria applicable to those waters in 401 KAR 5:031 or the requirements of 401 KAR 5:030 [Sections 2 to 9]; and

(c) Be in accordance with any general or particular facility requirement mandated by 401 KAR Chapter 5. ~~[other regulations. An example of a general facility requirement is the "best practicable control technology" found in 401 KAR 5:080.]~~

(4) Each WWTP shall have [A recording flow measuring device shall be installed at each large facility. Any facility may estimate flow from] a flow measuring device at the plant capable of measuring the anticipated flow, including variations, with an accuracy of \pm ten (10) percent. The flow measuring device shall measure all flow discharged by the WWTP including any bypasses. An indicating, recording, and totalizing flow measuring device shall be installed at each large

WWTP. Flow measuring devices for new large WWTPs shall meet the requirements of Section 12 of this administrative regulation.

(5) No bypass or overflow structure of any type shall be constructed in any sewer line or pump station or at any WWTP unless specifically approved by the cabinet in writing. [Infiltration/exfiltration-]

(a) The entrance of ground water into or loss of waste from a sewer system shall be limited to 250 gallons per inch of diameter per mile per day with a maximum of 6,000 gallons per mile per day regardless of the pipe diameter. This limitation is inclusive of manholes, sewers, and appurtenances.

(b) The integrity of a new system shall be verified by means of either smoke testing, or low pressure air testing or both testing methods. The use of smoke testing shall depend on prevailing ground water conditions during testing. Sewers over eighteen (18) inches in diameter shall be tested by the exfiltration method, or smoke testing, or both, if ground water conditions permit.

(6) Inflow. No new combined, extension or replacement of combined sewers shall be permitted. All points of entrance of inflow to a separate sanitary system will be identified and eliminated.]

Section 8. Requirements for Sewer Line Extensions. (1) If the applicant does not own all of the proposed sewer line extension, the applicant shall identify the owner and the portion of the sewer line extension owned by the other person.

(2) The applicant shall submit letters from:

(a) The owner of the sewer line extension stating that the owner will accept operation and maintenance responsibilities for the sewer line extension when it is constructed;

(b) The owner of the sewer system stating that the owner approves the connection and accepts responsibility for the additional flow; and

(c) The owner of the WWTP stating that the owner approves the connection and accepts responsibility for the additional flow.

(3) The applicant shall demonstrate that the portion of the sewer system used by the connection has adequate capacity to transport the current and anticipated peak flow to the WWTP and that the portion of the sewer system used by the connection is not subject to excessive infiltration or excessive inflow. The cabinet may deny a sewer line extension for that portion of the sewer system when the portion of the system is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation which addresses these conditions has been approved and is being implemented.

(4) The applicant shall demonstrate that the WWTP which receives the waste has adequate capacity to treat the current and the anticipated flow and is not subject to excessive infiltration or excessive inflow. The cabinet may deny the sewer line extension if the WWTP does not have adequate capacity to treat the flow or is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation which addresses these conditions has been approved and the plan is being implemented.

(5) The entrance of groundwater into, or loss of waste from, a new gravity sewer line shall be limited to 200 gpd per inch of diameter per mile of the gravity sewer line. This limitation includes manholes, gravity sewer lines, and appurtenances.

(6)(a) The integrity of a new gravity sewer line shall be verified by either the infiltration-exfiltration or low pressure air testing method. An infiltration-exfiltration test shall be performed with a minimum positive head of two (2) feet. A deflection test shall be performed for each new flexible pipe; pipe deflection shall not exceed five (5) percent. Each new manhole shall be tested for watertightness.

(b) The integrity of a new force main shall be verified by leakage tests. The applicant shall describe the proposed testing methods and leakage limits in the specifications submitted with the permit application.

(7) The construction of a new combined sewer shall not be permitted unless it is a consolidation sewer, flood relief sewer, or a replacement of a combined sewer that:

(a) Conforms with the long-term CSO control plan;

(b) Enhances water quality; and

(c) Protects public health and safety.

(8) Gravity sewer lines and force mains shall be designed and constructed to give mean velocities, when flowing full, of not less than two and zero-tenths (2.0) feet per second. The roughness coefficient used in the Manning or Kutter's formula shall be 0.013 or the "C" factor used in the Hazen-Williams Formula shall be 100. If the specifications allow only plastic pipe, a roughness coefficient of 0.011 or a "C" factor of 120 may be used. Roughness coefficients between 0.013 and 0.011 may be considered for other pipe materials if sufficient documentation of experimental testing is approved by the cabinet.

(9) Gravity sewer lines and force mains shall have a minimum of thirty (30) inches of cover or provide comparable protection.

(10) If gravity sewer lines and force mains are to be constructed in fill areas, the fill areas shall be compacted to ninety-five (95) percent density as determined by the Standard Proctor Density test or to a minimum of ninety (90) percent density as determined by the Modified Proctor Density test prior to the installation of the sewer lines.

(11) The minimum size for conventional gravity sewer lines shall be eight (8) inches, except that a six (6) inch sewer line may be approved if no future extension is possible. Alternative type sewer systems may be approved if sufficient operational experience is available from previous similar installations to indicate no operational problems have occurred.

(12) A manhole shall be provided at the junction of two (2) building sewers.

(13) The length of building sewers shall be less than or equal to 150 feet.

(14) Sewer lines shall be located at least fifty (50) feet away from a stream which appears as a blue line on a USGS seven and one-half (7 1/2) minute topographic map except where the sewer alignment crosses the stream. The distance shall be measured from the top of the stream bank. The cabinet may allow construction within the fifty (50) foot buffer if adequate methods are used to prevent the soil from entering the stream.

(15) Gravity sewer lines and force mains that cross streams shall be constructed by methods which maintain normal stream flow and allow for a dry excavation. Water pumped from the excavation shall be contained and allowed to settle prior to re-entering the stream. Excavation equipment and vehicles shall operate outside of the flowing portion of the stream. Spoil material from the sewer line excavation shall not be allowed to enter the flowing portion of the stream.

(16) Pump station wetwells shall be sized such that, based on the average flow, the time to fill the wetwell from the pump-off elevation to the pump-on elevation shall not exceed thirty (30) minutes.

(17) Pump station wetwells shall have a vent.

(18) Pump stations shall provide a minimum of two (2) hours of detention, based on the average design flow, above the high level alarm elevation or provide an alternate source of power with wetwell storage providing sufficient time for the alternative power source to be activated.

(19) Each high point in the force main shall have automatic air release valves.

(20) The applicant shall submit a performance curve for proposed pump stations.

(21) A simplex design shall be used only for pump stations which serve an individual residence or business and a spare pump shall be available for immediate installation.

Section 9. Municipal Water Pollution Prevention Program. This section applies to owners of regional WWTPs, sewer systems served by regional WWTPs, and facilities with KIMOPs.

(1) The cabinet will review the annual average of the reported

flows and organic loads for each regional WWTP. If the reported average flows or loads exceed ninety (90) percent of the average daily design capacity of the WWTP, the cabinet shall advise the owner of the WWTP. The cabinet may deny the approval of any sewer line extension until the owner of the WWTP commits to addressing the condition. The owner may address the condition by:

(a) Demonstrating, with supporting documentation, that the average daily design capacity of the plant is greater than the permitted amount. The cabinet will review the request and if justified will issue a revised average daily design capacity for the WWTP by issuing a modification to the KPDES permit;

(b) Expanding the WWTP to a size sufficient to handle the anticipated flows and loads; or

(c) Performing other remedial measures which address the condition.

(2) Sewer line extensions which are of sufficient flow or add sufficient load to exceed the remaining design capacity of the WWTP or exacerbate water quality problems may be denied.

(3) The owners of the following facilities shall conduct a study of the sewer system or the affected portion of the sewer system which complies with subsections (4) and (5) of this section:

(a) Regional WWTPs with reported average flows or organic loads which exceed ninety (90) percent of the design capacity of the WWTP and KIMOP facilities which either:

1. Receive more than 275 gallons per capita per day of sewage flow based on the maximum flow received during a twenty-four (24) hour period exclusive of industrial flow; or

2. Receive more than 120 gallons per capita per day of sewage flow based on the annual average of daily flows exclusive of industrial flow.

(b) Regional WWTPs, sewer systems served by a regional WWTP, or facilities with KIMOPs which are subject to excessive infiltration or excessive inflow.

(4) The study shall determine if the infiltration-inflow can be removed in a cost-effective manner and if not, shall identify the modifications to the sewer system or the WWTP that are necessary to transport and treat the infiltration-inflow. A schedule for completion of the necessary modifications shall also be prepared. The study and schedule shall be submitted to the cabinet for review and approval.

(5) For the infiltration-inflow study, the owner shall:

(a) Use a map of the sewer system to select manholes for the installation of flow monitoring equipment;

(b) Install equipment to monitor flow at the key manholes, groundwater levels, and rainfall volume and duration for a period of thirty (30) to ninety (90) days;

(c) Conduct physical surveys, smoke tests, and dye water studies of the sewer system;

(d) Evaluate the cost-effectiveness of transportation and treatment versus correction of the infiltration-inflow sources;

(e) If justified, internally inspect the sewer lines to determine the rehabilitation locations and methods;

(f) Develop plans for sewer system rehabilitation or modifications to the facility necessary to transport and treat all flows; and

(g) Develop a schedule for completion of the rehabilitation or modifications.

(6) The owner of the facility shall complete the necessary rehabilitation or modifications in accordance with the approved schedule. The cabinet may deny further sewer line extensions if the owner is not meeting or is not making acceptable progress toward meeting the approved schedule.

Section 10. Extended Aeration Package WWTP Requirements. This section applies to extended aeration package WWTPs intended to treat only domestic sewage but does not apply to extended aeration package WWTPs which serve an individual residence.

(1) A bar screen shall be provided for each plant, except those with trash traps.

(2) The aeration chamber shall have a minimum detention time of twenty-four (24) hours based on the average design flow.

(3) A minimum of 2,050 cubic feet of air shall be provided per pound of BOD.

(4) The clarifier shall have a minimum detention time of four (4) hours based on the average design flow, a surface overflow rate of less than 1,000 GPD/ft², and a solids loading of less than thirty-five (35) lb/ft² based on the peak daily design flow rate.

(5) A positive sludge return shall be provided.

(6) A source of water shall be provided for cleanup. If a potable source is provided, backflow preventers shall be installed to protect the water supply.

(7) Fencing with a lockable gate shall be installed around the plant site.

(8) An all-weather access road to the plant shall be provided.

(9) A sludge holding system shall be provided for each large WWTP. The sludge holding system shall:

(a) Provide two (2) cubic feet of volume per 100 gallons of WWTP design treatment capacity;

(b) Provide thirty (30) cubic feet per minute (cfm) of air per 1,000 cubic feet of tank volume;

(c) Be designed to prevent overflows; and

(d) Transport supernatant to the aeration chamber.

(10) For large WWTPs, motors and blowers shall be installed sufficient to handle the load if the largest unit is taken out of service.

(11) If food grinders are used, treatment units shall be designed for treating the additional BOD loading; additional treatment processes may be required.

(12) Post aeration, if required by effluent limits, shall be designed to raise the effluent dissolved oxygen from two (2) mg/l to the required effluent concentration. If a diffused air system is used, a minimum blower capacity of 0.154 cubic feet per minute (cfm) per 1,000 gallons of average daily design capacity shall be provided. If a step aeration ladder is used, a minimum drop of nineteen (19) feet shall be provided.

(13) WWTPs with monthly average permit limits for CBOD of twenty (20) mg/l or less shall provide additional treatment units.

(14) WWTPs which serve restaurants or other similar establishments where food is prepared and served shall be designed to treat the additional BOD loading.

(15) Effluent discharge piping for new WWTPs, except regional facilities, shall be designed to transport sewage to facilitate a future connection to a regional facility.

(16) Used package extended aeration WWTPs may be used if the tank is structurally sound and all mechanical equipment has been reconditioned.

Section 11. Disinfection. (1) All WWTPs shall have a disinfection process which meets the following requirements:

(a) An ultraviolet disinfection system designed to treat the anticipated peak hourly flow;

(b) A chlorination system with a flow or demand proportional feed system. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average flow, or fifteen (15) minutes based on the peak hourly flow, whichever requires the larger tank size. WWTPs shall also have a dechlorination system with a flow or demand proportional feed system if necessary to meet the effluent limits; or

(c) A chlorination system with a manually controlled feed system and a flow equalization basin designed to eliminate the diurnal flow variations. The flow equalization basin shall meet the requirements of Section 17 of this administrative regulation. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average design flow or fifteen (15) minutes based on peak hourly flow. WWTPs shall also have a dechlorination system if necessary to meet the effluent limits.

(d) Other disinfection processes providing equivalent treatment

may be approved by the cabinet.

(2) Tablet type chlorination equipment shall not be used in intermediate or large WWTPs.

Section 12. Requirements for Flow Measuring Devices. This section applies to new large WWTPs. Each flow measuring device shall be capable of measuring the anticipated flow, including variations, with an accuracy of \pm ten (10) percent. The flow measuring device shall measure all flow received at the WWTP. An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(1)(a) If the influent and effluent flow are expected to be significantly different, flow measuring devices shall be provided for both the influent and the effluent flow.

(b) Multiple flow measuring devices shall be provided for the following:

1. WWTPs that store and hydrographically control the release of effluent;

2. WWTPs with flow equalization facilities which are designed to store more than the volume required to dampen the diurnal flow variations;

3. WWTPs with lagoons that have a detention time of greater than twenty-four (24) hours;

4. WWTPs with the capability to bypass a treatment process; and

5. WWTPs with more than one (1) discharge point.

(2) Sharp crested weirs shall be used for measuring effluent flow only and shall have the following characteristics:

(a) The weir shall be installed perpendicular to the axis of flow and there shall be no leakage at the weir edges or bottom;

(b) The weir plate shall be level and adjustable;

(c) The sides of a rectangular contracted weir shall be vertical;

(d) The angles of V-notch weirs shall be cut precisely;

(e) The thickness of the weir crest shall be less than one-tenth (0.1) of an inch;

(f) The distance from the weir crest to the bottom of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;

(g) The distance from the sides of the weir to the sides of the approach channel shall be more than (1) foot or two (2) times the maximum weir head, whichever is greater. This does not apply to suppressed rectangular weirs;

(h) Air shall circulate freely under, and on both sides of, the nappe;

(i) The measurement of head on the weir shall be made at least four (4) times the maximum weir head upstream from the weir crest;

(j) The cross-sectional area of the approach channel shall be at least eight (8) times the area of the nappe. The approach channel shall be straight and uniform upstream from the weir for a distance of fifteen (15) times the maximum weir head;

(k) The minimum acceptable weir head is two-tenths (0.2) foot;

(l) The maximum downstream pool level shall be at least two-tenths (0.2) foot below the crest elevation;

(m) The weir length for a rectangular, suppressed, or cipolletti weir shall be at least three (3) times the maximum weir head; and

(n) A reference staff gauge shall be provided.

(3) Parshall flumes may be used to measure influent or effluent flows and shall have the following characteristics:

(a) The approach channel upstream of the flume shall be straight and have a width uniform for the length required by the following:

1. If the flume throat width is less than one-half ($\frac{1}{2}$) the width of the approach channel, the straight upstream channel length shall be twenty (20) times the throat width;

2. If the flume throat width is equal to or larger than one-half ($\frac{1}{2}$) the width of the approach channel, the straight upstream length shall be greater than ten (10) times the approach channel width; and

3. If the cross-sectional area of the inlet to the approach channel is smaller than the cross-sectional area of the approach channel,

additional straight upstream channel length may be required to dissipate the velocity;

(b) The throat section walls shall be vertical;

(c) The head measuring point shall be at two-thirds ($\frac{2}{3}$) the length of the converging sidewall;

(d) The flow shall be evenly distributed across the channel, shall be free of turbulence or waves, and shall not be located after transition sections;

(e) The longitudinal and lateral axes of the converging crest floor shall be level;

(f) Free flow conditions shall be maintained; and

(g) A reference staff gauge shall be provided for H_a and H_b to determine if submergence occurs.

(4) Other types of flow measuring devices may be approved by the cabinet if the device reasonably and accurately measures the flow.

Section 13. Reliability Categories. The cabinet shall determine the reliability categories of a WWTP based on factors such as the size of the discharge, the size of the receiving stream, and downstream water quality classifications.

(1) WWTP reliability categories are divided into three (3) grades:

(a) Grade One WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of all treatment processes and disinfection;

(b) Grade Two WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of the preliminary, primary, and secondary treatment processes and disinfection; and

(c) Grade Three WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of the preliminary and primary treatment processes and disinfection.

(2) WWTPs which discharge to a waterbody designated in 401 KAR 5:030 as a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall meet the requirements of a Grade One reliability category if the average daily design capacity is greater than twenty (20) percent of the seven (7) day, ten (10) year ($7Q_{10}$) low flow of the receiving stream.

(3) WWTPs which discharge into sinkholes or disappearing streams shall meet the requirements of a Grade One reliability category.

(4) WWTPs which discharge within five (5) miles of a water intake or discharge directly into a wellhead protection area shall meet the requirements of a Grade One reliability category.

(5) WWTPs which discharge to a waterbody designated in 401 KAR 5:030 as a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall meet the requirements of a Grade Two reliability category if the average daily design capacity is equal to or less than twenty (20) percent of the $7Q_{10}$ low flow.

(6) Large WWTPs which discharge within five (5) miles upstream of the head of an embayment when the lake is at normal pool elevation shall meet the requirements of a Grade Two reliability category.

(7) Large WWTPs shall, at a minimum, meet the requirements of a Grade Three reliability category.

(8) WWTPs which are subject to reliability requirements shall:

(a) Provide sufficient units to allow for cleaning and repair without causing a violation of effluent limitations or a bypass from the sewer system or the WWTP. This will require storage or treatment capability sufficient to contain or treat the volume of the largest tank and the flow received during the time needed to drain, complete cleaning, and accomplish any anticipated repair without causing a permit violation or bypass of any treatment process; and

(b) Provide alternate power from the connection of at least two (2) independent power sources such as substations, an emergency generator, or comparable protection.

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Section 14. Requirements for Trash Traps. Trash traps shall have an outlet baffle, be accessible to cleaning equipment, have air-tight access openings for cleaning, allow for cleaning in front of baffles, and have a volume required by this section.

(1) For small WWTPs, the trash trap volume shall be fifteen (15) percent of the average daily design flow; and

(2) For intermediate or large WWTPs, the trash trap volume shall be as indicated in the following table for the appropriate WWTP capacity. For capacities not included, the volume shall be interpolated.

WWTP Capacity (GPD)	Trash Trap Volume (Gallons)
10000	1500
20000	2400
30000	2900
40000	3200
50000	3430
60000	3600
70000	3740
80000	3840
90000	3920
100000	4000

Section 15. Requirements for Slow Sand Filters. (1) Wastewater loading shall not exceed five (5) GPD per square foot of filter surface area.

(2) Filter areas larger than 900 square feet shall have multiple beds.

(3) The discharge piping on the filter bed shall be located so that the maximum lateral travel over the sand is less than twenty (20) feet.

(4) Each discharge point shall serve a maximum of 300 square feet of filter surface.

(5) Each discharge point shall have a splash block with a minimum surface area of nine (9) square feet and a square or circular shape.

(6) Distribution piping shall be designed to drain properly.

(7) Underdrains shall be spaced on ten (10) foot centers or less.

(8) Gravel shall be placed around the underdrains and to a depth of six (6) inches over the top of the underdrains.

(9) The filter bed shall have at least thirty (30) inches of sand with an effective size between three-tenths (0.3) and five-tenths (0.5) millimeter.

(10) The dosing chamber shall have a volume sufficient to provide a depth of two (2) inches over the entire filter bed.

Section 16. Requirements for Rapid Sand or Mixed Media Filters. Rapid sand or mixed media filter loadings shall not exceed one (1) gallon per minute per square foot of filter surface area. If flow equalization is provided, the allowable loading may be increased to two (2) gallons per minute per square foot. A backwash system shall be provided.

Section 17. Requirements for Flow Equalization Basins. (1) Flow equalization basins shall have:

(a) A variable flow weir box set to deliver flow at a treatable rate;

(b) A minimum of 1.25 cfm of diffused air per 1,000 gallons of flow equalization volume;

(c) An emergency overflow to an appropriate point in the treatment scheme; and

(d) Sufficient volume to dampen the diurnal flow variations.

(2) If no site specific information nor similar flow pattern is available, the flow equalization basin volume shall be based on the following formula:

$$V = (1 - \frac{t}{24}) \times Q$$

Where:

V is the required volume for the flow equalization basin;

t is the number of hours flow is generated; and

Q is the volume of flow anticipated to be received at the WWTP during a twenty-four (24) hour period.

(3) Flow equalization basins with earth embankments shall be constructed with a slope no steeper than 1:3 (one to three) unless a steeper slope is supported by geotechnical and slope stability studies.

(4) For flow equalization basins constructed in material other than earth, the applicant shall indicate how the basin will be properly sealed.

Section 18. Requirements for Wastewater Treatment Lagoons. (1) BOD loading shall be less than thirty-five (35) pounds per day per acre of lagoon surface for nonaerated primary lagoon systems, fifty (50) pounds per day per acre of lagoon surface for nonaerated polishing lagoons, and 150 pounds per day per acre of lagoon surface for aerated lagoons.

(2) The lagoon design submittal shall provide details on the aeration system proposed including the type, location, and capacity of the aeration units; the operating depth; the area of the lagoon at the operating depth; permeability and thickness of the lagoon liner; anticipated ultimate wastewater flow; and influent wastewater characteristics. New lagoon systems shall be designed to treat a raw wastewater BOD of at least 240 mg/l. The lagoon design shall be evaluated by the method discussed in "Ten States' Standards", incorporated by reference in Section 29 of this administrative regulation, and the predicted BOD remaining shall be less than the required effluent concentration.

(3) Lagoons shall be at least 200 feet from any present or future residence.

(4) Nonaerated primary lagoons shall have a minimum detention time of ninety (90) days.

(5) The "Ten States' Standards" requirement for vegetation to be established prior to filling the lagoon shall not apply.

(6) The cabinet may approve a lagoon with an embankment slope steeper than 1:3 (one to three) if supported by geotechnical and slope stability studies.

(7) The applicant shall indicate how basins constructed in material other than earth will be properly sealed.

Section 19. Additional Requirements for WWTPs Which Serve Schools. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements shall apply to WWTPs which serve schools:

(1) If a flow equalization basin is provided it shall meet the requirements of Section 17 of this administrative regulation.

(2) The aeration tank shall have at least ten (10) gallons of capacity per day per student for elementary and middle schools, or at least twenty (20) gallons of capacity per day per student for high schools.

(3) The secondary clarifier shall be sized to provide a maximum surface loading, at the average design flow, of 300 GPD per square foot of clarifier surface area. If no flow equalization basin is provided, the secondary clarifier shall be sized to provide a maximum surface loading of 100 GPD per square foot at average daily design flow.

Section 20. Additional Requirements for WWTPs Which Serve Multifamily Residential Developments. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements apply to WWTPs which serve multifamily residential developments. Multifamily residential developments including subdivisions, condominiums, apartments, and mobile home parks shall provide one (1) or more of the following measures for additional

reliability:

- (1) Blowers and motors shall be installed sufficient to handle the load if the largest unit is not available for service;
- (2) An alternate source of power; or
- (3) Additional treatment units or processes.

Section 21. Additional Requirements for WWTPs Which Propose Effluent Disposal by Spray Irrigation. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements apply to WWTPs which propose effluent disposal by spray irrigation.

- (1) One (1) acre of spray field shall be provided for each 1,000 GPD of treated wastewater. Higher application rates may be approved if justified by a detailed design based on site specific information.
- (2) The spray field shall have less than a six (6) percent slope, have moderate to high soil permeability, and have sufficient vegetative growth to promote absorption, evaporation, and transpiration.
- (3) A WWTP capable of meeting secondary treatment which meets the requirements of 401 KAR 5:045 and disinfection shall be provided prior to irrigation.
- (4) A twenty (20) foot buffer zone shall be provided between the outer boundary of the spray field and the property boundary or the applicant shall provide screening to inhibit the transport of aerosols and windborne spray across property boundaries.
- (5) A spray irrigation field for an individual residence shall have:
 - (a) At least three (3) sprinkler heads;
 - (b) A spray area larger than 0.19 acre; and
 - (c) A barrier around the spray field.
- (d) The spray irrigation field shall be located at least 200 feet from the nearest dwelling.
- (e) Effluent from the spray irrigation field shall be contained on the owner's property.

Section 22. Requirements for WWTPs which Serve an Individual Residence. (1) Wastewater plants intended to serve an individual residence and eligible for a general KPDES permit under 401 KAR 5:055 shall have the following treatment processes: extended aeration WWTP, filtration, and disinfection. The WWTP shall be capable of meeting secondary treatment requirements of 401 KAR 5:045 without additional treatment units.

(2) A minimum lot size of one (1) acre shall be provided for WWTPs located within a residential subdivision.

(3) WWTP serving an individual residence and proposing effluent disposal by spray irrigation shall also comply with Section 21 of this administrative regulation.

Section 23. Additional Requirements for WWTPs which Serve Car Washes or Laundries. In addition to the requirements of Sections 10 to 18 of this administrative regulation, WWTPs which serve commercial or fleet car washes, commercial laundries, or laundries serving commercial or institutional establishments, shall have an average daily flow which is at least five (5) times greater than the anticipated flow of the car wash, commercial laundry, or laundry serving a commercial or institutional establishment.

Section 24. The Construction Permit. (1) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned. Construction shall be completed within twelve (12) months unless additional time is requested. If construction is not commenced within the twelve (12) months following a permit's issuance, a new permit shall be obtained before construction may begin. The cabinet may allow a single twelve (12) month extension to begin construction if site conditions have not changed.

(2) The permittee shall submit the certification from the engineer that the facility was constructed in conformity with the plans and specifications approved by the cabinet in accordance with this administrative regulation within thirty (30) days from the completion

of construction. The permittee may submit the certification for projects not designed by an engineer. Failure to comply with this subsection may result in the denial of sewer line extensions to the incomplete facility.

(3) The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet.

(4) Permit conditions.

(a) Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and treated as a part of the permit.

(b) The following conditions shall apply to all construction permits:

1. There shall be no deviations from the plans and specifications submitted with the application or the conditions specified in this subsection, unless authorized in writing by the cabinet.

2. The permittee shall ensure that the effluent is of satisfactory quality to prevent water pollution.

3. When the construction of the system is completed, the owner shall submit a written certification to the cabinet that the facility has been constructed and tested in accordance with the approved plans and approval conditions. Failure to certify may result in penalty assessments or future approvals being withheld.

(c) The following conditions shall also apply to construction permits issued to WWTPs which discharge to waters of the Commonwealth:

1. If pollution of the receiving waters results from the discharge of the treated effluent, the owner shall provide additional treatment or an extension of the effluent line;

2. If a sewer system served by a regional facility becomes available, the WWTP shall be abandoned and the influent flow shall be diverted to the regional facility;

3. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this cabinet and other state, federal, and local agencies.

(5) The construction permit may be used as an interim operational permit for agricultural waste handling systems until the operational permit is issued or denied.

Section 25. Kentucky No Discharge Operational Permits (KNDOPs). (1) Applicability. These permits are issued to facilities which do not discharge to waters of the Commonwealth, including agricultural wastes handling systems and facilities which dispose of their effluent by spray irrigation. The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet.

(2) Permit conditions. Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and shall be treated as part of the permit. The following conditions shall apply to all KNDOPs.

(a) There shall be no point source discharge of wastewater from the facility.

(b) The permit authorizes operation only of the WWTP described in the permit in the manner and under the conditions described in the permit application and supporting documents as approved by the cabinet in the permit.

(c) The permit shall not be construed as authorizing any operation

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which is otherwise in contravention of any statute, administrative regulation, ordinance, or order of any governmental unit. The permit shall not be construed to authorize the creation or maintenance of a nuisance.

(d) The permit shall be subject to revocation or modification by the cabinet as set forth in KRS Chapter 224. Commencement of a routine point source discharge shall result in a permit revocation.

(e) Any permit shall be issued under the provisions of KRS Chapter 224 and administrative regulations promulgated pursuant thereto. Issuance of the permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by the cabinet and other state, federal, and local agencies.

(f) If applicable, the waste materials removed from the settling basin shall be disposed of according to the requirements of the Division of Waste Management in 401 KAR Chapters 30 through 49.

(g) If applicable, the rate of land application shall prevent any runoff to a stream.

Section 26. Kentucky Intermunicipal Operational Permits (KIMOPs). These permits are issued to publicly owned sewer systems which discharge to a WWTP or a sewer system which is owned by another person. These permits do not apply to sewer systems with less than 5,000 linear feet of sewer line. The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet. Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and shall be treated as a part of the permit.

Section 27. Operational Permits. Operational permits required in Sections 25 and 26 of this administrative regulation shall be valid for five (5) years from the date of issuance, and shall be renewed to maintain continuous operation. [Application; Other Supporting Documents. (1) The applicant shall demonstrate that provision has been made for continuous inspection of a facility under construction to assure its conformity with approved plans and specifications. These facilities designed by an engineer shall be inspected by an engineer.

(2) The applicant shall demonstrate that laboratory services shall be provided for self-monitoring to assure facility operation in accord with any permit conditions and to substantiate protection of the receiving waters.

(3) Where a proposed facility will serve multiple users, the applicant shall demonstrate the financial ability to guarantee continuous operation and maintenance to the cabinet's satisfaction. Such guarantee may take the form of a supporting promise by another person to operate the facility if the applicant fails to properly do so, or by posting a bond payable or depositing money in escrow to be available for making necessary repairs only upon the cabinet's determination that the facility's operation and maintenance is not achieving permit conditions. The above requirement can be demonstrated by a certification from the Public Service Commission.

Section 9. Operation. (1) The cabinet's permit may specify the type of monitoring or analysis required for a facility and the frequency that the monitoring or [such] analysis shall be performed and reported to the cabinet.

(2) The facility, including backup or auxiliary components, shall be operated and maintained to ensure compliance with permit requirements and this administrative regulation. [cabinet may provide forms for self-monitoring reports.]

Section 28. Alternative Requirements. The cabinet may approve

alternative requirements to the provisions of Sections 7 to 23 of this administrative regulation based on the cabinet's best professional judgment that the alternative measure provides sufficient treatment. The applicant shall demonstrate that any alternatives requested by the applicant provide sufficient treatment.

Section 29. Documents Incorporated by Reference. The following documents or forms are hereby incorporated by reference. The material is available for inspection and copying, subject to the copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.

(1) "Recommended Standards for Wastewater Facilities", "1990 Edition", Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers. This document is also known as the "Ten States' Standards" and may be obtained from Health Education Services, P.O. Box 7126, Albany, New York 12224; phone 518/439-7286.

(2) The following document and forms may be obtained from the Division of Water, KPDES Branch unless otherwise noted, 14 Reilly Road, Frankfort, Kentucky 40601:

(a) "Water Policy Memorandum No. 84-02, Five Mile Limit Policy, signed by T. Michael Taimi, August 28, 1984", Facilities Construction Branch;

(b) "Construction Permit Application for Wastewater Treatment Plant, DEP 7071-W (9/96)", Facilities Construction Branch;

(c) "Construction Permit Application for Sewer Line Extension, DEP 7071-S (9/96)", Facilities Construction Branch;

(d) "Change in Ownership Certification for Sewer Line Extensions, DEP 7071-CO (9/96)", Facilities Construction Branch;

(e) "Change in Ownership Certification, DEP 7032-CO (9/96)";

(f) "No Discharge Certification, DEP 7032-NDC (9/96)";

(g) "Kentucky No Discharge Operational Permit Application, DEP 7032-ND (9/96)";

(h) "Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, DEP 7032-B-ND (9/96)";

(i) "Site Survey Request, Kentucky No Discharge Operational Permit for Agricultural Wastes Handling System, DEP 7032-Ag-Site (9/96)";

(j) "Kentucky Intermunicipal Operational Permit Application, DEP 7103 (9/96)".

[Section 10. Fees. (1) The applicant shall submit a permit fee as provided in subsection (5) of this section with the construction permit application.

(2) If the cabinet denies a construction permit, the fee for the construction permit shall be refunded.

(3) Checks or money orders shall be made payable to the Kentucky State Treasurer.

(4) Construction permit fees shall be as shown on the following schedule:

Facility Category	Construction Permit Fee
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Large Facility	\$1,800
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Intermediate Facility	\$ 900
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Small Facility	\$ 450
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Large Facility: Sewer Lines	\$ 800
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Intermediate Facility: Sewer Lines	\$ 400
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Small Facility: Sewer Lines	\$ 200
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(5) If the cabinet has delegated to a local or regional agency, through formal written agreement, review responsibility for sewer lines, a twenty (20) dollar fee per approval letter will be charged in lieu of the sewer line fees described in subsection (4) of this section.

~~(6) Fees in this section do not apply to publicly owned treatment works or agricultural wastes handling systems designed by the U.S. Soil Conservation Service (SCS) in accordance with the cabinet's May 15, 1980 memorandum of understanding with SCS, incorporated herein by reference.~~

~~(7) This section shall apply to permit applications submitted on or after the effective date of this administrative regulation and to applications which are not completed by the effective date of this administrative regulation. Permit applications which are completed by the effective date of this administrative regulation shall be subject to this section as in effect on October 26, 1988.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for October 28, 1996, at 1:30 p.m. (eastern time), in the Auditorium of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by October 21, 1996 of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed amended regulation. Persons testifying at the hearing are asked to provide the Cabinet with a written copy of their testimony, if available. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on October 28, 1996. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before October 21, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, 502/564-3410 (Voice), 502/564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation requires anyone who constructs, modifies, or operates a "facility" to have a permit. A facility is a sewage system other than septic tanks, pretreatment facilities regulated by an approved pretreatment program or inter-municipal agreement, and disposal wells as used in 401 KAR 5:090, and includes wastewater treatment plants (WWTPs), gravity sewer lines, force mains, and wastewater pump stations. Applicants for construction permits include individuals, corporations, and municipalities. In 1995, which the cabinet considers to be typical year, the cabinet issued approximately 1000 construction permits or other approvals of this type. The regulation also requires an operational permit for all facilities, however most of the operational permit provisions are satisfied by those facilities which have valid permits issued under the Kentucky Pollutant Discharge Elimination System (KPDES) program pursuant to 401 KAR 5:050 to 5:080. Other operational permits are for those facilities which do not discharge to waters of the Commonwealth (agricultural facilities, spray irrigation systems, etc.) and those operational permits for inter-municipal sewer systems (KIMOPs). The cabinet expects to issue approximately 300

of those non-KPDES operational permits per year. These permitting requirements exist in the present regulation; the amendments to this regulation would not cause a different kind of facility to obtain a permit if it already wasn't required to do so. Rather, this regulation is being amended to clarify the requirements for the construction of facilities that will be used to collect and treat raw sewage, so that the facilities will discharge properly treated waters, thus protecting water quality. Many of the requirements being added in this regulation are already being used in the construction of new facilities, therefore there will not be a significant impact. Other changes include new application forms so that applicants will know what technical information is required in a permit application. Under the current regulations (401 KAR 5:005, Section 7(3)), the cabinet may deny extensions of sewer lines to facilities where infiltration-inflow problems exist, resulting in water quality violations. This regulation is being amended to further specify the conditions under which permits are denied and to offer the cabinet the opportunity to continue to approve sewer line extensions if the permittee is attempting to improve the system. Other entities affected would be the over two million customers served by the 265 regional wastewater systems. Those customers, which are citizens of the municipality and which pay fees for services, including a properly operating wastewater treatment system, will be affected by an improved system. If approximately 58% percent of those systems report infiltration-inflow problems, as is reported by the Kentucky League of Cities (see below) resulting in sewer overflows in people's homes and yards, then the people served by those systems will receive improved service from an improved sewage system. If indeed 58% of the systems are reporting infiltration-inflow problems, then this cabinet must take action to correct the situations and at a minimum, require the municipality to study and address the problems before allowing any additional loads which would only exacerbate the situation. Other amendments to this regulation will delete the requirement that industrial wastewater treatment plants (WWTPs whose waste streams are at least 90% industrial waste) receive a construction permit. Those facilities undergo extensive review when they are issued a KPDES operational permit. Typically, those facilities are unique in their design and handling of wastes, and the design and review criteria that apply for domestic waste facilities do not apply to these industrial facilities. Also, the cabinet can stop the operation of the industrial facility if it does not meet its discharge limits. Such an option is not feasible for domestic WWTPs. Municipal operations cannot cease their operations altogether. The cabinet reviews and issues about 25 construction permits per year to those industrial facilities. Deleting the requirement that these facilities receive construction permits will allow reviewers to concentrate more on the operational permit and construction permits for other facilities. The cabinet is also amending the applicability section to exempt from the regulation those WWTPs which collect, convey, or treat only storm water. Those facilities will still be required to obtain operational permits for their WWTPs under the KPDES program. This represents a clarification of the procedures in the KPDES regulations (401 KAR 5:050 to 5:080) as amended in 1994.

(2) Direct and indirect costs or savings on the affected entities: The direct and indirect costs or savings will vary from entity to entity, depending on the type, size, and location of the facility under consideration. The following paragraphs give examples of the most significant types of requirements and their estimated costs under these amendments. Facilities will be required to provide for reliability with redundancy, depending on the type, size, and location of the facility. The cost of this requirement will vary. There should be no costs or savings on larger facilities since the larger facilities already provide redundancy and reliability. The larger facilities recognize that it is good business practice and prevents down-time and saves money to keep backup units and supplies on-hand. Smaller facilities may not already have backup equipment, so this requirement, if it applied to them, could increase their equipment costs by 30%. The requirement for reliability and redundancy is tiered, however, to ease

the cost burden on smaller facilities, depending on each facility's size and location. For example, small and intermediate size WWTPs are exempt from reliability requirements unless the WWTP discharges to a "high quality" water, sinkhole, or sinking stream. Another requirement is for WWTPs to provide a buffer zone or building around the WWTP, the cost of which would depend on the size of the WWTP and the cost of land in the area. For example, if the WWTP could be contained in a circle with a radius of 10 feet (a small WWTP with a capacity of 500 gpd), a buffer zone of at least 200 feet around would result in an exclusion area for residential dwellings of 3.18 acres. If a land buffer cannot be provided, the applicant may substitute an enclosure that would provide for noise and odor control; the cost for such an enclosure would depend on the size of the WWTP. Estimates from a manufacturer for an enclosure for a small facility (500 gpd) range from \$1,000 to \$1,250, and an enclosure for a large facility (50,000 gpd) is estimated at \$20,200. Enclosures could be built for less, using less expensive materials and in-house labor. Ventilation of the unit may also be required. Municipalities which own sewer systems larger than 5,000 feet in length which discharge to a sewer system or a WWTP owned by another person would be required to provide a flow measuring device to report flows under the Kentucky Inter-Municipal Operating Permit (KIMOP). The flow data will be used to determine if the owner of the sewer system needs to study the sewer system to identify and correct sources of infiltration-inflow. This would apply to about 30 permits and the flow measuring devices would cost about \$7,000 to \$8,000 for each municipality. Approximately one-half of the communities which would be affected already have flow measuring devices, therefore there is no additional cost for them. Those facilities which discharge to a sinkhole or sinking stream would be required to conduct a groundwater tracer study to predict the impact of the discharge, if there is not already sufficient information available. The cost of the groundwater tracer study would vary on the complexity of the study. An "average" complexity study could cost about \$25,000. The cabinet has not received any requests for a discharge to a sinkhole or sinking stream for several years, so the number of facilities impacted would probably be small. The regulation would require any facility equal to or larger than an intermediate sized WWTP to be designed by a professional engineer (P.E.). Engineering costs for those facilities could start at \$5,000. This does not represent a new cost, however, since most facilities are already doing this. Also, having an engineer design the facility regardless of the size is an investment that will reduce long-term costs by preventing improper design and redesigning, reconstructing, or repairing a facility. Any WWTP that requests approval for a sewer line which would increase plant load or flow to more than 90% of its design capacity could be required to conduct an infiltration-inflow (I/I) study to determine if the sewer system contains I/I which is cost effective to remove. The cost of this I/I study would depend on the size of the sewer system and could cost as little as a few thousand dollars. A typical study for a municipality would cost approximately \$50,000. The findings of the study, however, may result in a cost savings for the owner of the WWTP by finding sources of leaks in the wastewater system, and may alleviate the need for construction in the immediate future. In addition to the costs and impacts determined by the cabinet, the Kentucky League of Cities (KLC) conducted an informal survey of its members in an attempt to determine the overall impact which the proposed regulatory changes may have on cities in the Commonwealth (the number or what percent of KLC the survey represents is unknown). The KLC received responses from approximately 40 members. Of the 40 responding cities, approximately 50% will be impacted by the proposed changes. 58% of those respondents indicated that infiltration-inflow causes operational problems at the WWTP or results in overflows from the sewer system. Thirteen respondents indicated the amount of direct or indirect costs they will incur as a result of the proposed regulatory changes. The average of these amounts as given by the KLC was \$877,077. It is unknown what those costs represent. If this figure includes the construction

costs associated with correcting inadequate systems, then the cost figure is inflated. Such costs should not be included since correcting inadequate design is not an impact of this regulation. This figure does not include estimates of the costs avoided, or benefits, to be derived from this regulation. Twenty-five respondents estimated the number of individuals which will be impacted by the proposed regulatory changes. The total number of individuals reported by the KLC to be impacted is 113,631. It is unknown if those individuals are employees of the systems or customers served by those twenty-five respondents or how these individuals would be impacted. Nineteen respondents estimated the number of businesses which will be impacted by the proposed regulatory changes. The total number of businesses reported to be impacted is 2,885. It is not known which types of businesses were thought to be impacted or how these business types would be impacted. Thirteen respondents estimated the number of organizations to be impacted by the proposed regulatory changes. The total number of organizations reported to be impacted is 367. It is not known which organizations were thought to be impacted or how these organizations would be impacted. Finally, 55% of the respondents indicated what impact the proposed changes will have on local revenues. 17% anticipated increased revenues, 23% anticipate decreased revenues, and 60% anticipate no impact on revenues.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known effects on the cost of living and employment. Comments received to date have not provided any additional information, other than what was reported by the League of Cities (see above discussions). Sewer usage fees and some taxes could increase due to constructions or modifications to a wastewater treatment system, although the increase would more likely be a result of the construction costs associated with providing adequate facilities, rather than the cost of this regulation.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no known effects on the cost of doing business. Comments received to date have not provided any additional information, other than what was reported by the League of Cities (see discussion in (2) above).

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: This regulation incorporates new application forms for applicants to use in applying for construction permits for wastewater treatment plants and sewer line extensions. There currently is an application form for sewer line applicants. These forms are intended to inform the applicant what is required in a construction application. These forms do not require any new information other than what is already required by regulation. They merely provide a location for the applicant to place the information.

1. First year following implementation: Approximately 30 communities that operate sewer systems which discharge to a sewer system or WWTP owned by another person would be required to measure and report flow values delivered to the sewer system or WWTP owned. This information is necessary to determine if the sewer system owned by the community should conduct an infiltration-inflow study.

2. Second and subsequent years: The same 30 communities would continue to report flow.

(3) Effects on the promulgating administrative body: The changes to this administrative regulation should not result in additional responsibilities or impacts on the cabinet. Rather, clarifying in regulation the requirements for wastewater treatment systems should result in more complete permit applications and should allow the permit reviewer to issue permits without having to wait for additional information from the applicant. Fewer requests for additional information should expedite the permit process and result in cost savings to

the agency.

(a) Direct and indirect costs or savings: The cabinet does not anticipate any significant costs or savings to result from the proposed modifications. There should be improvements in the quality of the environment. The cabinet will lose about \$30,000 per year due to the removal of the construction permit from industrial WWTPs. Some of those funds can be recovered from the additional operating permits that can be issued since the reviewers are no longer reviewing the industrial construction permits.

1. First year: The cabinet expects to issue approximately 30 more operating permits for inter-municipal facilities, and not issue about 25 permits per year for the industrial WWTPs. The cabinet does not anticipate any other significant costs for these operating permits during the first year.

2. Continuing costs or savings: The cabinet does not anticipate any other continuing significant costs or savings.

3. Additional factors increasing or decreasing costs: The cabinet does not anticipate any additional factors affecting costs or savings.

(b) Reporting and paperwork requirements: Each of the 30 communities that will receive inter-municipal permits will be required to submit flow measurements monthly.

(4) Assessment of anticipated effect on state and local revenues: The cabinet does not anticipate any significant effect on state or local revenues due to the proposed modifications. The KLC reported, however, that 17% of the 40 entities that responded to its questionnaire would have increased local revenues, 23% would have decreased local revenues, and 60% would have no impact on local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The cabinet currently receives monies from the General Fund, as appropriated by the Kentucky General Assembly, to implement this regulation. Those monies are supplemented by grants from the U.S. EPA, as approved by the General Assembly. The cabinet does not anticipate the need for additional revenue to implement this amended regulation.

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

(a) Geographical area in which administration regulation will be implemented: The public comments received to date indicate that an economic impact will result when the cabinet denies sewer line extensions. It is not the intent of this cabinet to stop economic growth in a community. Rather, a properly operating sewage treatment facility encourages new businesses and residential construction. However, the cabinet cannot allow additional loads to facilities that are near their capacities or that are already experiencing operational problems that impact their existing customers. New customers will be allowed to the extent that they do not harm the existing customers and to the extent that the municipality commits to correcting the infiltration-inflow problems. Discharges of raw sewage from manholes or pump stations into streams or backing up into backyards or basements are considered illegal discharges since they are not authorized by any permit issued by the cabinet. These discharges contain high levels of pathogenic organisms, suspended solids, toxic pollutants, and other pollutants. These discharges can occur in areas where they present high risks of human exposure, such as streets, private property, basements, and receiving waters used as a drinking water source, for fishing, or for contact recreation. In addition to the health risks, these discharges contribute to the impairment of aquatic life and exceedances of water quality standards. The cabinet uses the sanction of denying sewer line extensions only after other methods of correcting the problem have failed. As long as communities can transport and treat all their wastewater, there will be no sanctions. The cabinet will approve line extensions when the facility commits to addressing the problem and is making progress towards correcting the situation. Denials of sewer line extensions may already occur under the cabinet's authority, however, and they would not be the result of the

cabinet promulgating this regulation.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered developing a design manual for wastewater facilities but chose to accept more universal standards like the "Ten States' Standards" for several reasons. First, it was simpler to adopt standards than to write standards. The "Ten States' Standards" are a compilation of the common requirements of several states including Indiana, Ohio, and Illinois. These standards are easier for the regulated community to use since they are already in a published format, and most engineering firms are familiar with the requirements.

(8) Assessment of expected benefits of the administrative regulation: The proposed modifications should reduce the number of incomplete applications the cabinet receives by including new application forms which identify many of the required items, by clarifying the approval requirements, and by requiring that a professional engineer design intermediate-sized or larger WWTPs. One of the proposed changes in this modification is to update the review standards from the 1978 edition to the 1990 edition of the "Ten States' Standards". This will allow the cabinet to use standards for treatment processes developed since the previous edition. Some of the review standards have been revised based on experience with the previous standards. Also, the regulation would allow other published standards if the applicant can show that the standards are applicable to the particular facility. The proposed modifications require the applicant to demonstrate how construction can occur without violating permit conditions. For instance, the applicant will have to demonstrate that there will not be a bypass of improperly treated water during modifications, how the contents of the existing wastewater facility will be removed and properly disposed, and how the existing wastewater facility will be removed or filled if a new facility is being constructed to replace the existing one. The proposed modifications should improve water quality through increased reliability in WWTPs. Larger facilities are generally more reliable in part because they usually have multiple units. The proposed modifications will require the applicant to demonstrate that sufficient units are available to allow for any maintenance to occur without causing a permit violation. The proposed modifications will also reduce health risks and improve water quality by denying sewer line extensions in areas where overflows of improperly treated wastewater are already occurring unless the owner has committed to correcting the overflow. (See earlier discussion in (6)(a).) The proposed modifications will also reduce the occurrence of overflows for municipalities whose sewer systems discharge to another municipality by requiring the applicant to demonstrate that the sewer system has adequate capacity to handle the current and additional loads. The cabinet encourages the connection of sewer systems to existing WWTPs. This frequently results in disputes between the municipalities about the reason for the recurring overflows. The reported flow values and information provided by these permits will allow the cabinet to determine where infiltration-inflow (I/I) corrections should occur. The proposed modifications should reduce odor and noise complaints from neighbors of WWTPs due to new siting requirements. The proposed modifications should improve water quality by requiring municipalities to begin planning for the expansion of their WWTP when the flow reaches 90% of the WWTP's design capacity. If the WWTP waits until it is no longer in compliance with the permit to begin the expansion process, the WWTP will be in non-compliance for the time involved in planning, designing, and constructing a larger WWTP, which would take several years to complete. The system would be in noncompliance and would be improperly discharging for that period of time. Proper planning would prevent such short-sightedness. While some facilities are already doing the necessary planning, other communities are not and will not unless they are required to do so. These amendments would accomplish that, to the benefit of improved systems and reduction of pollution.

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(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: See comments in (8) above.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Some detriment is already occurring in those areas that have not properly planned for their wastewater treatment needs. Those facilities are already discharging improperly treated waters while they are designing and constructing new plants. Also, facilities that do not have enough back-up units and spare supplies may be improperly operating during power outages and while they obtain the necessary equipment and supplies to clean or repair their facility.

(c) If detrimental effect would result, explain detrimental effect: See (b) above.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The cabinet is not aware of any statute, administrative regulation, or government policy which is in conflict, overlapping or duplication.

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

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

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes, there are many examples of tiering in the administrative regulation. Some examples of tiering include different fees for different sized facilities. Larger facilities are more complex and require more staff time to review and approve, therefore a higher fee is justified for larger facilities. It should be noted that these amendments are not changing the fee amount, the fees are just being moved. However, provisions being added would allow the cabinet to recover fees for separate sewer line projects, if the sewer lines are not on the same property as the WWTP. Such permits involve two separate reviews. These changes will allow the cabinet to recover the costs of the separate reviews. The cabinet currently reviews about 10 projects for which it does not receive the review fee, representing about \$2,000 for all 10 projects. Other examples of tiering are in the different requirements for different sized facilities. Again, larger, more complex facilities require more complex design and construction criteria. Still other examples are in the requirements for flow measuring devices, disinfection, and reliability for specific facilities.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects the division of local government that provides sewer and wastewater treatment services to its citizens; usually the public works or municipal utilities division or a sanitation district.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to sewer service and wastewater treatment services.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. It is difficult to determine the effect of this regulation for the first full year the regulation is in effect since this regulation generally impacts a local government if it intends to construct or modify its wastewater treatment system. If a local government modifies its system the first year, then expenditures will occur, if the changes to the system fall under this regulation. In addition, if a system reaches 90% of its design capacity in the first year, then the system may be required to perform a study of its sewer system to determine if it is cost-effective to correct the sources of

infiltration-inflow.

Revenues (+/-): There should be no impact on local governments' revenues, other than what was reported by the League of Cities (see below).

Expenditures (+/-): This regulation likely will not impact many local governments the first year; it will impact expenditures of a local government, if the entity constructs a new wastewater treatment system or modifies its existing system, and the changes are impacted by this regulation. Any major expenditures of the local government will probably be passed on to its customers through increased sewer usage fees or possibly increased taxes.

Other explanation: The Kentucky League of Cities conducted an informal survey of its members in an attempt to determine the overall impact which the proposed regulatory changes may have on cities in the Commonwealth. The League received responses from approximately 40 members. 55% of the respondents indicated what impact the proposed changes will have on local revenues. 17% anticipated increased revenues, 23% anticipate decreased revenues, and 60% anticipate no impact on revenues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation relating to the construction requirements for wastewater treatment facilities.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amendment)

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, 61, 63, 70, 72, 73, 74, 75, 76, 77, 78, 42 USC 7401-7671q, July 21, 1993 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation [~~combines construction and operating permits into one (1) permit and~~] provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Acid Rain Program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o (Title IV of the Act) and 40 CFR Parts 72, 73, 74, 75, 76, 77, and 78. 40 CFR Parts 72 through 78 are incorporated by reference in Section 24 of this administrative regulation.

(2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by PL 101-549 (November 15, 1990) and

PL 102-187 (December 4, 1991).

(3) "Administrative permit amendment" means a revision to a permit that:

- (a) Corrects typographical errors;
- (b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;
- (c) Requires more frequent monitoring or reporting by the permittee;
- (d) Allows for the relocation of a minor source within the Commonwealth of Kentucky, or a change in ownership or operational control of a source pursuant to Section 13(2) of this administrative regulation if no other change in the permit is necessary; or
- (e) Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements equivalent to those in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements equivalent to those contained in Section 7(2) 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 subject to the Acid Rain Program.

(7) "Applicable requirement" means a federally enforceable requirement or a state-origin requirement or standard.

(8) "Complete application" means an application for a permit or permit revision that meets the requirements of Sections 4 and 5 of this administrative regulation.

(9) "Conditional major permit" means a permit issued to the owner or operator of a source that limits the source's potential to emit below the major source thresholds specified in subsection (24) of this section.

(10) "Designated representative" means a 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, means the "designated representative."

(11) "Draft permit" means the version of a permit which the cabinet offers for public participation and affected state review, if applicable, as prescribed in Sections 19 and 20 of this administrative regulation.

(12) "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 which 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.

(13) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038, made effective April 12, 1995.

(14) "Emissions unit" means an affected facility, or a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant or a HAP that is not a regulated air pollutant pursuant to subsection (30)(f) of this section. This term does not alter or affect the definition of the term "unit" as used in the Acid Rain

Program.

(15) "Enforceable as a practical matter" means that the emission limitations or workplace standards contained in a permit or compliance schedule include:

- (a) Technically accurate emission limitations or workplace standards, and the portions of the source that are subject to the limitations or standards;
- (b) A time period adequate to demonstrate compliance with the limitations; and
- (c) The method the source will use to achieve and demonstrate compliance with the limitations and workplace standards, including appropriate reporting, recordkeeping, and monitoring.

(16) "Existing source" means a source which commences operation on or before the effective date of this administrative regulation.

(17) "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable. This includes:

- (a) Part 70 permits;
- (b) Permits issued pursuant to Title I of the Act, including:
 1. Prevention of significant deterioration (PSD) permits issued to owners or operators of major sources or affected facilities in attainment areas pursuant to 401 KAR 51:017; and
 2. New source review (NSR) permits issued to owners or operators of major sources in nonattainment areas pursuant to 401 KAR 51:052; and
- (c) Federally enforceable state operating permits (FESOPS) including conditional major permits and synthetic minor permits issued prior to the effective date of this administrative regulation.

(18) "Federally enforceable requirement" means the items specified in this subsection as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

- (a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;
- (b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 through 7515 (Title I of the Act);
- (c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7429 (Section 129 of the Act) governing solid waste incineration;
- (d) A standard or other requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act);
- (e) Standards or requirements of the Acid Rain Program;
- (f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification;
- (g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 through 7492 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act);
- (h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act);
- (i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act); and
- (j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.

(19) "Final permit" means:

- (a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures required in Sections 19 through 21 of this administrative regulation and for which a final determination has been made.

(b) For a state-origin permit, the version which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

(21) "General permit" means a permit that meets the requirements of Section 10 of this administrative regulation.

(22) "HAP" or "hazardous air pollutant" means a pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act).

(23) "Major source" means a stationary source or a group of stationary sources as described in paragraphs (a), (b), or (c) of this subsection. For paragraphs (b) and (c), a major stationary source includes any group of stationary sources located on one (1) or more contiguous or adjacent properties and under common control of the same person (or persons under common control) belonging to a single major industrial grouping. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at the source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two (2)-digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual, which is incorporated by reference in 401 KAR 51:017, Section 21, except that research and development activities shall be treated as belonging to a separate industrial grouping. In addition, for paragraphs (b) and (c) of this definition, stationary source (or group of stationary sources) that supports another source, if both are under common control of the same person (or persons under common control) and on contiguous or adjacent properties, shall be considered a support facility and part of the same source regardless of the two (2)-digit SIC code for that support facility. A stationary source (or group of stationary sources) is considered a support facility to a source if at least fifty (50) percent of the output of the support facility is dedicated to the source.

(a) A stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a HAP, or twenty-five (25) tons per year or more of a combination of HAPs, or a lesser quantity which the U.S. EPA has established by rule. All fugitive emissions of HAPs shall be considered in determining if the source is major. 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 a regulated air pollutant other than a HAP. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one (1) of the categories listed in this paragraph:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;

17. Fuel conversion plants;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants;

21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or

27. All other stationary source categories subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7412 (Section 112 of the Act) and for which the U.S. EPA has made an affirmative determination pursuant to 42 USC 7602(j) (Section 302(j) of the Act).

(c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:

1. For ozone nonattainment areas, sources that emit or have the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"

2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources that emit or have the potential to emit fifty (50) tons per year or more of carbon monoxide; and

3. For particulate matter (PM₁₀) nonattainment areas classified as "serious," sources that emit or have the potential to emit seventy (70) tons per year or more of PM₁₀.

(24) "Minor source" means a stationary source that emits and has the potential to emit less than the thresholds for a major source in subsection (24) of this section.

(25) "Part 70 permit" means a permit issued to the owner or operator of a source pursuant to 40 CFR Part 70 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.

(26) "Permit revision" means:

(a) An administrative permit amendment required to be processed pursuant to Section 14 of this administrative regulation;

(b) A minor permit revision required to be processed pursuant to Section 15 of this administrative regulation; or

(c) A significant permit revision required to be processed pursuant to Sections 16 and 22 of this administrative regulation.

(27) "Phase II" means the Acid Rain Program period beginning January 1, 2000, and continuing thereafter.

(28) "Potential to emit" means the maximum capacity of a stationary source to emit a regulated 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 enforceable as a practical matter. This definition 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.

(29) "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 21 of this administrative regulation.

(30) "Regulated air pollutant" means the pollutants listed in this subsection.

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);

(d) 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

(e) A pollutant, other than total suspended particulates (TSP), subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act);

(f) A pollutant subject to a standard or other requirement established pursuant to 42 USC 7412 (Section 112 of the Act) as specified in this paragraph:

1. A HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to 42 USC 7412(d) (Section 112(d) of the Act) or adopted by the cabinet pursuant to 42 USC 7412(g) and (j) (Section 112(g) and (j) of the Act) shall be considered regulated for all sources or categories of sources upon promulgation of the standard or requirement, or eighteen (18) months after the standard or requirement was scheduled to be promulgated pursuant to 42 USC 7412(e)(3) (Section 112(e)(3) of the Act), whichever date is sooner; and

2. A HAP for which the cabinet has made a case-by-case emission limitation determination pursuant to 42 USC 7412(g)(2) (Section 112(g)(2) of the Act) shall be considered regulated, but only for the source for which the determination was made.

(g) Other pollutants that are regulated in the Commonwealth of Kentucky but whose emissions standards are not federally enforceable.

(31) "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 12 of this administrative regulation.

(32) "Responsible official" means:

(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 \$25,000,000 (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; or

(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);

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(33) "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.

(34) "State-origin permit" means a permit that contains only state-origin requirements, or that contains federally enforceable requirements but is not required by the U.S. EPA to be a federally enforceable permit.

(35) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 through 63, that is not mandated

by the Act or any of the Act's applicable requirements, and that is not federally enforceable.

(36) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant or HAP that is not a regulated air pollutant pursuant to subsection (30)(f) of this section.

(37) "Synthetic minor permit" means a permit issued to the owner or operator of a source which limits the potential to emit of the source or an affected facility at the source below the major source or major modification thresholds required for PSD review pursuant to 401 KAR 51:017, or NSR review pursuant to 401 KAR 51:052.

(38) "Timely application" means an application that meets the requirements of Section 3 of this administrative regulation.

Section 2. General Applicability. (1) Permitted sources. Owners or operators of sources listed in this subsection shall obtain and comply with a permit issued pursuant to this administrative regulation.

(a) Major sources;

(b) Conditional major and synthetic minor sources;

(c) Minor sources that are required by the U.S. EPA to obtain a permit;

(d) Minor sources that are subject to a regulatory requirement that does not contain a specific method for achieving compliance and that emit or have the potential to emit twenty-five (25) tons per year or more of a regulated pollutant that is subject to an applicable requirement;

(e) Minor sources that are subject to a reasonably available control technology (RACT) requirement pursuant to 401 KAR 63:021, or a best available control technology (BACT) requirement pursuant to 401 KAR 63:022; and

(f) Except as provided in subsection (2)(c) of this section, incinerators that are subject to an applicable requirement promulgated in 401 KAR Chapters 59 or 61, or in 40 CFR Parts 60 or 63, or in any federal regulation promulgated pursuant to 42 USC 7429 (Section 129 of the Act).

(2) Source exemptions. Sources specified in this subsection are exempt from the obligation to obtain a permit pursuant to this administrative regulation, unless required to obtain a permit by the U.S. EPA.

(a) A source that is subject to only the requirements of 40 CFR 61, Subpart AAA, Standards of Performance for New Residential Wood Heaters; and

(b) 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 a requirement in 401 Chapter 59, 60, or 61;

(c) Incinerators with a unit capacity of less than 500 pounds per hour that are subject only to a provision in 401 KAR 59:020, 59:021, 61:010, or 61:011.

(3) Permitted activities. All activities that emit a regulated air pollutant shall be included in the permit except the activities listed in this subsection.

(a) An asbestos demolition or renovation operation subject only to the provisions of 40 CFR 61, Subpart M;

(b) An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement;

(c) Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984;

(d) Vehicles used for the transport of passengers or freight;

(e) Publicly owned roads;

(f) The installation and use of air pollution control equipment that is not required to meet an applicable requirement, if it does not cause an increase in the potential to emit of a regulated air pollutant;

(g) An activity or emission unit contained in the "List of Trivial Activities" which is incorporated by reference in Section 24 of this

administrative regulation, including activities or emission units which the cabinet later determines should be added to this list.

(h) Two (2)-ton construction exemption. The construction, reconstruction, alteration or modification of an affected facility at a source shall be exempt from the permitting requirements of this administrative regulation if it meets the conditions of this paragraph. This exemption shall not apply to sources required to obtain a Part 70 permit after the initial draft permit has been issued.

1. The total increase in potential to emit resulting from the change shall not exceed two (2) tons per year of any regulated air pollutant, regardless of any emission decreases that result from the change;

2. The increase in potential to emit shall not subject the source to a RACT requirement pursuant to 401 KAR 63:021, or a BACT requirement pursuant to 401 KAR 63:022; and

3. The increase in potential to emit shall not cause the source to exceed a major source threshold, or subject the source to PSD review pursuant to 401 KAR 51:017, or NSR review pursuant to 401 KAR 51:052.

(4) A source, emissions unit, or activity that is not required to be permitted pursuant to subsections (1) through (3) of this section shall comply with all applicable requirements to which the source, emissions unit, or activity is otherwise subject. The cabinet may require the owner or operator to demonstrate compliance with the applicable requirement.

(5) A minor source that is subject to an applicable requirement but is not required to be permitted shall submit Form DEP 7039, Minor Source Registration, prior to any construction, reconstruction, alteration, or modification. Form DEP 7039 is incorporated by reference in Section 24 of this administrative regulation.

Section 3. Submittal of Permit Applications. Owners or operators of sources required to obtain a permit issued by the cabinet shall submit a timely and complete application pursuant to subsections (1) through (7) of this section, using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034.

(1) Sources required to obtain a Part 70 permit.

(a) Major sources.

1. An existing major source that was authorized by the cabinet to operate on or before December 14, 1995, shall file a complete application by December 14, 1996.

2. All other major sources shall file a complete application within twelve (12) months after the requirement to obtain a Part 70 permit becomes applicable to the source.

(b) Minor sources. Minor sources that are subject to a federally enforceable requirement shall file a complete application within twelve (12) months after the date the U.S. EPA requires the source to obtain a Part 70 permit or by December 14, 2000, whichever date is earlier.

(2) Minor sources created by emission limits.

(a) Conditional major sources. A source that proposes to accept permit conditions to limit its potential to emit below the major source threshold shall file a complete application to obtain a conditional major permit. A source that would otherwise be required to file an application pursuant to subsection (1)(a)1 of this section shall be exempt from that requirement if it obtains a conditional major permit prior to December 14, 1996.

(b) Sources that elect to apply for a deferral pursuant to 401 KAR 50:031 shall submit an application, using Form DEP 7008, which is incorporated by reference in Section 24 of this administrative regulation. A source that would otherwise be required to file an application pursuant to subsection (1)(a)1 of this section shall be exempt from that requirement if it obtains a deferral prior to December 14, 1996.

(3) Sources required to obtain state-origin permits. Minor sources that are required to obtain a state-origin permit pursuant to Section 2(1) of this administrative regulation shall file a complete application to obtain a new permit by December 14, 2000.

(4) Sources that are constructing, reconstructing, altering, or

modifying. A source that proposes to construct, reconstruct, alter, or modify shall file an application to obtain a permit prior to commencing construction, except as provided in Sections 14 and 15 of this administrative regulation.

(5) Permit reopenings. A source that is required to open an existing permit pursuant to the requirements of Section 18 of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after a notification by the cabinet that the permit shall be reopened.

(6) Permit renewals. An application for a permit renewal shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 12 of this administrative regulation.

(7) Phase II acid rain permits. 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.

(8) Application shield. If an existing source submits a timely and complete application for a permit or permit revision pursuant to this section, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation unless the cabinet makes a final determination to 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 4 of this administrative regulation, the applicant fails to submit additional information requested by the cabinet by the deadline set by the cabinet.

Section 4. Completeness Determination for Permit Applications. A complete application shall provide the information required pursuant to Section 5 of this administrative regulation. Applications for a permit revision shall supply only the information related to the proposed change. The information shall be sufficient to evaluate the source and its application and to determine all applicable requirements.

(1) The cabinet shall promptly provide notice to the applicant if the application is not complete. Unless the cabinet makes 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.

(2) If, during the processing of an application that has been deemed complete, the cabinet determines that additional information is necessary, it may require the information in writing and set a reasonable deadline for response.

(3) For permit revisions processed through minor permit revision procedures, pursuant to Section 15 of this administrative regulation, a completeness determination shall not be required.

Section 5. Information Required on Permit Applications. (1) Applications for permits shall contain the information specified in this subsection, except as provided in subsection (2) of this section.

(a) The application shall include all information needed to determine applicable requirements and the emission fee.

(b) The application and attachments shall include the company name and address and, if different, the plant name and address; owner's and agent's names and addresses; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products, including any alternate operating scenarios identified by the source, and the appropriate SIC code.

(c) The application shall provide the emissions-related information specified in this paragraph.

1. All emissions of regulated air pollutants, unless the emissions are exempted pursuant to Section 2(3) of this administrative regulation. The application shall also provide any additional information related to the emissions necessary to verify which requirements are applicable to the source.

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 Part 70 permit, all

applicable requirements for the emissions units that cause the source to be subject to 40 CFR Part 70 shall be identified in the permit application. The cabinet may identify the applicable requirements for other minor sources prior to determining completeness of the application.

c. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(24)(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 the emission fee and applicable requirements.

3. Emissions rates in terms necessary to determine compliance with applicable requirements.

4. Fuels, fuel use, raw materials, production rates, and operating schedules, to the extent needed to determine or to limit emissions.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation which affect emissions or work practice standards at the source for all regulated air pollutants or HAPs that are not regulated air pollutants pursuant to Section 1(30)(f) of this administrative regulation.

7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042, made effective June 10, 1986.

8. Calculations on which the information in subparagraphs 1 through 7 of this paragraph is based.

(d) The application shall identify the following air pollution control requirements, except as provided in subsection (c)1b of this section:

1. Citation and description of all applicable requirements; and

2. Identification of the applicable test method for determining compliance with each applicable requirement.

(e) The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.

(f) The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.

(g) The application shall provide information defining operating scenarios identified by the source pursuant to Section 7(1)(g) of this administrative regulation, or to define permit terms and conditions implementing Section 7(1)(h) of this administrative regulation.

(h) The application shall provide a compliance plan containing the information specified in this subsection.

1. A description of the compliance status of the source for all applicable requirements:

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:

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 7(2)(a)2 of this administrative regulation, no less frequent 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 be included in the acid rain portion of a compliance plan for an affected source, except as provided in the Acid Rain Program.

(i) The application shall identify requirements for compliance certification as specified in this paragraph.

1. A certification of compliance with all applicable requirements by a responsible official pursuant to Section 6 of this administrative regulation;

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 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.

(2) An existing major source applying for a Part 70 permit that was authorized to operate on or before December 14, 1995, and that is notified by the cabinet that its permit is scheduled to be issued on or after December 14, 1998, shall submit an application containing the information specified in this subsection by December 14, 1996. This application shall be updated and expanded to include any additional information required in subsection (1) of this section and submitted to the cabinet at least one (1) year but not more than fourteen (14) months prior to the date its permit is scheduled to be issued.

(a) The company name and address and, if different, the plant name and address; owner's and agent's names and addresses; name, address, and telephone number of the plant site manager or contact; and the appropriate SIC code.

(b) The citation and description of all applicable requirements for each emission unit, and reference to the applicable test method for determining compliance with each applicable requirement.

(c) An identification and description of compliance monitoring devices or activities.

(d) A description of any alternate operating scenarios which the source may implement prior to the time this application is updated and submitted pursuant to paragraph (a) of this subsection.

(e) A compliance plan containing the information specified in this paragraph.

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 with 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.

c. 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 7(2)(a)2 of this administrative regulation, no less frequent than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

(f) Requirements for compliance certification as specified in this paragraph.

1. A certification of compliance with all applicable requirements by a responsible official pursuant to Section 6 of this administrative regulation;

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 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 and compliance certification requirements.

(3) Insignificant activities. A source shall not be required to provide detailed descriptions or estimates of emissions for insignificant activities if the emissions meet the conditions specified in this subsection. The cabinet shall maintain a list, subject to approval by the U.S. EPA, of approved insignificant activities and shall make this list available upon request to the public.

(a) The emissions shall not cause a source to exceed a major source threshold;

(b) The emissions shall not be subject to a federally enforceable requirement other than generally applicable requirements that apply to all activities and affected facilities, including the requirements contained in 401 KAR 59:010, 61:020, 63:010, and others deemed generally applicable by the cabinet;

(c) The potential to emit a regulated air pollutant from the activity shall not exceed five (5) tons per year;

(d) The potential to emit of a HAP from the activity or affected facility shall not exceed 1000 pounds per year or the de minimis level established under 42 USC 7412(g) Section 112(g) of the Act, whichever is less;

(e) The potential to emit of all insignificant activities and affected facilities shall not subject the source to a reasonably available control technology (RACT) pursuant to 401 KAR 63:021, or a best available control technology (BACT) pursuant to 401 KAR 63:022, or to 401 KAR 63:020; and

(f) The activity or affected facility shall be listed in the permit application together with all generally applicable and state origin requirements that apply. An insignificant activity proposed by a source after a permit is issued may be added to the permit as an administrative amendment.

(4) Duty to supplement or correct application.

(a) 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.

(b) Prior to the issuance of a draft permit, the applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date a complete application is filed.

(c) 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.

(5) Confidential information. A source that submits 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.

Section 6. Certification by Responsible Official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(33) of this administrative regulation. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the documents are true, accurate, and complete.

Section 7. Permit Content. A permit issued by the cabinet shall include the elements specified in this section.

(1) Standard permit requirements.

(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. If an applicable requirement of the Act is more stringent than an applicable requirement promulgated pursuant to 42 USC 7651 through 7651o (Title IV of the Act), both provisions shall be incorporated into the permit and shall be enforceable by the U.S. EPA;

3. If a permit contains a determination that an alternative emission limit is equivalent to a limit contained in the SIP, the permit 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.

(b) Permit duration. A statement shall be included in the permit which provides that the permit shall expire and shall be renewed pursuant to Section 12 of this administrative regulation.

(c) Monitoring requirements.

1. The permit shall contain 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);

2. If the applicable requirement does not require periodic testing or monitoring, the permit shall contain periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit pursuant to the reporting requirements of paragraph (e) of this subsection. 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 this requirement.

3. The permit shall contain requirements covering the use, maintenance, and installation of monitoring equipment or methods.

(d) Recordkeeping requirements. The permit shall incorporate all applicable recordkeeping requirements and shall require the information specified in this paragraph.

1. Required monitoring information:

a. The date, place, and time of sampling or measurements;

b. The dates analyses were performed;

c. The company or entity that performed the analyses;

d. The analytical techniques or methods used;

e. The results of analyses; and

f. The operating conditions at the time of sampling or measure-

ment.

2. Retention of records. The permit shall require the retention of records of all required monitoring data and support information for a period of at least five (5) years. 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.

(e) Reporting requirements.

1. The permit shall require the submittal of 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 6 of this administrative regulation.

2. The permit shall require the 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 applicable requirement and the degree and type of deviation likely to occur.

(f) Affected sources. For affected sources, the permit shall contain a 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. Except as provided by the Acid Rain Program, 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 24 of this administrative regulation.

(g) Alternate operating scenarios. The permit shall contain terms and conditions for reasonably anticipated alternate operating scenarios identified by the source in its application and approved by the cabinet. The terms and conditions shall:

1. Require the source, contemporaneously with making a change from one (1) operating scenario to another, to record in a log at the permitted facility the scenario in which it is operating;

2. Extend the permit shield described in Section 8 of this administrative regulation to all terms and conditions in each operating scenario; and

3. Ensure that the terms and conditions of each alternate operating scenario meet all applicable requirements.

(h) Emissions trading for federally enforceable emissions caps. The permit shall contain 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 no replicable procedures to enforce the emissions trades. The terms and conditions shall:

1. Include all terms required in this subsection and subsection (2) of this section to determine compliance;

2. Extend the permit shield described in Section 8 of this administrative regulation to all terms and conditions that allow increases and decreases in emissions;

3. Meet all applicable requirements and the requirements of this administrative regulation;

4. 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) Compliance requirements. All permits shall contain the elements for compliance, including but not limited to, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

(a) Compliance schedule. The permit shall contain:

1. The schedule of compliance required in the permit application pursuant to Section 5(1)(h)2 of this administrative regulation; and

2. A requirement for progress reports consistent with the schedule of compliance submitted pursuant to subparagraph 1 of this paragraph. The progress reports shall be submitted semiannually or more frequently if specified in an applicable requirement or by the cabinet, and shall include:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance requirements were achieved; and

b. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(b) Compliance certification. The permit shall require that all submitted documents, including reports, shall be certified by a responsible official pursuant to Section 6 of this administrative regulation. The permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices, as applicable. The permit shall establish:

1. Compliance certifications shall be required to be submitted annually or more frequently as specified in an applicable requirement or by the cabinet.

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:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. If 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)(e) of this section; and

e. Other facts the cabinet may require to determine the compliance status of the source.

4. A requirement that all compliance certifications be submitted to the U.S. EPA for sources required to obtain a Part 70 permit, in addition to the cabinet.

5. Additional requirements for monitoring and compliance certification, consistent with 42 USC 7414(a)(3) and 42 USC 7661c(b) (Sections 114(a)(3) and 504(b) of the Act).

(c) Inspection and entry requirements. All permits shall contain a requirement that the permittee shall allow the cabinet or an authorized representative to perform the functions specified in this paragraph.

1. To enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;

2. To 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.

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:

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:

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.

(d) Other provisions required by the cabinet.

(3) General provisions. The permit shall contain statements consistent with the general provisions specified in this paragraph.

1. For major sources, all applicable requirements for emissions units;

2. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation;

3. Fugitive emissions from a source applying for a Part 70 permit shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(24)(b) of this administrative regulation.

4. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and, for federally enforceable permits, shall also be a violation of the Act and shall be 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.

5. 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.

6. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

7. The permit shall not convey property rights or exclusive privileges.

8. Emission fees. The permit shall contain a provision to ensure that the source shall pay emission fees pursuant to the approved fee schedule in 401 KAR 50:038.

9. Emissions trading. The permit shall contain 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.

10. The permittee shall furnish to the cabinet information that the cabinet may request to determine if 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 by the permit to be kept.

11. Severability clause. The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.

(4) The permit shall contain a specific condition, for a source that is constructing, reconstructing, altering, or modifying, that the source shall not be allowed to commence operation until it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 13(3) of this administrative regulation, or until the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 19 through 21 of this administrative regulation.

(5) Enforceability requirements.

(a) Emissions limitations and workplace standards contained in

a permit or a compliance plan issued by the cabinet shall be enforceable as a practical matter.

(b) A federally enforceable permit shall include a notification that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin requirements, shall be enforceable by the U.S. EPA and citizens.

Section 8. Permit Shield. (1) 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:

(a) The applicable requirements are included and are specifically identified in the permit; or

(b) 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.

(2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(3) Nothing in this subsection or in a permit shall alter or affect:

(a) 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

(b) The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program; or

(d) The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).

Section 9. Emergency Provision. (1) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations contained in a Part 70 permit if the conditions in subsection (2) of this section are met.

(2) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and the permittee can identify the cause of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the technology-based emission limits; and

(d) The permittee notified the cabinet as promptly as possible and submitted written notice of the emergency to the cabinet within two (2) working days of the time when the technology-based emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of Section 7(1)(e)2 of this administrative regulation, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.

(3) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(4) This provision shall be in addition to any emergency or upset provision contained in an applicable requirement.

Section 10. General Permits. The cabinet may, after notice and opportunity for public participation provided in Section 19 of this administrative regulation, issue a general permit covering numerous similar sources.

(1) 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.

(2) 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. A permit shield shall not be a defense to this violation.

(3) General permits shall not be authorized for affected sources

except as provided in the Acid Rain Program.

(4) 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.

(a) 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.

(b) The cabinet may grant a source's request for a general permit without repeating the public participation procedures in Section 19 of this administrative regulation.

(c) 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 Section 3 of this administrative regulation.

Section 11. Temporary Source Permits. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations.

(1) The operation shall be temporary and involve at least one (1) change of location during the term of the permit.

(2) An affected source shall not be permitted as a temporary source.

(3) Permits for temporary sources shall include:

(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.

Section 12. Permit Duration and Renewal. (1) Permit duration. A permit issued pursuant to this administrative regulation shall be effective for a fixed term not to exceed 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.

(2) Permit renewal.

(a) Permit expiration shall terminate the source's right to construct and operate unless a timely and complete renewal application has been submitted pursuant to Section 3(6) of this administrative regulation.

(b) 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.

(c) If a timely and complete application for a permit renewal is submitted pursuant to Section 3(6) 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 terms and conditions of the previous permit, including any permit shield that is issued pursuant to Section 8 of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

(d) If the cabinet fails to act promptly on a federally enforceable permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661d(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 13. General Requirements. (1) 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.

(2) Permits issued by the cabinet shall not be transferred by the permittee. If a source changes ownership, the new owners or operators shall obtain a revised permit from the cabinet. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee shall be submitted to the cabinet prior to the transfer. If proper notice is given and no other change is required in the permit, the revised permit shall be processed as an administrative amendment pursuant to Section 14 of this administrative regulation.

(3) Compliance demonstration. A source that is constructing, reconstructing, altering, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Sections 14 through 16 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 plan shall be revised or added, as appropriate, pursuant to Section 7(4) of this administrative regulation.

Section 14. Administrative Permit Amendments. Administrative permit amendments shall be made by the cabinet pursuant to this section.

(1) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(2) Within sixty (60) days of a request for an administrative permit amendment, the cabinet shall take final action.

(3) The cabinet may incorporate an administrative permit amendment into the permit without providing notice to the public or affected states.

(4) For federally enforceable permits, the cabinet shall submit a copy of the revised permit to the U.S. EPA.

(5) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for an administrative permit amendment, if the amendment meets the relevant requirements of this administrative regulation for significant permit revisions.

(6) Administrative permit amendments for the acid rain portion of the permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651o (Title IV of the Act).

Section 15. Minor Permit Revisions. Except as provided in the Acid Rain Program, the procedures for minor permit revisions are specified in this section.

(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. These terms and conditions include:

1. A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of 42 USC 7401 through 7515 (Title I of the Act); and

2. An alternative emissions limit approved pursuant to 42 USC 7412(i)(5) (Section 112(i)(5) of the Act);

(e) Are not modifications in a provision of 42 USC 7401 through 7515 (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) 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 and meet the relevant requirements of this section.

(3) Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3 of this administrative regulation and shall include the items specified in paragraphs (a) through (d) of this subsection.

(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 6 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 20 and 21 of this administrative regulation.

(4) U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete application for a federally enforceable permit revision, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 20 and 21 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 21(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 21(3) of this administrative regulation, whichever is later, the cabinet shall:

1. Issue the minor permit revision as proposed;

2. Deny the minor permit revision application;

3. 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

4. Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 21(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:

1. Issue the minor permit revision as proposed; or

2. Deny the minor permit revision application.

(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 subsection (5) of this section, 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 8 of this administrative regulation shall not extend to minor permit revisions.

(8) Group processing of minor permit revisions. Pursuant to this subsection, the cabinet may modify the procedure outlined in subsections (1) through (7) of this section to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

(a) Criteria. Group processing shall be used only for permit revisions that:

1. Meet the criteria for minor permit revision procedures in subsection (1) of this section; and

2. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(24) of this administrative regulation, or five (5) tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of subsection (3) of this section and shall include the items specified in subparagraphs 1 through 6 of this paragraph.

1. A description of the change, the emissions resulting from the change, and new applicable requirements that apply if the change occurs.

2. The source's suggested draft permit revision.

3. Certification by a responsible official, pursuant to Section 6 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.

4. 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 paragraph (a)2 of this subsection.

5. Certification, for federally enforceable permits, pursuant to Section 6 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.

6. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 20 and 21 of this administrative regulation.

(c) 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 paragraph (a)2 of this subsection, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 20 and 21 of this administrative regulation.

(d) Timetable for issuance for federally enforceable permits. Subsection (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 (5)(a) 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 21(3) of this administrative regulation, whichever is later.

(e) The source's ability to make a change. Subsection (6) of this section shall apply to permit revisions eligible for group processing.

(f) Permit shield. The permit shield described in Section 8 of this administrative regulation shall not extend to permit revisions eligible for group processing.

Section 16. Significant Permit Revisions. (1) Significant permit revision procedures shall apply to the revisions specified in this subsection.

(a) A permit revision that is subject to PSD or NSR review;

(b) Revisions to a Part 70 permit that do not meet the criteria for

an administrative amendment or a minor permit revision;

(c) A revision to a conditional major or synthetic minor permit that changes the limit that caused the source to be a conditional major or synthetic minor source. The revision shall be submitted for U.S. EPA and affected state review only if the new emission limit exceeds a major source threshold and the source is required to obtain a Part 70 permit.

(2) Criteria.

(a) 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.

(b) Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall be considered significant changes.

(3) 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, and shall be processed by the cabinet pursuant to Section 22 of this administrative regulation.

Section 17. Off Permit and Section 502(b)(10) Changes. 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 create new emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if:

(1) The changes are not modifications pursuant to any provision of 42 USC 7401 through 7515 (Title I of the Act) or subject to 42 USC 7651 through 7651o (Title IV of the Act).

(2) The changes do not result in emissions which exceed the emissions allowed by the permit, whether expressed as a rate of emissions or in terms of total emissions.

(3) For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include:

1. A brief description of the change within the permitted facility;
2. The date on which the change will occur;
3. Any change in emissions; and
4. Any permit term or condition that is no longer applicable as a result of the change.

(4) The permit shield described in Section 8 of this administrative regulation shall not apply to any change made pursuant to this section.

(5) The change shall be incorporated into the permit at renewal.

Section 18. Reopening for Cause. (1) 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 circumstances specified in this section.

(a) 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 12(2)(c) of this administrative regulation.

(b) 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.

(c) 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.

(d) 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.

(2) 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.

(3) Reopenings in subsection (1) of this section 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 (1)(d) 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 19. 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 permit actions listed in this subsection:

- (a) Issuance of a draft permit;
- (b) Intended denial of a permit application;
- (c) Issuance of a draft significant permit revision;
- (d) Issuance of a draft general permit;
- (e) Issuance of a permit renewal; and
- (f) Scheduling of a public hearing pursuant to subsection (7) of this section.

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the persons listed in this subsection:

- (a) The applicant;

(b) The Administrator of the U.S. EPA through the appropriate regional office;

(c) For sources subject to 401 KAR 51:017 or 401 KAR 51:052, officials and agencies having authority over the locations where the source will be located as specified in this paragraph:

1. Local air pollution control agencies;
2. The chief executive of the city and county;
3. Any comprehensive regional land use planning agency; and
4. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;

(d) Affected states; and

(e) 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, at a minimum, the information specified in this subsection:

(a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity involved in the permit action;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:

1. Copies of the draft permit;
2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and

3. All other materials available to the cabinet that are relevant to the permit decision;

(e) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

(f) A description of the emission change involved in a 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 20 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 information specified in this paragraph.

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts shall also be made available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the comments and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for U.S. EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 21(3)(e) of this administrative regulation.

(10) The actions listed in this subsection shall be exempt from this section:

(a) Permit revisions qualifying for minor permit revision procedures, including group processing; and

(b) Administrative permit amendments.

Section 20. 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 19 of this administrative regulation, unless Section 15 requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, concurrent with submittal of the proposed permit to the U.S. EPA, pursuant to Section 21 of this administrative regulation (or for a minor permit revision, as soon as possible after the submittal), shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the

public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet shall not 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 21. 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 application pursuant to this section and Section 20 of this administrative regulation; and

(b) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal if the U.S. EPA 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 5(12) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit, for a federally enforceable permit, a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA may 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 U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(c) The cabinet shall not issue a federally enforceable permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(d) If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f (Title V of the Act).

(e) If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 19 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 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 the Act 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 22. Permit Issuance Procedures. Permits issued by the cabinet shall be processed pursuant to this section.

(1) Part 70 permits and significant revisions.

(a) The cabinet shall evaluate the completeness of the application pursuant to Section 4 of this administrative regulation.

(b) The cabinet shall issue a draft permit within sixty (60) days after the permit application is deemed complete. For sources subject to 401 KAR 51:052, Review of new sources in or impacting upon nonattainment areas (NSR) or 401 KAR 51:017, Prevention of significant deterioration or air quality (PSD), the draft permit shall be the preliminary determination.

1. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 19 and 20 of this administrative regulation.

2. If the draft permit also is the preliminary determination for a PSD or NSR source, the cabinet shall submit it to the U.S. EPA pursuant to Section 21 of this administrative regulation.

(c) The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review is complete, and shall respond to public comments. The proposed permit is the final determination for a PSD or NSR source.

1. The cabinet shall notify the applicant in writing of its action regarding the proposed permit.

2. If the proposed permit also is the final determination, the cabinet shall make the notification and public comments available for public inspection at the same location where the draft permit was made available.

3. The cabinet shall submit the proposed permit to the U.S. EPA.

4. The source shall construct and operate in compliance with the proposed permit until a final permit is issued or denied.

(d) The cabinet shall issue or deny a final permit according to the following schedule:

1. For initial round Part 70 permits, by December 14, 1998, for sixty (60) percent of the initial round of applications from existing sources that emit at least eighty (80) percent of the emissions as reported in the Kentucky Emissions Inventory System (KyEIS), and for one-half (½) of the remaining forty (40) percent of initial round applications each year for two (2) years after December 14, 1998.

2. For all other sources, within eighteen (18) months after the application is deemed complete.

(e) If a source is subject to an existing permit, authorization to operate, or order of the cabinet, it shall operate in compliance with its terms and conditions until a final permit is issued.

(2) Conditional major permits.

(a) The cabinet shall evaluate the completeness of the application pursuant to Section 4 of this administrative regulation.

(b) The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. If a draft permit is issued, the cabinet shall submit it for public review pursuant to Section 19 of this administrative regulation.

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(c) The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.

(d) If the source is subject to an existing permit, authorization to operate, or order of the cabinet, it shall operate in compliance with its terms and conditions until a final permit is issued.

(3) Synthetic minor permits. Synthetic minor permits that are also required to be Part 70 permits shall be issued pursuant to the procedures in subsection (1) of this section. Other synthetic minor permits shall be issued pursuant to the procedures in subsection (2) of this section.

(4) State origin permits.

(a) The cabinet shall evaluate the completeness of the application pursuant to Section 4 of this administrative regulation.

(b) 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.

(c) If the source is subject to an existing permit, authorization to operate, or order of the cabinet, it shall operate in compliance with its terms and conditions until a final permit is issued.

(5) Administrative permit amendment and minor permit revision procedures. The cabinet shall issue administrative permit amendments pursuant to Section 14 of this administrative regulation, and minor permit revisions pursuant to Section 15 of this administrative regulation.

(6) Interim permit revision procedures. Until a draft permit is issued by the cabinet, the cabinet shall issue permits for changes at a major source pursuant to the relevant preconstruction review requirements. These changes shall be incorporated into the draft permit when it is issued, with appropriate terms and conditions.

Section 23. Emissions Statement Certification. The cabinet shall provide annually to each source required to be permitted or registered pursuant to this administrative regulation a written copy of the KyEIS report containing the most recent information appropriate to that source.

(1) Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its actual emissions. Failure of the cabinet to notify a source pursuant to this subsection shall not relieve the source from the obligation to submit an emissions statement.

(2) The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.

(3) Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the actual emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

Section 24. Materials Incorporated by Reference. (1) The following documents are required for use by sources submitting permit applications, and are hereby incorporated by reference:

(a) DEP 7008, Application for coverage under 401 KAR 50:031.

(b) List of Trivial Activities.

(c) DEP 7039, Minor Source Registration.

(2) The following documents relating to affected sources subject to the Acid Rain Program, are hereby incorporated by reference:

(a) 40 CFR Part 72, Permits Regulation, as published in the Code of Federal Regulations, July 1, 1995, as amended.

(b) 40 CFR Part 73, Sulfur Dioxide Allowance System, as published in the Code of Federal Regulations, July 1, 1995, as amended.

(c) 40 CFR Part 74, Sulfur Dioxide Opt-Ins, as published in the Code of Federal Regulations, July 1, 1995, as amended.

(d) 40 CFR Part 75, Continuous Emission Monitoring, as published in the Code of Federal Regulations, July 1, 1995, as

amended.

(e) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program, as published in the Code of Federal Regulations, July 1, 1995, as amended.

(f) 40 CFR Part 77, Excess Emissions, as published in the Code of Federal Regulations, July 1, 1995, as amended.

(g) 40 CFR Part 78, Appeal Procedures for Acid Rain Program, as published in the Code of Federal Regulations, July 1, 1995, as amended.

(3) Copies of the documents incorporated by reference in subsections (1) and (2) of this section shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices of the Division for Air Quality:

(a) Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105-1507, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;

(f) London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky, 40741-9008, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W, Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304;

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

[Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 60:010, 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 approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661 through 7661f (Title V of the Act).

(9) "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.

(10) "Conditional major source" means a source that accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in this administrative regulation, if the limit is not a federally enforceable requirement.

(11) "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the Acid Rain Program, means the "designated representative."

(12) "Draft permit" means the version of a permit which the cabinet offers for the applicable public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.

(13) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(14) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50.038, made effective November 20, 1993.

(15) "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the Acid Rain Program.

(16) "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to November 20, 1993 or source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.

(17) "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable.

(18) "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 7420 (Section 120 of the Act) governing solid waste incineration.

(d) A standard or other requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

(e) Standards or requirements of the Acid Rain Program.

(f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification.

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act).

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act).

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act).

(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 these requirements need not be contained in the permit.

(10) "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) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21) "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(22) "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping (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 20, 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) of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;

3. Portland cement plants;
 4. Primary zinc smelters;
 5. Iron and steel mills;
 6. Primary aluminum ore reduction plants;
 7. Primary copper smelters;
 8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
 9. Hydrofluoric, sulfuric, or nitric acid plants;
 10. Petroleum refineries;
 11. Lime plants;
 12. Phosphate rock processing plants;
 13. Coke oven batteries;
 14. Sulfur recovery plants;
 15. Carbon black plants (furnace process);
 16. Primary lead smelters;
 17. Fuel conversion plant;
 18. Sintering plants;
 19. Secondary metal production plants;
 20. Chemical process plants;
 21. Fossil fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
 22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
 23. Taconite ore processing plants;
 24. Glass fiber processing plants;
 25. Charcoal production plants;
 26. Fossil fuel fired steam electric plants of more than 250 million BTU per hour of heat input; or
 27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

(c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:

1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"
2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and
3. For particulate matter (PM₁₀) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM₁₀.

(23) "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) "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.

(25) "Phase II" means the Acid Rain Program period beginning January 1, 2000, and continuing thereafter.

(26) "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. This 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) "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) "Regulated air pollutant" means the following:

- (a) For sources subject to 40 CFR Part 70:
 1. Nitrogen oxides;
 2. Volatile organic compounds;
 3. A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);
 4. A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);
 5. A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act); and
- (b) For state origin requirements:
 1. A pollutant for which a state ambient air quality standard has been promulgated in 401 KAR 63:010; and
 2. A pollutant listed in 401 KAR 63:021, made effective November 11, 1986, or 401 KAR 63:022, made effective November 11, 1986.

(29) "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5(7) of this administrative regulation.

(30) "Responsible official" means one (1) of the following:

- (a) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 2. The delegation of authority to the representative is approved in advance by the cabinet;
- (b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;
- (c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA); or
- (d) For the acid rain portion of a permit for an affected source, the designated representative.

(31) "Section 502(b)(10) changes" means changes that contravene an express permit term. These changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(32) "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.

(33) "State implementation plan (SIP)" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been submitted by the cabinet and approved by the U.S. EPA.

(34) "State origin permit" means a permit that contains only state origin requirements, or that contains federally enforceable requirements but is not required by the U.S. EPA to be a federally enforceable permit.

(35) "State origin requirement" means an applicable requirement that is not mandated by 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.

(36) "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 which prevents it from being classified as a major source as defined in either 401 KAR 61:017 or 401 KAR 61:062, if the limit is not a federally enforceable requirement.

(38) "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

(1) A source shall be exempt from this administrative regulation if:

(a) The source is a minor source pursuant to 40 CFR Part 70 and is not subject to an applicable requirement; or

(b) The source is a minor source that:

1. Emits or has the potential to emit less than twenty five (25) tons per year of a regulated air pollutant, except as provided in subparagraphs 2 and 3 of this paragraph, 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 67:061 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; 401 KAR 63:021; or 401 KAR 63:022; and

4. Is not required by the U.S. EPA to obtain a permit.

(2) The following activities and affected facilities shall be exempt from the requirement to obtain a permit pursuant to this administrative regulation. These exemptions shall not relieve a source from the requirements of any other applicable requirement. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements.

(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;

(b) An activity subject only to the provisions of 40 CFR Part 60, Subpart AAA;

(c) An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement;

(d) Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984;

(e) Vehicles used for the transport of passengers or freight; and

(f) Publicly owned roads.

(3) Insignificant activities shall be exempt from permitting requirements pursuant to the following criteria:

(a) The activity shall be included in the permit application with a request that the activity be exempt from permitting;

(b) The activity shall not be subject to an applicable requirement;

(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;

(d) The activity shall have a potential to emit of less five (5) tpy of any regulated air pollutant, not including a hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) or a toxic pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.

(e) The potential to emit of all activities exempted pursuant to this subsection shall be less than two (2) tpy of any hazardous air pollutant and less than five (5) tpy of any combination of hazardous air pollutants, or a lesser amount if specified by the U.S. EPA;

(f) The potential to emit of all activities exempted pursuant to this subsection shall be less than the significance level of any toxic air pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.

(g) The activity shall not be the incineration of medical waste.

(4) The cabinet shall maintain an updated list of those activities submitted and approved pursuant to subsection (3) of this section and shall provide this list to any person upon request.

(5) The following de minimis changes shall be exempted from the requirement to obtain a permit or permit revision.

(a) Affected facilities which are part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of a pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010, if the increase does not subject the source to an applicable requirement.

1. The owner or operator shall notify the cabinet in writing of the increases and construction projects thirty (30) days prior to commencing construction.

2. This exemption shall not apply to affected facilities which are subject to a regulation promulgated pursuant to 40 CFR Parts 60, 61, or 63; 401 KAR 63:021 or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for the pollutants in 401 KAR 61:010; or to incinerators.

(b) After the issuance of a draft permit, the exemption in paragraph (a) of this subsection shall not apply to sources that are required to obtain a federally enforceable permit pursuant to 40 CFR Part 70.

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet 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.

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. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(b) of this administrative regulation.

2. Existing minor sources required to obtain a federally enforceable 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) of this administrative regulation.

3. Existing minor sources required to have a state origin permit. An existing source that is required to have a state origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state origin permits pursuant to Section 5(1)(c) of this administrative regulation.

4. 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, shall file an application using Form DEP 7007 to obtain a permit for the proposed change prior to commencing construction or modification. The applications for these sources shall be processed by the cabinet pursuant to Section 5(2) of this administrative regulation.

5. A source constructing, reconstructing, altering or modifying after November 20, 1993, shall file a complete application to obtain

~~a permit or permit revision prior to commencing construction, reconstruction, alteration, or modification, except as provided in subparagraph 4 of this paragraph and Section 6 of this administrative regulation. The cabinet shall process these applications pursuant to Section 5(3) of this administrative regulation.~~

~~6. A source that is required to open an existing permit pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.~~

~~7. For permit renewal, an application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5(7) of this administrative regulation.~~

~~8. Applications for initial Phase II acid rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.~~

~~(b) Complete application.~~

~~1. To be deemed complete, an application shall provide all information required pursuant to 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 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) of this subsection:~~

~~(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 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 shall be identified in the permit application. The cabinet may identify the applicable requirements for other minor sources prior to determining completeness of the application pursuant to subsection (1)(b) of this section.~~

~~c. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(22)(b) of this administrative regulation.~~

~~2. Identification and description of all points of emissions described in subparagraph 1 of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.~~

~~3. Emissions rates in tons per year 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)(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 7661e(b) (Sections 114(a)(3) or 504(b) of the Act);

b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3 of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this sentence; and

c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.

2. Each permit shall incorporate the following recordkeeping requirements, if applicable:

a. Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The dates analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

(vi) The operating conditions at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

3. Each permit shall incorporate the following reporting requirements, if applicable:

a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

b. Prompt reporting of deviations from permit requirements, including those attributed to upset conditions, the probable cause of the deviations, and corrective actions or preventive measures taken. The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.

(d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the Acid Rain Program.

1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the Acid Rain Program if the increases do not require a permit revision in another applicable requirement.

2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.

3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section 11 of this administrative regulation.

(e) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.

(f) Provisions stating the following:

1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and, for federally enforceable permits, is also a violation of 42 USC 7401 through 7671q (the Act) and is grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.

3. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

4. The permit shall not convey property rights or exclusive privileges.

5. The permittee shall furnish to the cabinet information that the cabinet may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.

(g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 60:038.

(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, 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)(e) 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)(e) 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).

(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 50:056 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, 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. Final permit. The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.

5. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.

6. An existing source shall follow the applicable procedures in subparagraphs 1 through 4 of this paragraph unless the existing permit limits are deemed federally enforceable by the U.S. EPA.

(b) All other existing sources required to obtain a 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.

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 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 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 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 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 permit for the entire source.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility after the source submits an application for a 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 20, 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 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. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public, U.S. EPA, and affected state review required in Sections 7 and 8 of this administrative regulation is completed.

d. If the source is not required to have a permit pursuant to 40 CFR Part 70, the proposed permit shall be submitted to the U.S. EPA and the proposed permit shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(ii) Final permit. The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

3. Processing applications for the proposed construction, reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

(b) Applications for 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.

(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 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 7661 through 7661q (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 7614a (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 7614a (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 60 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, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.

5. Timetable for issuance.

a. The cabinet shall not issue a final minor permit revision to a federally enforceable permit until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

(i) Issue the minor permit revision as proposed;

(ii) Deny the minor permit revision application;

(iii) Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or

(iv) Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.

b. For state origin permits, the cabinet shall, within ninety (90) days of receipt of an application for a minor permit revision:

- (i) Issue the minor permit revision as proposed;
- (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 e of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and

b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(22) of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

b. The source's suggested draft permit revision.

c. Certification by a responsible official, pursuant to Section 3(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 enforce-

able 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. Revisions that do not cause the source to have a federally enforceable permit shall be processed as minor permit revisions pursuant to paragraphs (a) and (b) of this subsection.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if:

1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or subject to 42 USC 7651 through 7651e (Title IV of the Act);

2. The changes do not result in emissions which exceed the emissions allowed by the permit, whether expressed as a rate of emissions or in terms of total emissions;

3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:

- a. A brief description of the change within the permitted facility;
- b. The date on which the change will occur;
- c. Any change in emissions; and
- d. Any permit term or condition that is no longer applicable as a result of the change.

4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.

5. The change shall be incorporated into the permit at renewal.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under 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.

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)(e) 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 7661g, 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) Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its actual emissions. Failure of the cabinet to notify a source pursuant to this subsection shall not relieve the source from the obligation to submit an emissions statement.~~

~~(2) The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.~~

~~(3) Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the actual emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.~~

~~Section 11. Materials Incorporated by Reference. (1) The following documents 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) 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, Frankfort, Kentucky, 40601, (502) 573-3382;~~

~~(b) Ashland Regional Office, P.O. Box 1507, 3700 Thirteenth Street, Ashland, Kentucky, 41105-1507, (606) 325-8569;~~

~~(c) Bowling Green Regional Office, 1508 Weston 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) 430-2301;~~

~~(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304;~~

~~(g) Paducah Regional Office, 4500 Clarke River Road, Paducah, Kentucky, 42003, (502) 898-8468.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this amendment shall be held on October 21, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the amendment to the contact person: Kenneth M. Hines, Branch Manager, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Contact person: Kenneth, M. Hines, Manager

(1) Type and number of entities affected: The proposed amendment to this administrative regulation revises 401 KAR 50:035, which became effective September 28, 1994. The Regulatory Impact Analysis for that version of the administrative regulation contains a detailed explanation of how the state air permitting program was revised to meet the Title V requirements of the 1990 Clean Air Act Amendments, and how this administrative regulation plays a major role in that task. This amendment replaces an emergency amendment, made effective June 14, 1996. It will:

(a) Reduce the number of small sources required to obtain an air permit, and

(b) Reduce the cost and administrative burden of preparing an application to construct or operate an air pollution source in Kentucky by:

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1. Revising current criteria for insignificant activities to be consistent with less stringent federal criteria;

2. Creating a category of trivial activities not required to be permitted; and

3. Reducing the information relating to emissions required in permit applications.

This administrative regulation contains the permitting requirements for all air pollution sources in Kentucky. There are currently over 2500 sources listed in the Kentucky Emissions Inventory System (KyEIS).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no known impact on the cost of living or employment in Kentucky as a result of this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The cost of doing business will be reduced throughout Kentucky by the adoption of this amendment.

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

1. First year following implementation: Reporting and paperwork requirements will be reduced for sources required to apply for permits to operate major air pollution sources by December 14, 1996, and for all other air pollution sources required to apply for air quality permits.

2. Second and subsequent years: There will be a continuing reduction in the amount of reporting and paperwork required from sources seeking and holding permits from the Division for Air Quality as a result of this amendment.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no significant costs or savings that will accrue to the division as a result of this amendment.

1. First year: There are no significant costs or savings.

2. Continuing costs or savings: There are no significant costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings.

(b) Reporting and paperwork requirements: There will be a decrease in the reporting and paperwork requirements as a result of this amendment.

(4) Assessment of anticipated effect on state and local revenues: No effect is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: There will be no significant economic impact in Kentucky from the implementation of this amendment, although some slight benefit will occur as a result of cost savings noted above.

(b) Kentucky: Please see response to (6)(a), above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The provisions of this administrative regulation are mandated by Title V of the Clean Air Act Amendments of 1990, by the State Implementation Plan, and by the U.S. EPA, and this amendment is consistent with the federal mandate, except as noted in response (9)(a) and (b) below.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no significant effect on public health or environmental welfare from the implementation of this amendment, although some benefit

to environmental welfare will occur by allowing permit review personnel to direct more of their attention to the more significant environmental aspects of permit applications.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There will be no detrimental effect on environment and public health if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Please see response (8)(a) and (b), above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation may conflict with current U.S. EPA policy regarding the federal enforceability of emission limits and the definition of potential to emit.

(a) Necessity of proposed regulation if in conflict: The proposed revisions regarding federal enforceability are consistent with recent court decisions which vacated the requirements for emission limits to be federally enforceable under Titles I and V of the 1990 Clean Air Act Amendments.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes. The proposed regulation includes the provision that all emission limitations be enforceable as a practical matter. This was the most essential criterion in EPA's recipe for federal enforceability.

(10) Any additional information or comments: This amendment reorganizes and simplifies the content of this administrative regulation in response to comments from division staff, the general public, and the regulated community concerning the regulation's complexity. The following comments explain the revisions that were made to each section and are offered to assist individuals in their review of the proposed amendment:

Section 1. Definitions. In addition to some housekeeping amendments, the following definitions were also revised:

1(3) "Administrative permit amendment," to allow for the relocation of a minor source in Kentucky;

1(9) "Conditional major permit," to remove the requirement for federal enforceability;

1(23) "Major source," to be consistent with EPA's definition at 40 CFR Part 71;

1(28) "Potential to emit," to remove the requirement for emission limits to be federally enforceable; and

1(37) "Synthetic minor permit," to remove the requirement for federal enforceability.

Section 2. General Applicability. As written, this section exempts from permitting each minor source which emits and has the potential to emit less than 25 tons per year of a regulated air pollutant, and each minor source which emits or has the potential to emit 25 tons per year or more of a regulated air pollutant and which is subject only to a regulation containing the method for complying with its provisions. Sources subject only to the residential wood heaters NSPS and small saw mills are exempted specifically. Many of these sources currently are required to be permitted, and are subject to applicable requirements that must be enforced even if the source now is exempt from permitting. Subsection (3)(b) of this section requires the exempted sources to submit a registration which will contain information necessary for the division's inspectors to determine if the sources are in compliance with applicable requirements. This section also exempts certain activities at permitted sources from permitting. These exemptions include asbestos demolition, nonprocess emissions from sources not subject to applicable requirements, open burning, passenger and freight vehicles, voluntarily installed air pollution control equipment, publicly owned roads, trivial activities, and two-ton or less construction projects (not applicable to Part 70 permit holders). The cumulative effects of the changes made in this amendment are to reduce the overall number of sources required to have an air quality permit and to simplify the organizational structure of the section. Only major sources and minor sources requiring an

engineering assessment of their proposed methods for achieving compliance or accepting voluntary permit limits will require a permit.

Section 3. Submittal of Permit Applications. The proposed revisions to Section 3 are designed to simplify the section by removing extraneous requirements and by reorganizing its contents. No substantive amendments are made to this section.

Section 4. Completeness Determination. This section was moved from Section 3(1)(b) and (2), but contains no substantive amendments.

Section 5. Information Required on a Permit Application. This section was moved from Section 3(3). The proposed amendment substantially alters the provisions of this section. The changes are intended to relieve sources from application provisions not necessary to determine which regulatory requirements are applicable to a source and whether the source is in compliance with the requirements. The majority of changes are made in response to clarifications of 40 CFR Part 70 (the federal operating permit regulation) published by the U.S. EPA in a white paper. A major change is relief from the obligation to quantify emissions in cases where quantification is not needed to identify applicable requirements or compliance with them. Additionally, some source activities are classified as trivial activities and are not required to be included in the permit application or in the permit. Changes also are made that will reduce the amount of information contained in the original application required to be submitted by some major sources by December 1996. Those sources whose permit is not scheduled to be issued until December 14, 1998, or after are allowed under the proposed amendment to omit some information required from sources whose permit must be issued by December 14, 1997. The abbreviated applications must be upgraded with all necessary information at least one year before the permit is scheduled to be issued. The cabinet anticipates receiving comments on the proposed amendment to reduce further application requirements for minor sources.

Section 6. Certification by Responsible Official. This section was moved from Section 3(5), but contains no substantive amendments.

Section 7. Permit Content. This section was moved from Section 4(1) through (3). Substantive amendments were made to this section. The section was simplified, and was altered to restrict the requirement for practical enforceability to emission limits and workplace standards.

Section 8. Permit Shield. This section was moved from Section 4(6), but contains no substantive amendments.

Section 9. Emergency Provision. This section was moved from Section 4(7) and was amended to restrict emergency provisions to technology based emission limitations and workplace standards contained in the permit.

Section 10. General Permits. This section was moved from Section 4(4), but contains no substantive changes.

Section 11. Temporary Source Permits. This section was moved from Section 4(5), but contains no substantive changes.

Section 12. Permit Duration and Renewal. This section was moved from Section 5(7), but contains no substantive amendments.

Section 13. General Requirements. This section was moved from Section 5(4) through (6). The proposed amendment prohibits the transfer of a permit.

Section 14. Administrative Permit Amendments. This section was moved from Section 6(1), but contains no substantive amendments.

Section 15. Minor Permit Revisions. This section was moved from Section 6(2)(a), but contains no substantive amendments.

Section 16. Significant Permit Revisions. This section was moved from Section 6(2)(c), but contains no substantive amendments. There are administrative amendments to correct language.

Section 17. Off Permit and 502(b)(10) Changes. This section was moved from Section 6(2)(d), but contains no substantive amendments.

Section 18. Reopening for Cause. This section was moved from Section 6(3), but contains no substantive amendments.

Section 19. Procedures for Public Participation

This section was moved from Section 7, but contains no substantive amendments.

Section 20. Notice to Affected States. This section was moved from Section 8, but contains no substantive amendments.

Section 21. U.S. EPA Review. This section was moved from Section 9, but contains no substantive amendments.

Section 22. Permit Issuance Procedures. This section was moved from Section 5(1) through (3), and contains amendments to reorganize, clarify, and simplify its contents. Though the text of this section has been greatly simplified and reduced in volume, there are no substantive amendments to the existing provisions.

Section 23. Emission Statement Certification. This section was moved from Section 10, but contains no substantive amendments.

Section 24. Materials Incorporated by Reference. This section was moved from Section 11. It is updated, a list of trivial activities is added, necessary forms are added, and the federal citations are amended to allow the use of future amendments.

(11) TIERING: Is tiering applied? Yes. In order to reduce a disproportionate impact on small businesses, this amendment further tiers the permitting requirements of the existing administrative regulation for minor sources. The information that is required in permit applications for the initial round of Part 70 permits is also tiered since this is now allowed by federal guidance.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Any facility, such as a waste incinerator, which is owned or operated by a local government and emits a regulated pollutant in amounts greater than the specified de minimis will be required to obtain a permit under this administrative regulation. The proposed amendment does not change this requirement.

3. State the aspect or service of local government to which this administrative regulation relates. As stated in the response to question 2, any service provided by local government which emits a regulated pollutant in amounts greater than the specified de minimis will be affected, and the proposed amendment will not alter this effect.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact on the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendment revises 401 KAR 50:035, which contains the state operating permit program required by Title V of the 1990 Clean Air Act Amendments. The federal mandate is contained in 42 USC 7401-7671q (The Clean Air Act). 42 USC 7661-7661f (Title V of the Clean Air Act) contains the specific requirements for a federally enforceable operating permit program. The final rules establishing the requirements for an approvable state operating permit program are contained in 40 CFR part 70.

2. State compliance standards. The state compliance standards are contained in KRS Chapter 13A and in the current version of this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. There were no emission standards contained in the federal

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mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. To the contrary, this amendment removes some of the requirements contained in the September 28, 1994, version which were found to be more stringent than necessary.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter standards, or additional or different responsibilities or requirements.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections [commissioner] to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Luther Luckett Correctional Complex policies and procedures, September 12, 1996 [12, 1996], are incorporated by reference.

(b) It [(2) They] may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Luther Luckett Correctional Complex policies and procedures include:

LLCC 01-12-01 Duty Officer Responsibilities (Amended 9/12/96)
LLCC 01-13-01 Smoking[~~LLCC~~] Facility Policy (Amended 9/12/96)
LLCC 02-01-02 Fiscal Management: Accounting Procedures
LLCC 02-01-03 Fiscal Management: Agency Funds
LLCC 02-01-04 Fiscal Management: Insurance Policy (Amended 9/12/96)
LLCC 02-03-01 Fiscal Management: Audits
LLCC 08-01-01 Offender Records (Amended 9/12/96)
LLCC 08-04-01 Storage of Void [Expunged] Records (Amended 9/12/96)
LLCC 08-05-01 Psychological and Psychiatric Reports (Amended 9/12/96)
LLCC 11-09-01 Rules and Regulations of the Unit [(Amended 9/13/95)]
LLCC 11-13-01 Inmate Dress and Use of Access Areas [(Amended 9/13/95)]
LLCC 11-18-02 Use of Monitor Telephone
LLCC 11-19-01 Unit Shakedowns/Control of Excess Property
LLCC 11-20-01 Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01 Special Management Inmates [(Amended 9/13/95)]
[LLCC 12-01-02 Pretrial Contract Hold Status (Deleted 9/12/96)]
LLCC 13-01-01 Dining Room Guidelines
LLCC 13-04-01 Food Service: Meals
LLCC 13-04-02 Food Service: Menu, Nutrition and Special Diets

LLCC 13-05-02 Medical Screening of Food Handlers
LLCC 13-06-01 Food Service: Inspections and Sanitation
LLCC 13-07-01 Food Service: Purchasing and Farm Products
LLCC 13-08-01 OJT Food Service Training Placement
LLCC 14-01-01 Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01 Institutional Inspections (Amended 9/12/96)
LLCC 15-01-01 Health Maintenance Services; Sick Call and Pill Call [(Amended 9/13/95)]
LLCC 15-03-01 Pharmacy [(Amended 9/13/95)]
LLCC 15-03-02 Pharmacy Personnel
LLCC 15-03-03 Distribution, Procurement and Control
LLCC 15-03-04 Inmate Self Administration of Medication (Amended 9/12/96)
LLCC 15-03-05 Use of Psychotropic Medications [(Amended 9/13/95)]
LLCC 15-05-02 Licensure and Training Standards
LLCC 15-06-02 Specialized Health Services
LLCC 15-06-03 Emergency Medical/Dental Care Services
LLCC 15-06-04 First Aid/CPR Training Program
LLCC 15-06-05 Suicide Prevention and Intervention Program
LLCC 15-07-01 Health Records
LLCC 15-08-01 Special Diets
LLCC 15-10-01 Inmate Medical Screening and Health Evaluations [(Added 9/13/95)]
LLCC 15-14-01 Informed Consent
LLCC 15-15-01 Medical Restraints
LLCC 15-16-01 Health Education/Special Health Programs [(Amended 9/13/95)]
LLCC 15-17-01 Serious and Infectious Diseases
LLCC 16-01-01 Inmate Rights and Responsibilities
LLCC 16-03-01 Inmate Legal Services
LLCC 18-01-01 Inmate Correspondence
LLCC 18-01-02 Inmate Privileged or Legal Mail Policy
LLCC 18-01-03 Inmate Packages [(Amended 9/13/95)]
LLCC 18-02-01 Inmate Visiting
LLCC 18-02-03 Modification of Visitation Privileges [(Amended 9/13/95)]
LLCC 18-02-04 Meritorious Visits
LLCC 18-03-01 Entry and Identification of Visitors for Inmate Visitation
LLCC 18-03-03 Inmate Visiting Disciplinary Segregation Administrative Segregation
LLCC 18-03-04 Parole Hearings
LLCC 20-01-01 Personal Property Control
LLCC 20-04-01 Inmate Canteen Committee
LLCC 20-04-02 Inmate Canteen
LLCC 20-04-03 Canteen Purchases [(Amended 9/13/95)]
LLCC 20-05-01 Inmate Control of Personal Funds [(Amended 9/13/95)]
LLCC 20-05-02 Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-05-03 Theft of Inmate Personal Property
LLCC 20-06-01 Procedure for Sending Appliances to Outside Dealers for Repair
[LLCC 21-02-01 Classification/Security Levels (Deleted 9/12/96)]
[LLCC 21-03-01 Classification Process (Deleted 9/12/96)]
LLCC 22-01-01 On-the-job Training Assignment [(Added 9/13/95)]
LLCC 23-01-01 Academic School
LLCC 26-01-01 Religious Services
LLCC 26-01-02 Prayer

DOUG SAPP, Commissioner

APPROVED BY AGENCY: August 22, 1996

FILED WITH LRC: September 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative

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regulation shall be held on October 21, 1996, at 9 a.m., in the State Office Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 284 employees of the correctional institutions, 1,051 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 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorize[e] the Justice Cabinet and Department of Corrections ~~commissioner~~ to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Western Kentucky Correctional Complex policies and procedures, September 12, 1996 ~~July 12, 1996~~, are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01	Public Information and Media Communication
WKCC 02-00-03	Invoice and Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures (Amended 7/12/96)
WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen (Amended 7/12/96)
WKCC 02-02-01	Agency Funds and Accounting Procedures (Amended 7/12/96)
WKCC 02-08-01	Property Receipt and Inventory Procedures
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development (Amended 7/12/96)
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements (Amended 7/12/96)
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security (Amended 7/12/96)
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets

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WKCC 12-01-01 Inmate Clothing [~~Amended 7/12/96~~]
 WKCC 13-00-01 Special Health Programs [~~Amended 7/12/96~~]
 WKCC 13-01-01 Use of Pharmaceutical Products [~~Amended 7/12/96~~]
 WKCC 13-02-01 Health Care Services [~~Amended 7/12/96~~]
 WKCC 14-04-01 Legal Services Program
 WKCC 14-06-01 Inmate Grievance Procedure
 WKCC 15-01-01 Hair and Grooming Standards
 WKCC 16-01-01 Visiting Policy and Procedures
 WKCC 16-02-01 Inmate Correspondence
 WKCC 16-03-01 Inmate Access to Telephones [~~Amended 7/12/96~~]
 WKCC 16-04-01 Inmate Packages [~~Amended 2/13/96~~]
 WKCC 17-02-01 Inmate Reception and Orientation [~~Amended 7/12/96~~]
 WKCC 20-01-01 Education Program (Amended 9/12/96)
 WKCC 22-00-01 Inmate Recreation and Leisure Time Activities (Amended 9/12/96)
 WKCC 22-00-02 Inmate Clubs and Organizations
 WKCC 23-00-01 Religious Services
 WKCC 25-02-01 Inmate Release Process
 WKCC 25-03-01 Prerelease Programs [~~Amended 7/12/96~~]

DOUG SAPP, Commissioner

APPROVED BY AGENCY: August 22, 1996

FILED WITH LRC: September 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2204, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 146 employees of the correctional institutions, 410 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 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(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.

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education Department for Adult Education and Literacy (Amendment)

785 KAR 1:010. Testing program.

RELATES TO: KRS 151B.023, 151B.110, 151B.125

STATUTORY AUTHORITY: KRS 151B.023, 151B.110, 151B.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.110 delegates to the State Board for Adult and Technical Education the responsibility for adult education programs and services in Kentucky. KRS 151B.023 provides that the Department for Adult Education and Literacy is the agency solely designated for the purposes of adopting state plans required for federal adult education programs and services in Kentucky. KRS 151B.125 recognizes the General Educational Development (GED) test for high school equivalency purposes in Kentucky. This administrative regulation establishes the means whereby adults may be tested by official GED testing centers to determine their eligibility for receiving a high school equivalency diploma.

Section 1. (1) The GED tests shall provide a valid means of measuring the educational achievement of adults who are nonhigh school graduates and of comparing their competency with that of high school graduates. The tests shall be high school level batteries consisting of five (5) comprehensive examinations: Test 1: Writing Skills Test (Parts I and II); Test 2: Social Studies Test; Test 3:

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Science Test; Test 4: Interpreting Literature and the Arts Test; Test 5: Mathematics Test. An applicant shall be certified as test-ready. An applicant presenting a GED-on-TV voucher from Kentucky Educational Television study shall not be required to meet the test-readiness prerequisite.

(2) The GED tests shall be administered to an applicant with a Kentucky address, officially withdrawn from school, who has reached his nineteenth (19) birthday. Officially withdrawn applicants who are at least seventeen (17) years of age and their last enrolled class has graduated or who have been out of formal classroom for a period of one (1) year may be administered the GED test. Applicants, officially withdrawn from school, who are sixteen (16) years of age shall meet one (1) of the following criteria:

- (a) Committed or placed in state correctional facility; or
- (b) Completed Job Corps Program of instruction.

(3) Applicants at least sixteen (16) years of age who believe exigent circumstances exist and who do not meet the conditions of subsection (2)(a) or (b) of this section may request exemptions from the local school superintendent or designee in the district where the applicant resides. Exemptions granted on the basis of exigent circumstances or denials shall be in writing. A copy of the decision shall be mailed or faxed within five (5) working days to the state GED administrator. Dissatisfaction resulting from denials may be appealed to the Commissioner of the Department for Adult Education and Literacy. Exigent circumstances may include: sentenced by a court to an educational program and program completed or admission to a postsecondary program which is contingent upon earning a high school equivalency diploma (GED). Official GED testing centers shall be established under contract with the GED Testing Service of the Commission on Accreditation with locations authorized by the State Board for Adult and Technical Education. GED testing services for individuals confined to state correctional and health institutions shall be approved by the State Board for Adult and Technical Education.

(4) Testing fees shall be established by the State Board for Adult and Technical Education at a uniform fee of twenty-five (25) dollars or five (5) dollars per subtest. The Department for Adult Education and Literacy shall not charge a fee for testing services provided for individuals confined to state correctional and health institutions.

(5) Applicants seeking a high school equivalency diploma shall complete the appropriate application form provided for this purpose prior to taking the GED test. This form shall be available from local adult education providers, local school superintendents or the Department for Adult Education and Literacy. Military personnel shall not be required to complete the application form prior to taking the test. Military personnel shall complete an application form before a high school equivalency diploma shall be issued. Military personnel may use the Military GED Application (Form 300-M).

(6) If an applicant passes the five (5) subtests with a minimum standard test score of forty (40) ~~thirty-five (35)~~ but does not attain an average standard score of forty-five (45), he shall be eligible to retake a subtest in an attempt to raise the overall standard score. The testing center proctor shall recommend which subtest may be retaken.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: August 15, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by October 14, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be

made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Reecie Stagnolia, Division Director, Management and Support Services, Department for Adult Education and Literacy, Capital Plaza Tower, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Reecie Stagnolia

(1) Type and number of entities affected: Approximately 18,000 examinees who are administered the GED tests each year, approximately 220 local adult education providers, and 56 GED testing centers will be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A public hearing was scheduled to receive oral and written comments on this administrative regulation. However, the hearing was cancelled as a result of the Notice of Intent being published and no comments being received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A public hearing was scheduled to receive oral and written comments on this administrative regulation. However, the hearing was cancelled as a result of the Notice of Intent being published and no comments being received.

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

1. First year following implementation: This new requirement should have a minimal impact on the costs associated with implementation.

2. Second and subsequent years: This new requirement should have a minimal impact on the costs associated with implementation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This new requirement should have a minimal impact on the costs associated with implementation.

2. Continuing costs or savings: This new requirement should have a minimal impact on the costs associated with implementation.

(3) Additional factors increasing or decreasing costs: This new requirement should have a minimal impact on the costs associated with implementation.

(b) Reporting and paperwork requirements: This new requirement should have a minimal impact on the costs associated with implementation.

(4) Assessment of anticipated effect on state and local revenues: This new requirement should have a minimal impact on the costs associated with implementation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing was scheduled to receive oral and written comments on this administrative regulation. However, the hearing was cancelled as a result of the Notice of Intent being published and no comments being received.

(b) Kentucky: A public hearing was scheduled to receive oral and written comments on this administrative regulation. However, the hearing was cancelled as a result of the Notice of Intent being

published and no comments being received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method considered. Although not mandated by a federal statute or regulation, the agency must follow the policies of the GED Testing Service with the Commission on Educational and Credentials of the American Council on Education which has approved a policy requiring all states to set minimum standard scores of 40 on each of the five GED sub-tests and a 45 overall average on the complete battery of tests. States are required to have this policy in regulation by January 1, 1997. The administrative regulation will increase Kentucky's minimum standard passing score on the GED tests from 35 to 40 and continue the overall average standard score of 45.

(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

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

(10) Any additional information or comments: The governing body of the GED Testing Service of the American Council on Education has approved a policy requiring all states to set minimum standard scores of 40 on each of the five GED subtests and a 45 overall average on the complete battery of tests. States are required to have this policy in regulation by January 1, 1997. The administrative regulation will increase Kentucky's minimum standard passing score on the GED tests from 35 to 40 and continue the overall average standard score of 45.

(11) TIERING: Is tiering applied? Tiering was not applied. Adult education services must be applied on a consistent and equitable basis in accordance with federal guidelines.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Although not mandated by a federal statute or regulation, the agency must follow the policies of the GED Testing Service with the Commission on Educational and Credentials of the American Council on Education.

2. State compliance standards. Although not mandated by a federal statute or regulation, the agency must follow the policies of the GED Testing Service with the Commission on Educational and Credentials of the American Council on Education which has approved a policy requiring all states to set minimum standard scores of 40 on each of the five GED subtests and a 45 overall average on the complete battery of tests. States are required to have this policy in regulation by January 1, 1997. The administrative regulation will increase the minimum standard passing score on the GED tests from 35 to 40 and continue the overall average standard score of 45.

3. Minimum or uniform standards contained in the federal mandate. Although not mandated by a federal statute or regulation, the agency must follow the policies of the GED Testing Service with the Commission on Educational and Credentials of the American Council on Education which has approved a policy requiring all states to set minimum standard scores of 40 on each of the five GED subtests and a 45 overall average on the complete battery of tests. States are required to have this policy in regulation by January 1, 1997. The administrative regulation will increase the minimum standard passing score on the GED tests from 35 to 40 and continue the overall average standard score of 45.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Although not mandated by a federal statute or regulation, the agency must follow the policies of the GED Testing Service with the Commission on Educational and Credentials of the American Council on Education which has approved a policy

requiring all states to set minimum standard scores of 40 on each of the five GED subtests and a 45 overall average on the complete battery of tests. States are required to have this policy in regulation by January 1, 1997. The administrative regulation will increase the minimum standard passing score on the GED tests from 35 to 40 and continue the overall average standard score of 45. This administrative regulation will reflect the standards set by the GED Testing Service; it will not impose stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will reflect the standards set by the GED Testing Service.

WORKFORCE DEVELOPMENT CABINET Department for Employment Services Division of Unemployment Insurance (Amendment)

787 KAR 1:200. Maximum weekly benefit rate.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.380

requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1996 ~~[1995]~~, and prior to July 1, 1997 ~~[1996]~~. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1995 ~~[1994]~~ was 18,593,452 ~~[18,969,406]~~;

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,549,454 ~~[1,580,826]~~;

(3) The "total wages" reported by subject employers for the calendar year of 1995 ~~[1994]~~ was \$36,017,761,705 ~~[33,842,048,247]~~;

(4) The "average weekly wage" for the calendar year of 1995 ~~[1994]~~ for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was \$447.03 ~~[432.45]~~;

(5) Fifty-five (55) percent of the average weekly wage of \$447.03 ~~[432.45]~~ for the calendar year of 1995 ~~[1994]~~ was \$245.87 ~~[237.85]~~.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1996 ~~[1995]~~, and prior to the first day of July 1997 ~~[1996]~~, shall ~~[is determined to be]~~ \$246 ~~[238]~~.

RHONDA K. RICHARDSON, Commissioner
RODNEY S. CAIN, Secretary

APPROVED BY AGENCY: August 16, 1996

FILED WITH LRC: September 5, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, at 9 a.m. at the Health Services Auditorium, Workforce Development Cabinet, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by October 14, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A

transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Workforce Development Cabinet, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rhonda K. Richardson, Commissioner

(1) Type and number of entities affected: All eligible UI recipients for the year July 1, 1996, through June 30, 1997.

(2) Direct and indirect cost or savings to those affected:

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None

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

1. First year: An additional \$5 million paid to eligible UI recipients.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: An additional \$5 million paid from the Unemployment Insurance Trust Fund to UI recipients.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.

(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: 100% federal funds (BCAA).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available in accordance with statutory 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: None

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

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

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

(a) Necessity of proposed regulation if in conflict: NA

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

(10) Any additional information or comments: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the Secretary determines the maximum weekly unemployment insurance benefit rate prior to July 1 of each year.

(11) TIERING: Is tiering applied? Tiering was not applied as all claimants are treated equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. All local government agencies could be affected, but only if they have unemployment insurance claims filed against them.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to their payment of unemployment benefits to former employees.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): Nondeterminable

Other Explanation: Effective July 1, 1996, the maximum weekly benefit rate will increase to \$246, an increase of \$8 per claim over the present rate of \$238. If a local government agency choose to file and pay unemployment insurance taxes quarterly, this potential \$8 increase per claim could deplete their reserve account faster and create a deficit. If this were to occur, their tax rate would go up. If a local government agency chooses to be a reimbursing employer, where they would pay out of the reserve account dollar for dollar for every claim filed against them, their expenditures will likely increase.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and

Health Education and Training

(Amendment)

803 KAR 2:019. Receiving and unloading bulk hazardous liquids.

RELATES TO: KRS [Chapter] 338.051, 338.061

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [Chapter 43A]

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051 and 338.061, the following administrative regulation is adopted. The function of this administrative regulation is to set forth minimum safety requirements for employees with respect to receiving and unloading bulk hazardous liquids. This administrative regulation is necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).

Section 1. Definition. "Hazardous liquid" means, for the purpose of this administrative regulation, a chemical or mixture of chemicals that is toxic, an irritant, corrosive, a strong oxidizer, a strong sensitizer, combustible, flammable, extremely flammable, dangerously reactive or pressure generating or which otherwise may cause substantial personal injury or substantial illness during, or as a direct result of any customary or reasonably foreseeable handling or use. ~~[Scope. This administrative regulation will provide employers in Kentucky with specific requirements for chemical handling procedures to control receiving and transfer to storage of bulk hazardous liquids received via motor truck. This applies to chemicals which if inadvertently mixed or transferred to an inappropriate container could result in explosion and/or production of toxic gases. This administrative~~

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~~regulation does not apply to receiving gasoline, fuel oil, or liquefied petroleum gas at retail or wholesale outlets or to industrial filling stations where the industry standard operating procedure requires the hauler to make connections and complete delivery. This administrative regulation does not apply to agriculture.]~~

Section 2. Scope. This administrative regulation will provide employers in Kentucky with specific requirements for chemical handling procedures to control receiving and transfer to storage of bulk hazardous liquids received via motor truck. This applies to chemicals which if inadvertently mixed or transferred to an inappropriate container could result in explosion and/or production of toxic gases. This administrative regulation does not apply to receiving gasoline, fuel oil, or liquefied petroleum gas at retail or wholesale outlets or to industrial filling stations where the industry standard operating procedure requires the hauler to make connections and complete delivery. This administrative regulation does not apply to agriculture. [Definition: "Hazardous liquid" means, for the purpose of this administrative regulation, a chemical or mixture of chemicals that is toxic, an irritant, corrosive, a strong oxidizer, a strong sensitizer, combustible, flammable, extremely flammable, dangerously reactive or pressure generating or which otherwise may cause substantial personal injury or substantial illness during or as a direct result of any customary or reasonably foreseeable handling or use.]

Section 3. General Requirements. (1) Signs and labels shall be posted as follows:

(a) At bulk chemical receiving and storage facilities, (capable of unloading tank trucks or trailers) signs and labels, readily legible at normal operating positions, shall indicate appropriate contents and item identification at receiving and dispensing connections, valves, tanks, and the storage area perimeter.

(b) Prominently displayed signs at critical access points shall direct tank truck drivers to plant security stations or to supervisory personnel. Signs at the unloading area shall give specific instruction to drivers not to connect truck tank hoses to chemical receiving lines.

(c) Bills of lading, freight bills or accompanying paper work should have each hazardous chemical clearly identified by its shipping name (49 CFR) or if N.O.S. (not otherwise specified) by its common name. Handling information clearly indicated for receiver information should be included.

(2) Receiving liquid chemicals.

(a) Receiving of bulk liquid chemicals shall be coordinated by the receiving department or persons responsible for receiving. Only those persons trained and authorized shall make the required chemical identification and perform or supervise the unloading of hazardous chemicals.

(b) Prior to unloading, the authorized person shall make an inspection of the accompanying papers, check the load and ascertain its identity.

(c) If necessary for identification, chemical testing shall be accomplished prior to acceptance.

(d) The authorized person shall direct the driver to the proper unloading area.

(e) The receiving area, where chemicals are unloaded, shall be secured behind a locked fence enclosure or all receiving connections shall be under lock and key or made secure by other positive means.

(f) The authorized person shall be responsible for control of keys or combination to locking devices.

(g) The tank truck driver may make connection to the tank truck. An authorized person only shall make connection to company receiving connections and supervise the unloading into storage. The tank truck driver may make both connections provided an authorized person is present to identify, check and supervise the connection and unloading. In receiving areas where more than one (1) chemical is stored, the tank connection shall be individually keyed. Connection to different chemical receiving systems shall be locked by separated

keying arrangement. Due caution shall be made to prevent spills and to assure that the receiving tank is not overfilled. Prior arrangements shall be made to assure that inadvertent overflow is controlled without exposing employees. (It is recognized that environmental protection administrative regulations require storm or sewer drains also be protected.)

(h) Upon completion of unloading, the receiving device or the enclosure shall be locked and the key returned to its designated security location or other equivalent action be taken to secure the chemical inventory.

(i) Appropriate respiratory and other emergency personal protective equipment for the body, eyes, face, etc., shall be immediately available and used in accordance with 29 CFR 1910, Subpart I, as adopted by 803 KAR 2:308 [2:020].

(3) Training.

(a) Authorized persons responsible for the acceptance of potentially hazardous chemicals shall have an understanding of the particular hazards associated with those chemicals individually and in combination.

(b) Internal written operating procedures shall be prepared. All affected employees shall be trained in these procedures.

(c) Written emergency evacuation plans shall be prepared, and practiced by all potentially affected employees.

(d) Copies of the operating procedures, emergency evacuation plans, and a listing of personnel authorized to receive bulk chemicals shall be on the premises and available to employees and to compliance safety and health officers.

(e) Employees subject to exposure in the storage area requiring the use of respirators shall be fitted for and trained in their use, all in accordance with 29 CFR 1910.134, as adopted by 803 KAR 2:308 [2:020].

(f) Special first aid procedures shall be prepared for the potential injuries of the operation. First aid capability shall be in accordance with 803 KAR 2:310. [1010-161, as adopted by 803 KAR 2:020.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in construction and general industry, that receive and unload bulk hazardous liquids as defined in this regulation, and their employees.

(2) Direct and indirect costs or savings:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These

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proposed changes correct references to other regulations and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only corrects and updates references to other regulations and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments correct and update references to other regulations and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment will not impose any stricter or more stringent responsibilities or requirements than the regulation now in effect.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than currently in effect.

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. These amendments affect local government entities that have employees that receive and unload bulk hazardous liquids as defined in this regulation.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who receive and unload bulk hazardous liquids as defined in this regulation.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to update and correct references to other regulation and to reformat the existing regulation to meet KRS Chapter 13A considerations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:200. Confined space entry.

RELATES TO: KRS [Chapter] 338.051, 338.061

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted to the Kentucky Occupational Safety and Health Standards Board by 338.051 and 338.061, the following administrative regulation is adopted. The function of this administrative regulation is to set forth minimum safety and health requirements for those employees who must enter confined spaces for the purposes of performing their duties in the course of their employment.

Section 1. Definitions. (1) "Confined space" means a space having the following characteristics:

(a) Limited means for exit and entry; and

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(b) Ventilation of the space is lacking or inadequate, allowing for the potential accumulation of toxic air contaminants, flammable or explosive agents, or depletion of oxygen.

(2) "Emergency entry" means entry into a confined space necessitated by a sudden and unexpected condition requiring immediate action.

(3) "Toxic air contaminants" means those substances listed in Subpart Z of 29 CFR 1910 as adopted by 803 KAR 2:320 [2:020]; and, whenever a substance is not listed in Subpart Z, those substances with exposure limits listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances."

(4) "Lower explosive limit (LEL)" means the minimum concentration of gas or vapor below which propagation of flame does not occur on contact with a source of ignition.

(5) "Zero mechanical state (ZMS)" means the mechanical state of a machine or equipment in which:

(a) Every power source that can produce a machine or equipment member movement has been locked/tagged out as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(b) Pressurized fluid (air, oil, or other) power lockoffs (shutoff valves), if used, will block pressure from the power source and will reduce pressure on the machine or equipment side port of that valve by venting to atmosphere or draining to tank;

(c) All accumulators and air surge tanks are reduced to atmospheric pressure or are treated as power sources to be locked/tagged out, as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(d) The mechanical potential energy of all portions of the machine or equipment is at its lowest practical value so that the opening of the pipe(s), tube(s), hose(s), or actuation of any valve or lever will not produce a movement which could cause injury;

(e) Pressurized fluid (air, oil, or other) trapped in the machine or equipment lines, cylinders, or other components is not capable of producing a machine motion upon actuation of any valve or lever;

(f) The kinetic energy of the machine or equipment members is at its lowest practical value;

(g) Loose or freely movable machine or equipment members are secured against accidental movement; and

(h) A workpiece or material support, retained or controlled by the machine or equipment, shall be considered as part of the machine or equipment if the workpiece or material can move or can cause machine or equipment movement.

(6) "Agricultural production operation" means establishments engaged primarily in the production of crops or livestock.

Section 2. Application and Scope. (1) This regulation applies only to those confined spaces, as defined in Section 1(1) of this administrative regulation, which are not specifically covered by other administrative regulations adopted by this chapter, such as in the construction industry standards, 29 CFR Part 1926. [-

~~(a) General industry standards, 29 CFR 1910;~~

~~(b) Maritime standards, 29 CFR 1915-1919; and~~

~~(c) Construction industry standards, 29 CFR 1926.]~~

(2) This administrative regulation does not apply to agricultural production operations.

(3) This administrative regulation does not apply to employers in general industry who are covered by 29 CFR 1910.146, "Permit-required Confined Spaces", as adopted by 803 KAR 2:309.

(4) This administrative regulation does not preempt any specific applicable regulation.

Section 3. Confined Space Entry: Nonemergency and Nonrescue. Except as provided in Section 4 of this administrative regulation, entry into a confined space shall not be made unless the following

procedures have been accomplished:

(1) All pipes, lines, or other connections which may carry harmful agents into the confined space have been disconnected or blocked by some means which assures complete closure. In continuous systems, such as but not limited to sewers or utility tunnels, where complete isolation is not possible, written safety procedures to ensure employees' safety and health shall be developed and administered.

(2) Fixed mechanical devices or equipment that are capable of causing injury shall be placed at zero mechanical state (ZMS). The electrical equipment, excluding lighting, shall be locked out or tagged out in accordance with National Fire Protection Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982.

(3) The internal atmosphere of the confined space shall be tested for oxygen content, flammable or explosive agents, or any toxic air contaminant(s) of which an employer, who is or should be reasonably familiar with the practices, procedures, and methods of operation in the industry, has or should have knowledge. If the oxygen content is less than nineteen and five-tenths (19.5) percent (148 mm Hg), or if the flammable or exposure agents are detected in excess of twenty-five (25) percent of the lower explosive limit (LEL), or if the toxic air contaminant(s) are present in levels which exceed allowable limits as set forth in 29 CFR 1910, Subpart Z as adopted by 803 KAR 2:320 [2:020], and whenever a substance is not listed in Subpart Z, the exposure levels listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances," the following provisions apply:

(a) The confined space shall be ventilated until the unsafe condition(s) are eliminated, and the ventilation shall be continued as long as there is a possibility of recurrence of the unsafe condition(s) while the confined space is occupied by employee(s).

(b) If oxygen deficiency or toxic air contaminant level(s) cannot be eliminated by ventilation, or as an alternative to ventilation, employee(s) may be allowed to enter a confined space only with appropriate respiratory protection. Respirator usage shall be in accordance with the requirements of 29 CFR 1910.134 as adopted by 803 KAR 2:308 [2:020]. Respiratory protection shall be provided and maintained at no cost to employee(s). If a self-contained respirator is used, the wearer shall not be permitted to remain within the confined space, when the primary air system is depleted or being replaced. The reserve air supply shall be used only for escape purposes. Employee(s) shall be allowed to enter a confined space containing explosive or flammable agents exceeding twenty-five (25) percent lower explosive limits (LEL), only during emergency or rescue operations.

(4) Provisions shall be made for constant communications: visual, voice and/or other means, between employee(s) within the confined space and an employee in the immediate vicinity outside the confined space.

(5) Provision shall be made for rescue procedures, including rescue equipment and rescue training, as outlined in Section 4 of this administrative regulation.

(6) Ladders or other safe means shall be used to enter and exit confined spaces exceeding four (4) feet in depth.

Section 4. Confined Space Entry: Emergency and Rescue. (1) The employer shall establish a written procedure for emergency and rescue methods and operations covering all confined space entries. The procedure shall include at a minimum:

(a) An assessment of the hazard(s);

(b) Personnel required to perform the rescue or emergency entry;

(c) Precautions to be taken while in the confined space;

(d) Personal protective equipment to be used;

(e) Rescue equipment such as but not limited to respirators, life lines, safety belts, safety harnesses, wristlets, hoisting equipment when an employee must be lifted vertically, and other equipment; and

(f) Tools and other equipment to be used.

(2) The employer shall establish a training program to instruct

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affected employees in the procedures and practices for emergency and rescue confined space entry. The training shall be repeated annually or more often as needed. The employer shall maintain records of the most recent training program conducted. The records shall include the date(s) of the training program, the instructor(s) of the training program, and the employee(s) to whom the training was given.

(3) The employer shall assure that personnel with rescue training, basic first aid, and CPR, in the vicinity of the confined space are readily available to render emergency assistance as may be required.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in construction industry whose employees enter confined spaces, as defined in this regulation.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes correct references to other regulations and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only corrects and updates references to other regulations and reformat the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments correct and update references to other regulations and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment will not impose any stricter or more stringent responsibilities or requirements than the regulation now in effect.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than currently in effect.

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. These amendments affect local government entities that have employees doing construction work entering confined spaces as defined in this regulation.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government doing construction work entering confined spaces as defined in this regulation.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to update and correct references to other regulation and to reformat the existing regulation to meet KRS Chapter 13A considerations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:300. General. ~~[Adoption of 29 CFR Part 1910.1-6.]~~

RELATES TO: KRS ~~[Chapter]~~ 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 ~~[Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~[rules and]~~ administrative regulations ~~[, and standards]~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]~~

Section 1. Definitions Applicable to This Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Purpose and Scope. The provisions of this administrative regulation adopt and extend the applicability of established federal standards contained in 29 CFR 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 9 CFR 1910.3-7 of the Code of Federal Regulations revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is hereby incorporated by reference;

(b) The revisions to 29 CFR 1910.6, "Incorporation by Reference", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. ~~(The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1910.1-6 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~

(1) 29 CFR Part 1910.1 shall read as follows:

~~"The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."~~

(2) 29 CFR 1910.2 shall read as follows: As used in this part, unless the context clearly requires otherwise:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(c) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(d) "Employee" means any person employed except those employees excluded in KRS 338.021.

(e) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(h) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

(3) The revision to 29 CFR 1910.5, "Applicability of standards," as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add and update references to other regulations, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

(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: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these proposed amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only adds and updates references to other regulations in an existing regulation and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments add and update references to other regulations and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. This proposed regulation adopts, by reference, changes in existing adopted referenced standards, as published in the Federal Register, March 7, 1996.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than the federal mandate.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. It adds and updates references and reformats the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this proposed

regulation is to update references to other regulations and to reformat the existing regulation to meet KRS Chapter 13A considerations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:301. Adoption and extension of established federal standards. [~~of 29 CFR Part 1910.7-19.~~]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
 STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR

1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations[, and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.~~]

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally-recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.11-19 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration are incorporated by reference.

(b) The revision to 29 CFR 1910.17, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m.

(ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.7-19 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions.

(1) 29 CFR 1910.7, "Definition and Requirements for a Nationally Recognized Testing Laboratory," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(2) The removal of 29 CFR 1910.13, "Ship repairing", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(3) The removal of 29 CFR 1910.14, "Shipbuilding", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(4) The revision of 29 CFR 1910.15, "Shipyard employment", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(5) 29 CFR 1910.16(b)(2)(ix), "Longshoring and Marine Terminals," as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.

(6) 29 CFR 1910.19(f) "Special Provisions for Air Contaminants," is removed as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.19(i), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(b) A new paragraph (i) to 29 CFR 1910.19, "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, is incorporated by reference.

(c) 29 CFR 1910.19(j), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(d) A new paragraph (k) to 29 CFR 1910.19, "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, is incorporated by reference.

(e) The revision to 29 CFR 1910.19, "Special Provisions for Air Contaminants", as published in the Federal Register, Volume 59, Number 153, August 10, 1994, is incorporated by reference.]

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort,

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Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, delete an expired effective date, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only deletes an expired effective date and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the

proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments, by reference delete an expired effective date, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in the effective date is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. It deletes an expired effective date and reformats the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this proposed regulation is to delete an expired effective date and to reformat the existing regulation to meet KRS Chapter 13A considerations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:302. General safety and health provisions. [Adoption of 29 CFR Part 1910.20.]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051

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and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~rules and~~ administrative regulations ~~and standards~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]~~

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR 1910.20(e)(1)(i);

(2) 29 CFR 1910.20(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.20(e)(1)(iii);

(4) 29 CFR 1910.20(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in paragraphs 1 through 3 of this subsection, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.20 through 1910.20(e)(1);

2. 29 CFR 1910.20(e)(1)(ii); and

3. 29 CFR 1910.20(e)(3)(iii)(a) through Appendix B to 1910.20.

(b) The revision of 29 CFR 1910.20, "Access to Employee and Medical Records", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to the access of exposure and medical records in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.20(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.20(e)(1)(iii).

(4) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. ~~[The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.20 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.20, "Access to Employee Exposure and Medical Records," is amended as follows:~~

(1) 29 CFR 1910.20(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(2) 29 CFR 1910.20(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

(3) 29 CFR 1910.20(e)(1)(v) is added and shall read: "Original x-ray film will be made available to the employee and/or designated representative for inspection, review, and duplication under the supervision of the employer or his representative. The employer is not required to bear the cost of duplication of x-ray film."

(4) Amendments to 29 CFR 1910.20, "Access to Employee Exposure and Medical Records," as published in Federal Register, Volume 53, Number 189, September 20, 1988, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 43A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general

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industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes correct a typing error, add a reference to another regulation, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only corrects a typing error, adds a reference to another regulation, and reformats the existing regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of

those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed amendments, by reference correct a typing error, add a reference to another regulation, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. It corrects a typing error, adds a reference to another regulation, and reformats the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this proposed regulation is to correct a typing error, add a reference to another regulation, and to reformat the existing regulation to meet KRS Chapter 13A considerations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:303. Walking-working surfaces. [~~Adoption of 29 CFR Part 1910.21-32.~~]

RELATES TO: KRS [~~Chapter~~] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 [~~Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [~~rules and~~] administrative regulations [~~and standards~~]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The

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following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]~~

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Permanent and Temporary Floor Openings. (1) The language relating to the guarding of permanent and temporary floor openings in subsection (2) of this subsection shall apply in lieu of 29 CFR 1910.23(a)(7);

(2) 29 CFR 1910.23(a)(7) is amended to: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.21 through 1910.23(a)(6); and

2. 29 CFR 1910.23(a)(8) through 29 CFR 1910.32.

(b) The revision to 29 CFR 1910.30, "Other Working Surfaces", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(c) The removal of 29 CFR 1910.31, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(d) The removal of 29 CFR 1910.32, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to the guarding of floor openings in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.23(a)(7).

(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. ~~[The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1910.21-32 revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~

(1) Subparagraph 29 CFR 1910.23(a)(7) shall be amended to

~~read as follows: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."~~

(2) The amendment to 29 CFR 1910.26, "Portable Metal Ladders," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(3) The amendments to 29 CFR 1910.28(f)(2), (g)(3), (h)(2) and (i)(1), "Safety Requirements for Scaffolding," as published in the Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes add a reference to another regulation, remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

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(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only adds a reference to another regulation, removes two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes add a reference to another regulation, remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding a reference to another regulation and removing two standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes add a reference to another regulation, remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and

Health Education and Training

(Amendment)

803 KAR 2:304. Means of egress. [~~Adoption of 29 CFR Part 1910.35-40.~~]

RELATES TO: KRS [~~Chapter~~] 338.051, 338.061, 29 CFR 1910 STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 [~~Chapter 13A~~]

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [~~rules and~~] administrative regulations [~~and standards~~]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.~~]

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to

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provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.35-40 of the Code of Federal Regulations revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is hereby incorporated by reference;

(b) The removal of 29 CFR 1910.39, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference;

(c) The removal of 29 CFR 1910.40, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. (The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1910.35-40 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The amendments to 29 CFR 1910.35(h), "Definitions," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(2) The amendment to 29 CFR 1910.40, "(Amended)", as published in Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes remove two standards and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only removes two standards and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of

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those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These proposed changes remove two standards and reformat the regulation to meet KRS Chapter 13A considerations.
3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. removing two standards, is identical to the federal standard.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.
3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed remove two standards and reformat the regulation to meet KRS Chapter 13A considerations.
4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms. [~~Adoption of 29 CFR Part 1910.66-.70.~~]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations[, and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The

following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.~~]

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.66-.70 of the Code of Federal Regulations revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is hereby incorporated by reference;

(b) The removal of paragraph (k) of 29 CFR 1910.66, "Powered Platforms for Building Maintenance", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference;

(c) The revisions to 29 CFR 1910.67, "Vehicle-Mounted Elevating and Rotating Platforms", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference;

(d) The revisions to 29 CFR 1910.68 "Manlifts", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference;

(e) The removal of 29 CFR 1910.69, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference;

(f) The removal of 29 CFR 1910.70, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [~~The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.66-.70 revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended, with the following additions, exceptions, and deletions:~~

(1) ~~Revision to 29 CFR 1910.66, as published in the Federal Register, Volume 54, Number 144, July 28, 1989, is incorporated by reference.~~

(2) ~~Revision to 29 CFR 1910.67, "Vehicle-Mounted Elevating and Rotating Work Platforms," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.~~

(3) ~~Revision to 29 CFR 1910.68, "Manlifts," as published in the~~

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Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 9 a.m. - 4:30 p.m. (EST), Monday through Friday.]~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, remove a paragraph from an adopted referenced standard, correct references to two adopted referenced standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these

proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, remove a paragraph from an adopted referenced standard, correct references to two adopted referenced standards, and reformat the regulation to meet KRS Chapter 13A considerations. removes two standards and reformats the regulation to meet KRS 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, remove a paragraph from an adopted referenced standard, correct references to two adopted referenced standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. removing the paragraph and correcting references to other standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, remove a paragraph from an adopted referenced standard, correct references to two adopted referenced standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:306. Occupational health and environmental control. [Adoption of 29 CFR Part 1910.94-100.]

RELATES TO: KRS ~~[Chapter]~~ 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 ~~[Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~[rules and]~~ administrative regulations ~~[and standards]~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]~~

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Occupational Noise Exposure. (1) The language relating to audiometric test requirements for occupational noise exposure in subsection (2) of this section shall apply in lieu of 29 CFR 1910.95(h)(1).

(2) 29 CFR 1910.95(h)(1) is amended to read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(3) The language relating to audiometric test requirements for occupational noise exposure in subsection (4) of this section shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) 29 CFR 1910.95(h)(4) is amended to read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(5) The language relating to audiometric test requirements for occupational noise exposure in subsection (6) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(6) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(7) The language relating to audiometric test requirements for occupational noise exposure in subsection (8) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(iii).

(8) 29 CFR 1910.95(h)(5)(iii) is amended to read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(9) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1).

(10) 29 CFR 1910.95(l)(1) is amended to read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(11) The language relating to exemptions to the regulation for occupational noise exposure requirements in subsection (12) of this section shall apply in lieu of 29 CFR 1910.95(o).

(12) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(13) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E.

(14) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound pressure output check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading".

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(c) Tolerances. When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR
TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	7.0
2000	9.07	9.0
3000	10.0	80.0
4000	9.57	9.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR
TELEPHONICS-TDH-49 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in paragraphs 1 through 7 of this subsection, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.94 through 1910.95(g)(10)(ii);
2. 29 CFR 1910.95(h)(2) through 29 CFR 1910.95(h)(3);
3. 29 CFR 1910.95(h)(5)(i) through 29 CFR 1910.95(h)(5)(ii);
4. 29 CFR 1910.95(i)(1) through 29 CFR 1910.95(k)(2)(iii);
5. 29 CFR 1910.95(l)(2) through 29 CFR 1910.95(n)(2);
6. 29 CFR 1910.95(q) through 29 CFR 1910.95 Appendix D;
7. 29 CFR 1910.95 Appendix F through 29 CFR 1910.100.

(b) The revisions to 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.95, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revision to 29 CFR 1910.97, "Nonionizing Radiation", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(e) The removal of 29 CFR 1910.99, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(f) The removal of 29 CFR 1910.100, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to audiometric testing in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(1).

(3) The language relating to audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) The language relating to audiometric testing in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(5) The language relating to audiometric testing in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(iii).

(6) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1);

(7) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(8) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E;

(9) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.94-100 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.95, "Hearing Conservation Program," is amended as follows:

(1) Revision to 29 CFR 1910.94, as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(2) The amendment to 29 CFR 1910.94, "(Amended)", as published in the Federal Register, Volume 58, No. 124, June 30, 1993, is incorporated by reference.

(3) 29 CFR 1910.95, "Hearing Conservation Program," is amend-

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ed as follows:

(a) 29 CFR 1010.95(h)(1) shall read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(b) 29 CFR 1010.95(h)(4) shall read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(c) 29 CFR 1010.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(d) 29 CFR 1010.95(h)(5)(iii) shall read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(e) 29 CFR 1010.95(L)(1) shall read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(f) 29 CFR 1010.95(e) shall read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(g) 29 CFR 1010.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave band filter set, and a National Bureau of Standards 8A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound Pressure Output Check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter

connected to the earphone terminals.

(c) Tolerances.

When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 REFERENCE THRESHOLD LEVELS FOR TELEPHONICS TDH-39 EARPONES

Frequency, Hz	Reference threshold level for TDH 39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.0	77.0
2000	9.0	79.0
3000	10.0	80.0
4000	9.5	79.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 REFERENCE THRESHOLD LEVELS FOR TELEPHONICS TDH-49 EARPONES

Frequency, Hz	Reference threshold level for TDH 49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

(4) The amendments to 29 CFR 1010.96, "(Amended)", as published in the Federal Register, Volume 58, No. 124, June 30, 1993, are incorporated by reference.

(5) The amendment to 29 CFR 1010.100, "(Amended)", as published in the Federal Register, Volume 58, No. 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 9 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written

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comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adds references to a different standard and removes two standards, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding references to another standard and removing two standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

ADMINISTRATIVE REGISTER - 1702

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:307. Hazardous materials. [Adoption of 29 CFR Part 1910.101-120.]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations [and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Automotive Service Station (Service Station). (1) The language relating to automotive service stations (service stations) in subsection (2) of this section shall apply in lieu of 29 CFR 1910.106(a)(3).

(2) 29 CFR 1910.106(a)(3) is amended to read: The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 2 of this paragraph,

published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.101 through 1910.106(a)(2);

2. 29 CFR 1910.106(a)(4) through 29 CFR 1910.120.

(b) The revisions to 29 CFR 1910.101, "Compressed Gases (General Requirements)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.102, "Acetylene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.103, "Hydrogen", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.104, "Oxygen", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revision to 29 CFR 1910.105, "Nitrous Oxide", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The revisions to 29 CFR 1910.106, "Flammable and Combustible Liquids", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) The revisions to 29 CFR 1910.107, "Spray Finishing Using Flammable and Combustible Liquids", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) The revisions to 29 CFR 1910.108, "Dip Tanks Containing Flammable or Combustible Materials", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) The revisions to 29 CFR 1910.109, "Explosives and Blasting Agents", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(k) The revisions to 29 CFR 1910.110, "Storage and Handling of Liquefied Petroleum Gases", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(m) The removal of 29 CFR 1910.114, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(n) The removal of 29 CFR 1910.115, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(o) The removal of 29 CFR 1910.116, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(p) The revision to 29 CFR 1910.119, "Process Management of Highly Hazardous Chemicals", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(q) The revisions to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(2) The language relating to automotive service stations (service stations) in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.106(a)(3).

(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.101-120 revised as of July 1, 1996, published by the Office of the Federal Register,

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National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1010.101(b), "Compressed Gases," shall be amended by revocation of referenced pamphlets P-1 1965 and the adoption of P-1 1974, herein filed by reference.

(2) 29 CFR 1010.103, "Hydrogen," is amended, as follows:

(a) The amendment to 29 CFR 1010.103(a)(1)(ii), "Hydrogen," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(b) The amendment to 29 CFR 1010.103, "Hydrogen," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(c) The amendments to 29 CFR 1010.103, "Hydrogen," as published in the Federal Register, Volume 58, No. 124, June 30, 1993, are incorporated by reference.

(3) 29 CFR 1010.106, "Flammable and Combustible Liquids" is amended as follows:

(a) 29 CFR 1010.106(a)(3) shall read: "The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(b) The amendment to 29 CFR 1010.106(a)(35), "Flammable and Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(c) 29 CFR 1010.106(g)(1)(i)(g), "Flammable and Combustible Liquids," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is removed.

(d) Amendment to 29 CFR 1010.106, "Flammable and Combustible Liquids," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(4) The amendment to 29 CFR 1010.107(a)(8), "Spray Finishing Using Flammable and Combustible Materials," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(5) The amendment to 29 CFR 1010.108(a)(3), "Dip Tanks Containing Flammable or Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(6) The amendment to 29 CFR 1010.109(d)(2)(iii)(a), "Explosives and Blasting Agents," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(7) The amendment to 29 CFR 1010.109, "(Amended)," as published in the Federal Register, Volume 58, No. 124, June 30, 1993, is incorporated by reference.

(8) The amendment to 29 CFR 1010.109, as published in the Federal Register, Volume 57, Number 36, February 24, 1991, is incorporated by reference.

(9) 29 CFR 1010.110 is amended, as follows:

(a) The amendment to 29 CFR 1010.109, "Explosive and Blasting Agents," as published in the Federal Register, Volume 58, Number 58, March 20, 1993, is incorporated by reference.

(b) The amendment to 29 CFR 1010.110, as published in the Federal Register, Volume 55, Number 151, is incorporated by reference.

(c) The amendments to 29 CFR 1010.110(a)(14), (b)(2)(iii), (c)(5)(i)(g)(i) and (f)(5)(iv), "Storage and Handling of Liquefied Petroleum Gases," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(d) The amendment to 29 CFR 1010.110, as published in the Federal Register, Volume 55, Number 110, June 20, 1990, is

incorporated by reference.

(e) The amendment to 29 CFR 1010.110(d)(11), "Storage and Handling of Liquefied Petroleum Gases," as published in the Federal Register, Volume 58, Number 52, March 10, 1993, is incorporated by reference.

(f) The amendment to 29 CFR 1010.110, "(Amended)," as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(10) The amendments to 29 CFR 1010.111(b)(1)(ii) and the new paragraph 1010.111(b)(1)(vi), "Storage and Handling of Anhydrous Ammonia," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(11) 29 CFR 1010.119, as published in the Federal Register, Volume 57, Number 36, February 24, 1991, is incorporated by reference, with the following additions, exceptions, or deletions: The corrections to 1010.119, as published in the Federal Register, Volume 57, Number 43, March 4, 1992, are incorporated by reference.

(12) The amendment to 29 CFR 1010.116, "(Amended)," as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(13) 29 CFR 1010.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, December 10, 1986, Volume 51, No. 244, is incorporated by reference.

(a) Corrections to amendments to 29 CFR 1010.120, "Hazardous Waste Operations and Emergency Response," as published in Federal Register, Volume 52, Number 85, May 4, 1987, are incorporated by reference.

(b) 29 CFR 1010.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, Volume 54, Number 42, March 6, 1989, is incorporated by reference.

(c) The amendment to 29 CFR 1010.120, as published in the Federal Register, Volume 55, Number 72, April 13, 1990, is incorporated by reference.

(d) Amendments, revisions and additions to 29 CFR 1010.120, as published in the Federal Register, Volume 56, Number 75, April 18, 1991, are incorporated by reference.

(e) The revisions to 29 CFR 1010.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, Volume 59, Number 161, August 22, 1994, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston,

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Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adds references to a different standard and removes three standards, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of

these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding references to another standard and removing three standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:308. Personal protective equipment. [Adoption of 29 CFR Part 1910.132-140.]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
 STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR

1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations[, and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Respiratory Protection. (1) The language relating to guidance for physicians in determining medical conditions that would preclude the use of respirators by individuals in subsection (2) of this section shall apply in lieu of 29 CFR 1910.134(b)(10).

(2) 29 CFR 1910.134(b)(10) is amended to read: A physician shall determine whether or not an employee has any medical conditions that would preclude the use of respirators. The physician shall follow the guidance in ANSI Z88.6, "American National Standard for Respiratory Protection-Respirator Use-Physical Qualifications for Personnel" on the frequency and content of the examination.

(3) The language relating to selection of respirators in subsection (4) of this section shall apply in lieu of 29 CFR 1910.134(c).

(4) 29 CFR 1910.134(c) is amended to read: Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2 - 1980.

(5) The language relating to specifications for breathing air in subsection (6) of this section shall apply in lieu of 29 CFR 1910.134(d)(1).

(6) 29 CFR 1910.134(d)(1) is amended to read: Compressed air,

compressed oxygen, liquid air, and liquid oxygen used for respiration shall be of high purity. Oxygen shall meet the requirements of the United States Pharmacopoeia for medical or breathing oxygen. Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 - 1973. Compressed oxygen shall not be used in supplied-air respirators or in open circuit self-contained breathing apparatus that have previously used compressed air. Oxygen must never be used with air line respirators.

(7) The language relating to identification of gas mask canisters in subsection (8) of this section shall apply in lieu of 29 CFR 1910.134(g).

(8) 29 CFR 1910.134(g) is amended to read: Identification of Air-purifying Respirator Canisters and Cartridges:

(a) The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

(b) All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

(c) On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

1. CANISTER FOR (Name of atmospheric contaminant); or CARTRIDGE FOR (Name of atmospheric contaminant).

2. In addition, either or both of subparagraphs 1 and 2 of this paragraph, information in clauses a, b, and c of this subparagraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

a. For respiratory protection in atmospheres containing not more than (Concentration) by volume of (Name of atmospheric contaminant).

b. For respiratory protection in atmospheres containing (Type of particulate contaminant).

c. Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level.

(d) Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

TABLE I-1
 Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red

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<u>Other vapors and gases not listed above</u>	<u>Olive</u>	<u>106</u>	<u>Light olive</u>
<u>Radioactive materials tritium and noble gases)</u>	<u>Purple</u>	<u>218</u>	<u>Strong (except purple</u>
<u>Dusts, fumes, and mists (other than radioactive materials)</u>	<u>Orange</u>	<u>48</u>	<u>Vivid orange</u>

NOTES:

1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 4 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.132 through 1910.134(b)(9);
2. 29 CFR 1910.134(b)(11);
3. 29 CFR 1910.134(d)(2) through 29 CFR 1910.134(f)(5)(iii);
4. 29 CFR 1910.135 through Appendix B to Subpart I.

(b) The revisions to 29 CFR 1910.133, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.135, "Nonionizing Radiation", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.136, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The removal of 29 CFR 1910.139, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(f) The removal of 29 CFR 1910.140, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to guidance for physicians in determining medical conditions that would preclude the use of respirators by individuals in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(b)(10).

(3) The language relating to selection of respirators audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(c).

(4) The language relating to specifications for breathing air in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(d)(1).

(5) The language relating to identification of gas mask canisters in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(g).

(6) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.132-140 of the Code of Federal Regulations revised as of July 1, 1986, published

by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.132, "General Requirements", is amended, as follows:

(a) The addition to 29 CFR 1910.132, "General Requirements", as published in the Federal Register, Volume 59, Number 66, April 6, 1994, is incorporated by reference.

(b) The revision to 29 CFR 1910.132, "General Requirements", as published in the Federal Register, Volume 59, Number 126, July 1, 1994, is incorporated by reference.

(2) 29 CFR 1910.133, "Eye and Face Protection", is amended, as follows:

(a) Revisions to 29 CFR 1910.133, "Eye and Face Protection", as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(b) The revision to 29 CFR 1910.133, "Eye and Face Protection", as published in the Federal Register, Volume 59, Number 126, July 1, 1994, is incorporated by reference.

(3) 29 CFR 1910.134 is amended as follows:

(a) 29 CFR 1910.134(b)(10) shall read: "A physician shall determine whether or not an employee has any medical conditions that would preclude the use of respirators. The physician shall follow the guidance in ANSI Z88.6, "American National Standard for Respiratory Protection Respirator Use Physical Qualifications for Personnel" on the frequency and content of the examination.

(b) The amendment to 29 CFR 1910.134(b)(11), "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(c) 29 CFR 1910.134(e) shall read: "Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2-1980."

(d) 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1-1973."

(e) 29 CFR 1910.134(g) shall read: Identification of Air purifying Respirator Canisters and Cartridges.

1. The primary means of identifying an air purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air purifying respirator canister or cartridge shall be by an identifying color or colors.

2. All who issue or use air purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

3. On each air purifying respirator canister and cartridge, the following shall appear in bold letters:

CANISTER FOR-

(Name of atmospheric contaminant)

or

CARTRIDGE FOR-

(Name of atmospheric contaminant)

In addition, either or both of subparagraphs 1 and 2 of this paragraph, and subparagraph 3 of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

1. For respiratory protection in atmospheres containing not more than _____ by volume of _____ (Concentration)

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(Name of atmospheric contaminant)

2. For respiratory protection in atmospheres containing

(Type of particulate contaminant)

3. Do not use in atmospheres containing less than nineteen and five tenths (19.5) percent oxygen by volume at sea level.

4. Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, sealing, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(f) 29 CFR 1010.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	ISCC NBS Centroid Color Assigned	ISCC NBS Centroid Number	ISCC NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	130	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

1) A purple (ISCC NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

2) An orange (ISCC NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC NBS Centroid Number 266), or a metal canister or cartridge body may be left in its natural metallic color.

4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

(4) Revisions to 29 CFR 1010.135, "Head Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(5) 29 CFR 1010.136, "Foot Protection," is amended, as follows:

(a) Revisions to 29 CFR 1010.136, "Foot Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(b) The revision to 29 CFR 1010.136, "Foot Protection," as published in the Federal Register, Volume 59, Number 126, July 1,

1994, is incorporated by reference.

(6) 29 CFR 1010.137, "Electrical Protective Equipment," is amended, as follows:

(a) Revisions to 29 CFR 1010.137, "Electrical Protective Equipment," as published in the Federal Register, Volume 59, Number 20, January 31, 1994, are incorporated by reference.

(b) The corrections to 29 CFR 1010.137, "Electrical Protective Equipment," as published in the Federal Register, Volume 59, Number 126, June 30, 1994, are incorporated by reference.

(7) 29 CFR 1010.138, "Hand Protection," is amended, as follows:

(a) 29 CFR 1010.138, "Hand Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, is incorporated by reference.

(b) The revision to 29 CFR 1010.138, "Hand Protection," as published in the Federal Register, Volume 59, Number 126, July 1, 1994, is incorporated by reference.

(8) Appendices A and B added to Subpart I, as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

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1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adds references to a different standard and removes two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A

considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding references to another standard and removing two standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

**803 KAR 2:309. General environmental controls. [Adoption of
29 CFR Part 1910.141-149.]**

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR
1910 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations [and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

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(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Construction of Water Closets. (1) The language relating to construction of water closets in subsection (2) of this section shall apply in lieu of 29 CFR 1910.141(c)(2)(i).

(2) 29 CFR 1910.141(c)(2)(i) is amended to read: Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

Section 3. Lockout. (1) The language relating to utilization of lockout procedures in subsection (2) of this section shall apply in lieu of 29 CFR 1910.147(c)(2)(ii).

(2) 29 CFR 1910.147(c)(2)(ii) is amended to read: If an energy isolating device is capable of being locked out, the employer's energy control program under paragraph (c)(1) of this subsection shall utilize lockout.

(3) The language relating to tag location in subsection (4) of this section shall apply in lieu of 29 CFR 1910.147(c)(3).

(4) 29 CFR 1910.147(c)(3)(i) is amended to read: Full employee protection. When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. Where tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment will be fastened at the same point at which the lock would have been attached.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 4 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.141 through 1910.141(c)(1)(iii);
2. 29 CFR 1910.141(d)(1) through 29 CFR 1910.147(c)(2)(i);
3. 29 CFR 1910.147(c)(2)(iii);
4. 29 CFR 1910.147(c)(3)(ii) through 29 CFR 1910.150.

(b) The revisions to 29 CFR 1910.142, "Temporary Labor Camps", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revision to 29 CFR 1910.144, "Safety Code for Marking Physical Hazards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(d) The revisions to 29 CFR 1910.145, "Specifications for Accident Prevention Signs", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The language relating to utilization of lockout procedures in

Section 3(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.147(c)(2)(ii).

(f) The language relating to tag location in Section 3(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.147(c)(3)(i).

(g) The removal of 29 CFR 1910.148, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(h) The removal of 29 CFR 1910.149, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(i) The removal of 29 CFR 1910.150, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to the construction of water closets in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.141(c)(2)(i).

(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1910.141-149 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended January 15, 1993, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.141(c)(2)(i) shall read as follows: "Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(2) Amendment to 29 CFR 1910.145(f), "Accident Prevention Tags," as published in Federal Register, Volume 61, Number 182, September 19, 1986, is incorporated by reference.

(3) 29 CFR 1910.146, "Permit required Confined Spaces", as published in the Federal Register, Volume 58, Number 9, January 14, 1993, is incorporated by reference with the following additions, exceptions, and deletions:

(a) The corrections to 29 CFR 1910.146, "Permit required Confined Spaces", as published in the Federal Register, Volume 58, Number 123, June 29, 1993, are adopted by reference.

(b) The corrections to 29 CFR 1910.146, "Permit Required Confined Spaces", as published in the Federal Register, Volume 59, Number 96, May 19, 1994, are incorporated by reference.

(4) Revision to 29 CFR 1910.147, as published in the Federal Register, Volume 54, Number 160, September 1, 1989, is incorporated by reference with the following additions, exceptions, and deletions:

(a) 29 CFR 1910.147(c)(2)(ii) is amended to read: "If an energy isolating device is capable of being locked out, the employer's energy control program under paragraph (c)(1) of this section shall utilize lockout."

(b) 29 CFR 1910.147(c)(3) is amended to read: "Full employee protection. (i) When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program."

(c) "Where tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment will be fastened at the same point at which the lock would have been attached."

(d) Revision to 29 CFR 1910.147, as published in the Federal Register, Volume 55, Number 183, September 20, 1990, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS

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~~13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adds references to a different standard and removes three standards, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding references to another standard and removing three standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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

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proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:311. Fire protection. [Adoption of 29 CFR Part 1910.155-166b.]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations[, and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.155-165, Subpart L, "Fire Protection", published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference.

(b) The revisions to 29 CFR 1910.156, "Fire Brigades", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revision to 29 CFR 1910.157, "Portable Fire Extinguishers", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(d) The revisions to 29 CFR 1910.158, "Standpipe and Hose Systems", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revision to Appendix D to 29 CFR Subpart L, "Availability of Publications Incorporated by Reference in Section 1910.156, Fire Brigades", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1910.155-166.b of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The amendments to 29 CFR 1910.155(e)(3)(i) and the new paragraph 1910.155(e)(3)(iv)(E), "Scope, Application and Definitions Applicable to this Subpart," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(2) 29 CFR 1910.156(a)(2), "Application," is amended to read: "The requirements of this section apply to fire brigades; industrial fire departments; private fire departments; and municipal public fire departments and fire protection districts. Personal protective equipment requirements apply to members of fire brigades and fire departments performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue, forest fire fighting operations, or volunteer fire fighters."

(3) Revision to 29 CFR 1910.157(f)(16), "Portable Fire Extinguishers," as published in the Federal Register, Volume 51, Number 198, September 29, 1986, is incorporated by reference.

(4) The corrections to the appendices as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If

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you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add references to a different standard, remove two expired effective dates and update a telephone number, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adds references to a different standard, removes two expired effective dates and updates a telephone number, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add references to a different standard, remove two expired effective dates and update a telephone number, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding references to another standard, remove two expired effective dates and update a telephone number, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or a different or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add references to a different standard, remove two expired effective dates and update a telephone number, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:312. Compressed gas and compressed air equipment. [~~Adoption of 29 CFR Part 1910.166-171.~~]

RELATES TO: KRS [~~Chapter~~] 338.051, 338.061, 29 CFR 1910 STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 [~~Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [~~rules and~~] administrative regulations [~~, and standards~~]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.~~]

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by an agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in 29 CFR 1910, Subpart M, "Compressed Gas and Compressed Air Equipment", published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference.

(b) The revisions to 29 CFR 1910.169, "Air Receivers", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The removal of 29 CFR 1910.170, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The removal of 29 CFR 1910.171, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127

South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1910.166-171 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, deletions, and revisions: the revision to 29 CFR 1910.171, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add a reference to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amend-

ments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adds a reference to a different standard and removes two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add a reference to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding a reference to a different standard and removing two standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal

Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add a reference to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:313. Materials handling and storage. (Adoption of 29 CFR Part 1910.176-199.)

RELATES TO: KRS ~~Chapter~~ 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 ~~Chapter 13A~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~rules and~~ administrative regulations ~~and standards~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. ~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.~~

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

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(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.176-190, Subpart N, "Materials Handling and Storage", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revision to Appendix B of 29 CFR 1910.177, "Servicing Multi-Piece and Single Piece Rim Wheels", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(c) The revisions to 29 CFR 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.179, "Overhead and Gantry Cranes", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.180, "Crawler, Locomotive, and Truck Cranes", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revision to 29 CFR 1910.181, "Derricks", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The removal of 29 CFR 1910.182, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(h) The revision to 29 CFR 1910.184, "Slings", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(i) The removal of 29 CFR 1910.189, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(j) The removal of 29 CFR 1910.190, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. (The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.176-190 revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.177(a)(2), "Servicing Multi-Piece and Single Piece Rim Wheels," shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.

(b) Amendments to 29 CFR 1910.177(b), "Servicing Multi-Piece and Single Piece Rim Wheels," as published in Federal Register, Volume 53, Number 174, September 8, 1988, are incorporated by reference.

(2) The amendment to 29 CFR 1910.178(a)(7), "Powered Industrial Trucks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.178, "Powered Industrial Trucks," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(4) Revisions to 29 CFR 1910.179(i)(2)(iii) and (iv), "Overhead and Gantry Cranes," as published in the Federal Register, Volume 51, Number 188, September 20, 1986, are incorporated by reference.

(a) Revision to 29 CFR 1910.179(m)(i), "Overhead and Gantry Cranes," as published in the Federal Register, Volume 51, Number 188, September 20, 1986, is incorporated by reference.

(b) Revision to 29 CFR 1910.179, "Overhead and Gantry Cranes," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(5) Revision to 29 CFR 1910.180(d)(6), "Crawler Locomotive and Truck Cranes," as published in the Federal Register, Volume 51, Number 188, September 20, 1986, is incorporated by reference.

(a) Revisions to 29 CFR 1910.180(g)(i) and (2)(ii), "Crawler and Locomotive Truck Cranes," as published in the Federal Register, Volume 51, Number 188, September 20, 1986, are incorporated by reference.

(b) The amendment to 29 CFR 1910.180(i)(4)(i), "Crawler, Locomotive and Truck Cranes," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(e) Amendment to 29 CFR 1910.180, "Crawler, Locomotive, and Truck Cranes," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(6) Revisions to 29 CFR 1910.181(g)(1) and (3), "Derricks," as published in the Federal Register, Volume 51, Number 188, September 20, 1986, are incorporated by reference.

(a) The amendment to 29 CFR 1910.181(i)(4)(i), "Derricks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(b) Amendment to 29 CFR 1910.181, "Derricks," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(7) Amendment to 29 CFR 1910.184, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(8) Amendment to 29 CFR 1910.190, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

ADMINISTRATIVE REGISTER - 1716

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, add references to a different standard and remove three standards, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding references to a different standard and removing three standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:314. Machinery and machine guarding. [Adoption of 29 CFR Part 1910.211-.222.]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 [Chapter 13A]

ADMINISTRATIVE REGISTER - 1717

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~rules and~~ administrative regulations~~, and standards~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]~~

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Clutch/Brake Control. (1) The language relating to clutch/brake controls on mechanical power presses with part revolution clutches in subsection (2) of this section shall apply in lieu of 29 CFR 1910.217(b)(7)(xii).

(2) 29 CFR 1910.217(b)(7)(xii) is amended to read: The clutch/brake control shall incorporate an automatic means to prevent initiation or continued activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.211-.222, Subpart O, "Machinery and Machine Guarding", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions.

(b) The revision to 29 CFR 1910.215, "Abrasive Wheel Machinery", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(c) The revision to 29 CFR 1910.216, "Mills and Calendars in the Rubber and Plastics Industries", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(d) The revisions to 29 CFR 1910.217, "Mechanical Power Presses", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.218, "Forging Machines", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revision to 29 CFR 1910.219, "Mechanical Power-Transmission Apparatus", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The removal of 29 CFR 1910.220, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(h) The removal of 29 CFR 1910.221, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(i) The removal of 29 CFR 1910.222, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. ~~[The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1910.211-.222 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~

(1) The amendments to 29 CFR 1910.211(d)(11)(iii) and (12) and the new paragraphs 1910.211(d)(11)(iv), (61), (62), (63), (64), (65), and (66), "Definitions," as published in the Federal Register, Volume 53, Number 40, March 14, 1988, are incorporated by reference.

(2) 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following: "This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the 'inch' position."

(a) Revisions to 29 CFR 1910.217(e)(1)(i) and (ii), "Mechanical Power Presses," as published in the Federal Register, Volume 61, Number 188, September 20, 1986, are incorporated by reference.

(b) The amendments to 29 CFR 1910.217(e)(3)(iii)(b) and the new paragraph (h) to 1910.217, "Mechanical Power Presses," as published in Federal Register, Volume 53, Number 40, March 14, 1988, are incorporated by reference.

(3) Revisions to 29 CFR 1910.218(a)(2)(i) and (ii), "Forging Machines," as published in the Federal Register, Volume 61, Number 188, September 20, 1986, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston,

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Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, add references to a different standard and remove three standards, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of

these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding references to a different standard and removing three standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add references to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

ADMINISTRATIVE REGISTER - 1719

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:315. Hand and portable powered tools and other hand-held equipment. [Adoption of 29 CFR Part 1910.241-.247.]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR
Part 1910 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations[, and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1910.241-.247, Subpart P, "Hand and Portable Powered Tools and Other Hand-Held Equipment", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The revisions to 29 CFR 1910.243, "Guarding of Portable Power Tools", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The removal of 29 CFR 1910.245, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(d) The removal of 29 CFR 1910.246, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(e) The removal of 29 CFR 1910.247, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March

7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.241-.247 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Amendments to 29 CFR 1910.243, "Guarding of Portable Powered Tools" as published in the Federal Register, Volume 60, Number 22, February 1, 1985 are incorporated by reference.]

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add a reference to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the

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regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adds a reference to a different standard and removes three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add a reference to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding a reference to a different standard and removing three standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add a reference to a different standard and remove three standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:316. Adoption of 29 CFR Part 1910.251-.257.

RELATES TO: KRS ~~[Chapter]~~ 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 ~~[Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~[rules and]~~ administrative regulations~~[-and standards]~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]~~

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety

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and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.251-257, Subpart Q, "Welding, Cutting, and Brazing", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The revision to 29 CFR 1910.251, "Definitions", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(c) The revisions to 29 CFR 1910.252, "General Requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.253, "Oxygen - Fuel Gas Welding and Cutting", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.254, "Arc Welding and Cutting", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The removal of 29 CFR 1910.256, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The removal of 29 CFR 1910.257, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. ~~(The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.251-257 revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions, as published in the Federal Register, Volume 55, Number 70, April 11, 1990: Revision to 29 CFR 1910.252, "Welding, Cutting, and Brazing," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notifica-

tion of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(4) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adds references to a different standard and removes two standards, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

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the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. adding references to a different standard and removing two standards, is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, add references to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:317. Special industries.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1910.261-.275, Subpart R, "Special Industries", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.262, "Textiles", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.263, "Bakery Equipment", as published in the Federal Register, Volume 61, Number 46, March 12, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.265, "Sawmills", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revisions to 29 CFR 1910.266, "Logging Operations", as published in the Federal Register, Volume 60, Number 174, September-

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ber 8, 1995, are incorporated by reference.

(g) The revisions to 29 CFR 1910.266, "Logging Operations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) The revisions to 29 CFR 1910.268, "Telecommunications", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) The revisions to 29 CFR 1910.272, "Grain Handling Facilities", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) The revisions to 29 CFR 1910.272, "Grain Handling Facilities", as published in the Federal Register, Volume 61, Number 47, March 8, 1996, are incorporated by reference.

(k) The removal of 29 CFR 1910.274, "Sources of Standards Operations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) The removal of 29 CFR 1910.275, "Standards Organization", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1910.261-275 revised as of July 1, 1994, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1910.266, "Logging", as published in the Federal Register, Volume 60, Number 196, October 12, 1994, are incorporated by reference.

(c) The revisions to 29 CFR 1910.266, "Logging", as published in the Federal Register, Volume 60, Number 174, September 8, 1995, are incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which

the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes add definitions and reformat the regulation to meet KRS Chapter 13A considerations, and, by reference, add references to a different standard, and remove two standards. Also, by reference, the proposed changes adopt technical changes to the grain handling facility standard to assure protection against engulfment, mechanical, and other hazards is provided without regard to the point at which the employee enters the structure, and adds a definition for "flat storage structure".

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation adopts federal changes to the regulations, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one

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or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes add definitions and reformat the regulation to meet KRS Chapter 13A considerations, and, by reference, add references to a different standard, and remove two standards. Also, by reference, the proposed changes adopt technical changes to the grain handling facility standard to assure protection against engulfment, mechanical, and other hazards is provided without regard to the point at which the employee enters the structure, and adds a definition for "flat storage structure".

3. Minimum or uniform standards contained in the federal mandate. The change in technical content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996, and March 8, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes add definitions and reformat the regulation to meet KRS Chapter 13A considerations, and, by reference, add references to a different standard, and remove two standards. Also, by reference, the proposed changes adopt technical changes to the grain handling facility standard to assure protection against engulfment, mechanical, and other hazards is provided without regard to the point at which the employee enters the structure, and adds a definition for "flat storage structure".

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:319. Commercial diving operations. [Adoption of 29 CFR Part 1910.401-.441.]

RELATES TO: KRS ~~Chapter~~ 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910 ~~Chapter 13A~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~rules and~~ administrative regulations~~[-and standards]~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]~~

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1910.401-.441, revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration are hereby incorporated by reference.

(b) The revisions to 29 CFR 1910.440, "Recordkeeping Requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. ~~[The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1910.401-.441 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, except-~~

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tions, and deletions:

(1) Amendment to 20 CFR 1010.401, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(2) Amendment to 20 CFR 1010.430(e)(1), "Commercial Diving Equipment," as published in the Federal Register, Volume 51, Number 181, September 18, 1986, is incorporated by reference.

(3) 20 CFR 1010.440(a)(1), "Commercial Diving Recordkeeping Requirements," as published in the Federal Register, Volume 51, Number 188, September 20, 1986, is removed.

(4) 20 CFR 1010 Subpart T Appendix B, "Commercial Diving Operations" as published in the Federal Register, Volume 50, Number 6, January 9 1985, is incorporated by reference.

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, update a reference, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, updates a reference, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, add a reference to a different standard and remove two standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. updating a reference is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal

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Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, update a reference, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it updates a reference. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:320. Air contaminants.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-.1500

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-.1500

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations[, and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) Definitions applicable to this part:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(c) "Employee" means any person employed except those employees excluded in KRS 338.021.

(d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(e) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same

meaning as and includes the words "regulation" and "rule".

(h) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601. [Definitions for Section 2 of this administrative regulation:

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono-disperse aerosol of 0.3 μ particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis-(2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis-(2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis-(2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis-(2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary or Health, Education and Welfare to act for the director.

(g) "Disposal" means the safe removal of 4,4'-Methylene bis-(2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis-(2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis-(2-chloroaniline).

(i) "External environment" means any environment external to regulated and nonregulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel of containment, of 4,4'-Methylene bis-(2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis-(2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis-(2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis-(2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(m) "Open vessel system" means an operation involving 4,4'-Methylene bis-(2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis-(2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis-(2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(2) Definitions for Section 2 [5] of this administrative regulation.

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono-disperse aerosol of three-tenths (0.3) μ particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of

4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary or Health, Education and Welfare to act for the Director.

(g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(i) "External environment" means any environment external to regulated and nonregulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet. [As used in the material incorporated by reference in Section 5 of this administrative regulation.]

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant Secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.]

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and

(d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;

2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in paragraph (b)13 of this subsection are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level or protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under subsection (5)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are release.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, other than those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

9. There shall be no connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify

correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering;

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment,

clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. Where toilets are in regulated areas, such toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (f)7b, and (g)3 of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance;

provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application for decontamination practices and purposes;

e. The purpose for and significance of emergency practices and procedures;

f. The employees specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline);

h. The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first raining and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and inplant location of the area(s) regulated and the address of each regulated area:

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure:

b. A description of the area involved, and the extent of known and possible employee and area contamination; and

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the circumstances to be taken, with specific

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completions dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon request to authorized representatives of the assistant secretary or the director; and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employees suitability for employment in the specific exposure.

Section 3. Laboratory Activities. (1) The requirements of this subsection shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-1016.

(a) Mechanical pipetting aids shall be used for all pipetting procedures.

(b) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(c) Surfaces on which chemicals covered by 1103-1016 are handled shall be protected from contamination.

(d) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(e) All other forms of chemicals covered by 1003-1016 shall be inactivated prior to disposal.

(f) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(g) Employees engaged in animal support activities shall be:

1. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before

engaging in other activities; and

4. Required to shower after the last exit of the day.

(h) Employees, other than those engaged only in animal support activities, each day shall be:

1. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suite, or fully buttoned laboratory coat;

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(i) Air pressure in laboratory areas and animal rooms where chemicals covered by 1003-1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(j) There shall be no connection between regulated areas and any other areas through the ventilation system.

(k) A current inventory of chemicals covered by 1003-1016 shall be maintained.

(l) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and

2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1003, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1004, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revisions to 29 CFR 1910.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(g) The revisions to 29 CFR 1910.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) The revisions to 29 CFR 1910.1010, "Benzidine", as published

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in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) The revisions to 29 CFR 1910.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) The revisions to 29 CFR 1910.1012, "Ethyleneimine," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(k) The revisions to 29 CFR 1910.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) The revisions to 29 CFR 1910.1014, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(m) The revisions to 29 CFR 1910.1015, "4-Dimethylamino-azobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(n) The revisions to 29 CFR 1910.1016, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(o) The revisions to 29 CFR 1910.1018, "Inorganic arsenic," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(p) The revisions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in the Federal Register, Volume 60, Number 196, October 11, 1995, are incorporated by reference.

(q) The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(r) The removal of 29 CFR 1910.1499, "Source of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(s) The removal of 29 CFR 1910.1500, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference. [The material in paragraph (a) through (b) of this subsection, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1994, is incorporated by reference:

(a) 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and

(b) 29 CFR 1910.1030(d)(3)(ix) through 29 CFR 1910.1500.]

(2) The language relating to gloves in Section 4(2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(3) This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The revisions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 125, June 29, 1995, are incorporated by reference.

(4) The revisions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in the Federal Register, Volume 60, Number 196, October 11, 1995, are incorporated by reference.

(5) The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 60, Number 245, December 22, 1994, are incorporated by reference.

(6) This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference

Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in general industry. ;

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes reformat the regulation to meet KRS Chapter 13A considerations, and, by reference, incorporate a number of minor technical corrections and eliminate redundant provisions.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only reformat the regulation to meet KRS Chapter 13A considerations, and, by reference, incorporate a number of minor

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technical corrections and eliminate redundant provisions.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes reformat the regulation to meet KRS Chapter 13A considerations, and, by reference, incorporate a number of minor technical corrections and eliminate redundant provisions.

3. Minimum or uniform standards contained in the federal mandate. The change in content, i.e. incorporating a number of minor technical changes is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes reformat the regulation to meet KRS Chapter 13A considerations, and, by reference, incorporate a number of minor technical corrections and eliminate redundant provisions.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it clarifies and reorganizes specific regulations, making minor technical changes, and eliminates redundant provisions. There will be no increase or decrease in local government revenues or significant expenditures.

These proposed amendments will not affect the number of local government employees.

Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:402. General safety and health provisions. [Adoption of 29 CFR Part 1926.20-32.]

RELATES TO: KRS ~~Chapter~~ 338.051, 338.061, 29 CFR 1926

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~rules and~~ administrative regulations ~~and standards~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]~~

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

(a) 29 CFR 1926.20-.35 revised as of July 1, 1995 published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The amendment to 29 CFR 1926.30, "Shipbuilding and ship repairing", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.

(c) The amendment to 29 CFR 1926.31, "Incorporation by reference" as published in the Federal Register, Volume 61, Number 46, March 7, 1996. [The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1926.20-.35 of the Code of Federal Regulations revised as of January 15, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following revisions, additions, and deletions:

~~(1) The addition to 29 CFR 1926.20, "General Safety and Health Provisions and Applicability of Standards", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.~~

~~(2) The correction to 29 CFR 1926.32, "Definitions", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.~~

~~(3) 29 CFR 1926.33, "Access to Employee Exposure and Medical Records", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.~~

~~(4) 29 CFR 1926.34, "Means of Egress", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e):~~

~~(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~[(2)] Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.~~

JOE NORSWORTHY, Chairman

ADMINISTRATIVE REGISTER - 1733

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS 338 Chapter in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adopts minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease

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in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

**Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)**

803 KAR 2:403. Occupational health and environmental controls.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926.50-.66

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926.50-.66

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]~~

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

(1) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;

(2) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1926.50-.66, Subpart D, "Environmental Controls", revised as of July 1, 1995 ~~[1994]~~, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) Revisions to 29 CFR 1926.55, "Gases, Vapors, Fumes, Dusts, and Mists", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference. ~~[1926.50, "Hazard Communication", as published in Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.]~~

(c) Revisions to 29 CFR 1926.57, "Ventilation", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the

proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, make minor corrections to the threshold limit values of airborne contaminants for construction, add captions to figures contained in this part.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, make minor corrections to the threshold limit values of airborne contaminants for construction.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public

health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, make minor corrections to the threshold limit values of airborne contaminants for construction, add captions to figures contained in this part.

3. Minimum or uniform standards contained in the federal mandate. The change in content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, make minor corrections to the threshold limit values of airborne contaminants for construction, add captions to figures contained in this part.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:404. Personal protective and life saving equipment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]~~

Section 1. Table E-4 Respirator Protection Factors. (1) The Table E-4 Respirator Protection factors found in Section 2 shall apply in lieu of Table E-4 found in 29 CFR 1926.103.

(2) Table E-4 Respiratory Protection Factors.

Respirator Protection Factors^a

Type of Respirator	Permitted for Use in		Respirator Protection Factor	
	Oxygen-deficient Atmosphere	Immediately-dangerous-to-life-or-health Atmosphere ¹	Qualitative Test	Quantitative Test
Particulate-filter, or half-mask face-piece ^{b,c}	No	No	10	As measured on each quarter-mask person with maximum of 100.
Vapor- or gas-removing, quarter-mask or half-mask facepiece ^c	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, ¹¹ whichever is less.
Combination particu-	No	No	10, or maximum use	As measured on each

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late-filter and vapor- or gas-removing, quarter-mask or half-mask facepiece ^{b,c}			limit or cartridge or canister for vapor or gas, whichever is less.	person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, ^{i,j} whichever is less.
Particulate-filter, full facepiece ^b	No	No	100	As measured on each person with maximum of 100 if dust, fume or mist filter is used, or maximum of 1000 if high-efficiency filter is used.
Vapor- or gas-removing, full facepiece	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000, or maximum use limit of cartridge or canister for vapor or gas ^{i,j} , whichever is less.
Combination particulate-filter and vapor- or gas-removing, full facepiece ^b	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.
Powered particulate-filter, any respiratory-inlet covering ^{b,c,d}	No	No (yes, if escape provisions are provided ^d)	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.	N/A
Powered vapor- or gas-removing, any respiratory-inlet covering ^{c,d}	No	No (yes, if escape provisions are provided ^d)	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas ^{i,j} whichever is less.	N/A
Powered combination particulate-filter and vapor or gas-removing, any respiratory-inlet covering ^{b,c,d}	No	No (yes, if escape provisions are provided ^d)	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, ^{i,j} whichever is less.	N/A
Airline, demand, quarter-mask or half-mask facepiece, with or without escape provisions ^{c,e}	Yes ^f	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Airline, demand, full facepiece, with or without escape provisions ^e	Yes ^f	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the

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				immediately-dangerous to-life-or-health (IDLH) values
Airline, continuous flow or pressure demand type, any facepiece, without escape provisions ^c	Yes ^f	No	N/A	N/A No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Airline, continuous flow or pressure demand type, any facepiece, with escape provisions ^{c,e}	Yes ^g	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factors is 10000 plus ^h .
Airline, continuous flow, helmet, hood, suit without escape provisions	Yes ^f	No	N/A	N/A No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Airline, continuous flow, helmet, hood, or suit, with escape provisions ^g	Yes ^g	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus ^h .
Hose mask, with or without blower, full facepiece	Yes ^f	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask facepiece ^c	Yes ^f	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full face-piece or mouth-piece/nose clamp ^c	Yes ^f (Yes, if respirator is used for mine rescue and mine recovery operations.)	No (yes, if respirator is used for mine rescue and mine recovery operations.)	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or health (IDHL) values except when the respirator is used for mine rescue and mine recovery operations.
Self-contained breathing apparatus, pressure-demand-type open-circuit or positive-	Yes ^g	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.

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pressure-type closed-circuit, quarter-mask or half-mask facepiece, full facepiece, or mouthpiece/nose clamp^c

Combination respirators not listed.

The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.

N/A means not applicable since a respirator-fitting test is not carried out.

^a respirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.

^b When the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).

^c If the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or mouthpiece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.

^d If the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

^e The escape provision shall be an auxiliary self-contained supply of respirable air.

^f "Oxygen deficiency - not immediately dangerous to life or health" - an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

^g "Oxygen deficiency - immediately dangerous to life or health" - an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

^h The protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.

ⁱ The service life of a vapor- or gas-removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

^j Vapor- and gas-removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory-inlet covering are not given, since such respirators are approved only for escape purposes.

Section 2. Incorporation by Reference. (1) The material in paragraphs (a) and (b) of this subsection, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, revised as of July 1, 1995 [1994], is incorporated by reference.

(a) 29 CFR 1926.95 to 29 CFR 1926.103(b)(2), excluding Table E-4 - Selection of Respirators.

(b) 29 CFR 1926.103(c) through 29 CFR 1926.107.

(2) "Table E-4 Respiratory Protection Factors", listing the types of respirators required for protection in dangerous atmospheres, found in Section 1(2) of this administrative regulation shall apply in lieu of "Table E-4 Selection of Respirators" found in 29 CFR 1926.103(b)(3).

(3) The revision to 29 CFR 1926.103, "Respiratory Protection", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference. [1926.104, "Safety Belts, Lifelines, and Lanyards", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(4) The withdrawal of the revision to 29 CFR 1926.104, "Safety Belts, Lifelines, and Lanyards", as published in the Federal Register, Volume 60, Number 148, August 2, 1995, is incorporated by reference.

(5) The revision to 29 CFR 1926.105, "Safety Nets", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(6) The withdrawal of the revision to 29 CFR 1926.105, "Safety Nets", as published in the Federal Register, Volume 60, Number 148, August 2, 1995, is incorporated by reference.

(7) The revision to 29 CFR 1926.107, "Definitions Applicable to this Subpart", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(8) The withdrawal of the revision to 29 CFR 1926.107, "Definitions Applicable to this Subpart", as published in the Federal Register, Volume 60, Number 148, August 2, 1995, is incorporated by reference.]

(4) [(9)] This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601, during the hours of 8 a.m. - 4:30 p.m.(ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written

comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, update references to the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, updates a reference, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, updates references to the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.

3. Minimum or uniform standards contained in the federal mandate. The change is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, update references to the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it updates a reference. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

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Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

**803 KAR 2:408. Tools - hand and power. [Adoption of 29 CFR
Part 1926.300-1926.306.]**

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1926
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR
1926 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations[, and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]

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

(a) 29 CFR 1926.300-.307 revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The amendment to 29 CFR 1926 Subpart I, "Tools-Hand and Power", as published in the Federal Register, Volume 61 Number 146, March 7, 1996.

(c) The amendment to 29 CFR 1926.300, "General requirements", as published in the Federal Register, Volume 61 Number 146, March 7, 1996.

(d) The amendment to 29 CFR 1926.304, "Woodworking tools", as published in the Federal Register, Volume 61 Number 146, March 7, 1996. [The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.300-.307 revised as of June 30, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.]

(1) The additions to 29 CFR 1926.300, "General Requirements", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(2) The additions to 29 CFR 1926.302, "Power-operated Hand Tools", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(3) The additions to 29 CFR 1926.303, "Abrasive Wheel and Tools", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(4) The additions to 29 CFR 1926.304, "Woodworking Tools", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(5) Revisions to 29 CFR 1926.305, as published in the Federal Register, Volume 55, Number 202, October 18, 1990, are incorporated by reference.

(6) The addition to 29 CFR 1926.305, "Jacks-lever and Ratchet, Screw, and Hydraulic", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(7) 29 CFR 1926.306, "Air Receivers", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(8) 29 CFR 1926.307, "Mechanical Power transmission Apparatus", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS

13A.224(3)(e);

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

[(2)] Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

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(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adopts minor and technical amendments, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this

administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:410. Electrical. [~~Adoption of 29 CFR Part 1926.400-.449.~~]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1926 STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules.] administrative regulations[~~and standards~~]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.~~]

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

(a) 29 CFR 1926.400-.449 revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The amendment to 29 CFR 1926 Subpart K, "Electrical", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(c) The amendment to 29 CFR 1926.416, "General requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(d) The amendment to 29 CFR 1926.417, "Locking and tagging of circuits", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference. [The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1926.400-.449 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) Revision of 29 CFR 1926, Subpart K, "Electrical," 1926.400, .401, .402, .403, .405, .406, .407, .408, .409, .416, .417, .418, .431, .432, .433, .441, .442 and .449, as published in Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

(2) The addition to 29 CFR 1926.416, "General Requirements", as published in Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(3) The addition to 29 CFR 1926.417, "Lookout and Tagging of Circuits", as published in Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

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~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e).~~

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

~~((2))~~ Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local

revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adopts minor and technical amendments, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

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3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

**Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)**

803 KAR 2:422. Rollover protective structures; overhead protection. [Adoption of 29 CFR Part 1926.1000-1003.]

RELATES TO: KRS ~~[Chapter]~~ 338.051, 338.061, 29 CFR 1926
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR
1926 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~[rules and]~~ administrative regulations ~~[and standards]~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]~~

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

(a) 29 CFR 1926.1000-1003 revised as of July 1, 1995 published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The amendment to 29 CFR 1926 Subpart W, "Rollover Protective Structures; Overhead Protection", as published in the Federal Register, Volume 61, Number 46, March 7, 1996 is incorporated by reference.

(c) The amendment to 29 CFR 1926.1002, "Protective Frames (rollover protective structures, known as ROPS) for wheel type agricultural and industrial tractors used in construction", as published in the Federal Register, Volume 61, Number 46, March 7, 1996 is incorporated by reference.

(d) The amendment to 29 CFR 1926.1003, "Overhead protection for operators of agricultural and industrial tractors", as published in the Federal Register, Volume 61, Number 46, March 7, 1996 is incorporated by reference. ~~[The Occupational Safety and Health Standards Board hereby adopts Chapter 20, Part 1926.1000-1003 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.]~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e);~~

~~(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~[(2)] Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received,

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the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adopts minor and technical amendments by adding references to national consensus standards, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, adopt minor and technical amendments by adding references to national consensus standards, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed

changes, by reference, adopt minor and technical amendments by adding references to national consensus standards, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

(a) 29 CFR 1926.1100-.1148 revised as of July 1, 1995 [4904], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[~~Volume 58, Number 124~~].

(b) 29 CFR 1926.1101, "Occupational Exposure to Asbestos", is amended, as follows:

1. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 134, July 13, 1995 is incorporated by reference.

2. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 189, September 29, 1995 is incorporated by reference.

(c) The amendment to 29 CFR 1926.1103, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(d) The amendment to 29 CFR 1926.1104, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(e) The amendment to 29 CFR 1926.1106, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(f) The amendment to 29 CFR 1926.1107, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The amendment to 29 CFR 1926.1108, "bis-chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(h) The amendment to 29 CFR 1926.1109, "beta-naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(i) The amendment to 29 CFR 1926.110, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7,

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1996, is incorporated by reference.

(j) The amendment to 29 CFR 1926.1111, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(k) The amendment to 29 CFR 1926.1112, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(l) The amendment to 29 CFR 1926.1113, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(m) The amendment to 29 CFR 1926.1114, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(n) The amendment to 29 CFR 1926.1115, "4-Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(o) The amendment to 29 CFR 1926.1116, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(p) The amendment to Appendix A to Part 1926, as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference. [The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 153, August 10, 1994, is incorporated by reference.]

~~2. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 34, February 21, 1995, is incorporated by reference.~~

~~3. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 125, June 29, 1995 is incorporated by reference.~~

~~4. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 124, July 13, 1995 is incorporated by reference.~~

~~5. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 180, September 29, 1995 is incorporated by reference.~~

~~(e) The amendment to 29 CFR 1926.1147, "Ethylene oxide," as published in the Federal Register, Volume 69, Number 143, July 29, 1993, is incorporated by reference.]~~

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, remove redundant wording from thirteen regulations, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, removes redundant wording from thirteen regulations, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(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:

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(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, remove redundant wording from thirteen regulations, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, remove redundant wording from thirteen regulations, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

**Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)**

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1915, 1917, 1918, 1919

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations[~~and standards~~]. Express authority

to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

(1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky;

(2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;

(3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(4) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. Incorporation by Reference. (1) The following is incorporated by reference:

(a) Chapter 29, Part 1915 of the Code of Federal Regulations, revised as of July 1, 1995 [~~1994~~], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

1. The revisions to 29 CFR 1915.1003, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

2. The revisions to 29 CFR 1915.1004, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

3. The revisions to 29 CFR 1915.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

4. The revisions to 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

5. The revisions to 29 CFR 1915.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

6. The revisions to 29 CFR 1915.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

7. The revisions to 29 CFR 1915.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

8. The revisions to 29 CFR 1915.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

9. The revisions to 29 CFR 1915.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

10. The revisions to 29 CFR 1915.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

11. The revisions to 29 CFR 1915.1014, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

12. The revisions to 29 CFR 1915.1015, "4-Dimethylamino-azobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

13. The revisions to 29 CFR 1915.1016, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference. [~~The revisions to 29 CFR 1915.12, "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 60, Number 51, March 16, 1995, are incorporated by reference.~~

~~2. The revisions to 29 CFR 1915.14, "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment",~~

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as published in the Federal Register, Volume 60, Number 51, March 16, 1995, are incorporated by reference.

3. The revisions to 29 CFR 1015.15, "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 60, Number 51, March 16, 1995, are incorporated by reference.

4. 29 CFR 1015.1001 is revised, as follows:

a. The revisions to 29 CFR 1015.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 125, June 29, 1995, are incorporated by reference.

b. The revisions to 29 CFR 1015.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 134, July 13, 1995, are incorporated by reference.

c. The revisions to 29 CFR 1015.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 180, September 20, 1995, are incorporated by reference.

5. The revisions to 29 CFR 1015.1200, "Hazard Communication", as published in the Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.]

(b) Chapter 29 Part 1917 of the Code of Federal Regulations, revised as of July 1, 1995 [1994], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(c) [The revisions 29 CFR 1017.28, "Hazard Communication," as published in the Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.

(d) Chapter 29 Part 1918 of the Code of Federal Regulations, revised as of July 1, 1995 [1994], published by the Office of the Federal Register, National Archives and Record Services, General Services Administration.

(e) The revisions 29 CFR 1918.00, "Hazard Communication," as published in the Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.]

(d) [(f)] Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1995 [1994], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W.L. Ralston

(1) Type and number of entities affected: The amendments to this

regulation affect all employers under KRS Chapter 338 in public sector maritime employment.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, incorporate a change in the federal standards whereby thirteen standards regulating carcinogens, which had redundant provisions, were combined under one regulation which covers all thirteen substances.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, incorporates a change in the federal standards whereby thirteen standards regulating carcinogens, which had redundant provisions, were combined under one regulation which covers all thirteen substances.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(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:

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(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, incorporate a change in the federal standards whereby thirteen standards regulating carcinogens, which had redundant provisions, were combined under one regulation which covers all thirteen substances.

3. Minimum or uniform standards contained in the federal mandate. The change is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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 proposed regulation affects those agencies of local government who employ employees involved in maritime operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government involved in maritime operations. These proposed changes, by reference, incorporate a change in the federal standards whereby thirteen standards regulating carcinogens, which had redundant provisions, were combined under one regulation which covers all thirteen substances.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates redundant provisions. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:600. Occupational safety and health standards for agriculture. [Adoption of 29 CFR Part 1928.]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1928
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR

1928

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules,] administrative regulations[~~and standards~~]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of agriculture.

Section 1. 29 CFR Part 1928.1 shall read as follows: "This part contains Occupational Safety and Health Standards applicable to agriculture operations. The provisions of this administrative regulation adopt and extend the applicability to established federal standards contained in 29 CFR Part 1928 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Chapter 29, Part 1928 of the Code of Federal Regulations revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revision to 1928.21, "Applicable standards in 29 CFR part 1910" as published in the Federal Register, Volume 61, Number 46, March 7, 1996.

(c) The revision to 1928.51, "Roll-over protective structures (ROPS) for tractors used in agricultural operations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.

(d) The removal of 1928.52, "Protective Frames for Wheel Type Agricultural Tractors Test Procedures and Performance Requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.

(e) The removal of 1928.53, "Protective Enclosures For Wheel Type Agricultural Tractors - Test Procedures and Performance Requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.

(f) The revision to 29 CFR 1928.1027, "Cadmium", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.

(2) This material may be inspected copied or obtained at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1928 of the Code of Federal Regulations revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions and deletions:

(1) 29 CFR 1928, "Hazard Communication", as published in the Federal Register, Volume 62, Number 163, August 24, 1987 is incorporated by reference.

(2) 29 CFR Part 1928.1 shall read as follows: "This part contains Occupational Safety and Health Standards applicable to agriculture operations. The provisions of this regulation adopt and extend the applicability to established federal standards contained in 29 CFR Part 1928 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(3) The revisions to 29 CFR 1928.21(a)(3), "Logging", as published in the Federal Register, Volume 60, Number 196, October 12, 1994 are incorporated by reference.

(4) The revisions to 29 CFR 1928.21, "Hazard Communication", as published in the Federal Register, Volume 60, Number 27, February 9, 1994 are incorporated by reference.

(5) 29 CFR "Field Sanitation", as published in the Federal

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~~Register, Volume Number 52, May 1, 1987, is incorporated by reference.~~

~~(6) The addition of 29 CFR 1928.21(a)(7), "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994 are incorporated by reference.~~

~~(7) Amendments to 29 CFR 1928.1027, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: September 13, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers under KRS Chapter 338 in the agricultural industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no additional costs attributed to these proposed changes.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition.

3. Reporting and paperwork requirements: These changes in the regulation will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation only, by reference, adopts minor and technical amendments, and reformats the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The change in content is identical to the federal standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended regulation adopts, by reference, federal standards published in the Federal Register, March 7, 1996.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions adopt provisions identical to federal requirements.

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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 proposed regulation affects local government.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government. These proposed changes, by reference, adopt minor and technical amendments, and reformat the regulation to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The proposed regulation should make it easier for local government to comply, as it eliminates duplication in the regulations. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workers' Claims (Amendment)

803 KAR 25:089. Workers' Compensation Medical Fee Schedule for Physicians.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. The function of this administrative regulation is to regulate the fees of "physicians" as defined in KRS 342.0011.

Section 1. Definitions. (1) "Medical fee schedule" refers to the [4994] Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" shall have the same meaning as in KRS 342.0011, and may also include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Department of Workers' Claims does not apply.

Section 2. Services Covered. The medical fee schedule governs all medical services provided to injured employees by physicians under KRS Chapter 342, and also applies to other health care or medical services providers to whom a listed CPT code is applicable if another fee schedule of the Department of Workers' Claims does not apply, unless a lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to administrative regulations.

Section 3. Fee Computation. The appropriate fee for a procedure covered by the medical fee schedule is obtained by multiplying the listed unit value for the medical procedure by the applicable conversion factor. The resulting fee is the maximum fee allowed for the service provided.

Section 4. Incorporation by Reference. (1) The 1994 Workers' Compensation Medical Fee Schedule for Physicians is hereby incorporated by reference.

(2) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - 410 West Chestnut Street, Suite 700, [Fourth Floor - The Meyer Building, 624 West Main Street,] Louisville, Kentucky 40202;

(c) ~~[Lexington - 950 National City Plaza, Lexington, Kentucky 40507;~~

~~(d)]~~ Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

~~(d) [(e)]~~ Pikeville - 101 Summit Drive [The Justice Building, 3rd Floor, 314-316 Second Street,] Pikeville, Kentucky 41501.

~~(e) [(d)]~~ Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose. Copies of the medical fee schedule may be obtained from the agency upon payment of reproduction costs.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: September 13, 1996

FILED WITH LRC: September 13, 1996 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, 405 Mero Street, Frankfort, Kentucky 40601, Rooms A, B, C, on Monday, October 21, 1996 at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, FAX (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact person: Marcy D. Ches

(1) Type and number of entities affected: This proposed administrative regulation will affect "physicians" as defined in KRS 342.0011, the employees who seek medical treatment under KRS Chapter 342, and the employers, self-insured employers, Special Fund, Uninsured Employers' Fund and insurance carriers making medical payments under the Kentucky Workers' Compensation Act.

(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: Overall reimbursement to the providers of medical services will be increased in all section of the Workers' Compensation Medical Fee Schedule for Physicians to assure that reimbursement for services provided to workers' compensation patients is limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers.

(b) Costs of doing business in geographical area in which the administrative regulation will be implemented to the extent available from public comments received: See response under subsection (a), above.

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

1. First year following implementation: No change.

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2. Second and subsequent years: No change.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be an initial expense to the Department of Workers' Claims for the copying and distribution of the new fee schedule. This expense is not expected to exceed \$10,000.00.

2. Continuing costs or savings: The agency expects to recover most of the expenses of providing copies of the Workers' Compensation Medical Fee Schedule for Physicians adopted in the ordinary regulation through the sale of the fee schedule at cost.

3. Additional factors increasing or decreasing costs. None

(b) Reporting and paperwork requirements: Copying and distribution of the new fee schedule.

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of this administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

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

(a) Geographic area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky, and will affect the reimbursement for some services rendered by out-of-state medical services providers. For further discussion of the economic impact see Section (2), above.

(b) Kentucky: See Response to (a) above.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Additional information or comments: None

(11) Tiering: Is tiering applied? No. All similarly situated or similarly licensed medical service providers to whom this regulation applies are treated equally and receive the same fees for services described in the schedule.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Explosives and Blasting (Amendment)

805 KAR 4:085. Dealer registration; record requirements.

RELATES TO: KRS 351.350, 26 CFR 55.121-55.129

STATUTORY AUTHORITY: KRS ~~Chapter 13A~~ 351.335

NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and administrative regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This administrative regulation effects the provisions of that law.

Section 1. Dealer Registration. Each person intending to engage in business as an importer or a manufacturer of, or a dealer in, explosive materials shall, before commencing such business, be required annually to register with the Department of Mines and Minerals. Each person shall annually fill out the registration form (EC-12), revised December 1996 ~~(1979)~~, incorporated herein by reference. This form may be obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m.

Section 2. Record Requirements. (1) Each person, corporation or entity engaged in the manufacture, purchase, distribution or selling, of explosives shall maintain, in a permanent form, such records of importation, production, shipment, receipt, sale or other disposition, including the number of the permit to purchase explosives.

(2) All records shall be retained for a period of not less than five (5) years from the date the transaction occurs or until discontinuance of business or operations. All records shall be subject to inspection and examination by the Department of Mines and Minerals.

(3) The records required to be maintained pursuant to Title 26, part 55.121-55.129 of the Code of Federal Regulations of the Bureau of Alcohol, Tobacco, and Firearms shall satisfy the requirements of this section.

Section 3. Magazine Identification. (1) ~~[All permanent, fixed, or stationary magazines shall be registered annually with the Department of Mines and Minerals. Registration forms EC 11, revised December, 1990, is incorporated herein by reference. This form may be obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m.]~~

~~(2)~~ All ~~[portable]~~ magazines shall have identification tags. Semitrailers containing blasting agents are excluded from this requirement provided they have a current license plate attached.

~~(2)~~ ~~(3)~~ The identification tags shall be approximately three (3) inches long by two (2) inches wide and shall be lettered or painted directly onto the magazine or attached such that normal use and weather will not render the tag illegible.

~~(3)~~ ~~(4)~~ The tags shall provide the following information:

(a) Name of owner;

(b) Address;

(c) Person responsible for security of the magazine; and

(d) Telephone number.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 13, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Friday, October 25, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 18, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Larry C. Schneider, Director, Division of Explosives and Blasting, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, Telephone:

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(606)246-2026, Fax: (606)246-2038.

REGULATORY IMPACT ANALYSIS

Contact Person: Larry C. Schneider

(1) Type and number of entities affected: This proposed administrative regulation will affect the 27 companies registered as explosives dealers and approximately 250 companies that file forms annually in order to register their permanent explosive storage facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although no public comments were received in response to the Notice of Intent to Promulgate this proposed amendment, no effect is anticipated on the cost of living or on employment in the Commonwealth due to this administrative regulation, as amended.

(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: Although no public comments were received in response to the Notice of Intent to Promulgate this proposed amendment, no significant effect on the cost of doing business in the Commonwealth is anticipated if it is enacted.

(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 proposed amendment will decrease paperwork requirements for the approximately 275 companies that currently must file annual registrations of their permanent explosive storage facilities. On average, these companies own four (4) permanent facilities, each of which must be registered. This elimination of paperwork for these companies may slightly decrease costs, though not significantly. There is no effect on competition.

2. Second and subsequent years: The annual registration of permanent explosives storage facilities is eliminated for the second and all subsequent years, resulting in the same small decrease in cost, reporting, and paperwork as in the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation, as proposed for amendment, will produce no direct or indirect costs or savings for the Department of Mines and Minerals in the first year of its implementation.

2. Continuing costs or savings: This amended administrative regulation will produce no continuing costs or savings for the Department of Mines and Minerals.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The Department of Mines and Minerals, Division of Explosives and Blasting, will no longer receive and process the permanent magazine, or explosives storage facilities, registrations submitted by companies and individuals. This will represent a small decrease in the Department's reporting and paperwork.

(4) Assessment of anticipated effect on state and local revenues: The implementation of this amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenues will be required for the implementation and enforcement of this administrative regulation, as amended, since it merely deletes a paperwork requirement currently enforced.

(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 were received concerning the economic impact of this proposed amendment; the Department therefore envisions no impact on economic activities due to this administrative regulation.

(b) Kentucky: As noted above, no public comments concerning economic impact were received. The administrative regulation, as proposed for amendment, decreases the cost of complying with the current, unamended administrative regulation slightly by eliminating approximately 1,000 registration forms.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are two alternatives to the amendment of this administrative regulation: (1) Do not change the requirement for registration of permanent magazines on an annual basis, or (2) change the registration to require different types of information than that currently required. Both alternatives were rejected, since the information currently being supplied to the Department of Mines and Minerals by means of magazine registration is now also being provided through the explosive permit application. Registration of permanent magazines represents a duplication of effort. The second alternative, to require additional or different information, was rejected since all the information needed by the Department to comply with its statutory mandate is provided by the explosive permit application. Developing additional information is deemed unnecessary.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendment to this administrative regulation has no effect on public health or environmental welfare of any specific geographic area of the Commonwealth.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the environment or public health.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This agency is aware of no statute, administrative regulation or government policy which may conflict with, overlap, or duplicate this administrative regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was used in the original regulation. Although the owners of permanent, fixed magazines were required to register these facilities annually with the department, the owners of portable magazines were not required to do so. This tiering was done in recognition of the fact that permanent facilities are, in general, much larger and are used to store much greater quantities of explosives. The department felt that the need for public safety and security of explosives would be best served if these facilities were identified. However, since the explosive permitting system has been enacted, all magazines, large or small, are currently located and identified adequately.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Explosives and Blasting (Amendment)

805 KAR 4:140. Misfires.

RELATES TO: KRS 351.350

STATUTORY AUTHORITY: KRS [Chapter 13A,] 351.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules

and administrative regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This administrative regulation effects the provisions of that law.

Section 1. (1) If a misfire is found, the blaster shall provide proper safeguards for excluding all employees from the danger zone.

(2) No other work shall be done except that necessary to remove the hazard of the misfire and only those employees necessary to do the work shall remain in the danger zone.

(3) No attempt shall be made to extract explosives from any charged or misfired hole; a new primer shall be put in and the hole reblasted. If refiring on the misfired hole presents a hazard, the explosives may be removed by washing out with water or, where the misfire is under water, blown out with air.

(4) If there are any misfires while using cap and fuse, all employees shall remain away from the charge for at least one (1) hour.

(5) When electric blasting caps have been used, employees shall not return to misfired holes for at least fifteen (15) minutes.

(6) When a completely nonelectric initiation system, other than safety fuse, has been used, persons shall not return to misfired holes for at least fifteen (15) minutes.

(7) No drilling, digging, or picking shall be permitted until all missed holes have been detonated or the authorized representative has approved that work can proceed.

(8) Misfires shall be handled under the direction of the blaster in charge. All connections shall be carefully traced and a search made for unexploded charges.

~~[(9) All misfires and premature detonations shall be reported to the department within three (3) days of such occurrence. The blaster shall provide information regarding the date and time of the occurrence, the type of explosives and initiation system used, and the cause of the malfunction if it is known.]~~

LAURA M. DOUGLAS, Secretary
JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 13, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Friday, October 25, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 18, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Larry C. Schneider, Director, Division of Explosives and Blasting, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, Telephone: (606)246-2026, Fax: (606)246-2038.

REGULATORY IMPACT ANALYSIS

Contact Person: Larry C. Schneider

(1) Type and number of entities affected: This proposed amendment will affect the approximately 3200 licensed blasters who use explosives in the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although no public comments were received in response to the Notice of Intent to Promulgate this amendment, no effect on the cost of living or on employment in the Commonwealth due to this amendment is anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although no public comments were received in response to the Notice of Intent to Promulgate this amendment, it will have no significant effect on the cost of doing business in the Commonwealth.

(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 proposed amendment will eliminate reporting of misfires to the Department of Mines and Minerals. The paperwork that is eliminated is minimal and does not represent any significant increase or decrease in costs, since most blasters rarely experience a reportable misfire and therefore seldom complete such paperwork.

2. Second and subsequent years: The reporting requirement is repealed for the second and all subsequent years. However, due to the very infrequent instances of misfires occurring, this amendment represents no significant change in costs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation, as amended, will produce no direct or indirect costs or savings on the Department of Mines and Minerals in the first year of its implementation.

2. Continuing costs or savings: This administrative regulation will produce no continuing costs or savings to the Department of Mines and Minerals.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs due to this amendment.

(b) Reporting and paperwork requirements: The Department of Mines and Minerals, Division of Explosives and Blasting, will no longer receive reports of misfires. However, the number of these reports has amounted to fewer than 25 per year.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenues will be required for the implementation and enforcement of this administrative regulation, since the amendment is simply eliminating one (1) report now required.

(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 were received concerning the economic impact of this regulation. Furthermore the department envisions no impact on economic activities due to this amendment.

(b) Kentucky: As expressed above, no public comments concerning economic impact were received. The administrative regulation has no significant affect on cost of complying with statutes already in force.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to this amendment would be to make no change in the reporting requirement. The department has determined that this report is used so rarely that it has no value as a tool to evaluate safe operations or products; therefore, eliminating this reporting requirement is justified on the basis that it serves no significant purpose.

(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 has no effect on public health or environmental welfare of any specific geographic area of the Commonwealth.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the environment or public health, whether or not this amendment is made.

(c) If detrimental effect would result, explain detrimental effect: There are none.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This agency is aware of no statute, administrative regulation or government policy which may conflict with, overlap, or duplicate this administrative regulation, as proposed for amendment.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used in this amendment, since the department found no justification for any entity to continue to report misfires. Therefore, the proposed amendment deletes this requirement for all blasters, in all types of blasting operations.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)**

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. These product changes were approved at the May 13, 1996 Plumbing Code Committee meeting. [These product changes were approved at the February 12, 1996 Plumbing Code Committee meeting.]

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" means the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a specification

listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) Any part or material shall not be used in drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22)

inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(h) Electric Drain System as manufactured by Myers for light commercial and household usage.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Deklite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the

relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

17. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480, all requiring an approved pressure and temperature relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

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(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safig material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 6, 1996

FILED WITH LRC: September 9, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 22, 1996 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 1996, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: There will be no impact on the cost of living or employment with this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Provides ability of manufacturer to market his product in 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:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

- (a) Direct and indirect costs or savings:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs:
- (b) Reporting and paperwork requirements: Unchanged by this amendment.
- (4) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.
- (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: N/A
 - (b) Kentucky: N/A
- (7) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A 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: Not applicable with this amendment.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable with this amendment.
 - (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: This is the only known law or policy dealing with this product.
- (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it as well as identify and publish the manufacturer's specification number of the material accepted in those installations. This amendment was approved by the Plumbing Code Committee and the Board of Housing to allow the use of new products for water supply pipes and allow use of previously approved pipe (CPVC) to be used underground with connections [CVPC water piping underground beneath a building] (Section 10 of this administrative regulation).

Section 1. Definition of Terms. (1) "ASSE" means American Society of Sanitary Engineers and copies of specifications identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(2) "ASTM" means American Society for Testing Materials and copies of specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) "Critical level (CL)" means the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) The pipe conveying and the surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or other piping connections to the system.

(4) Cross connections shall be prohibited except as approved by the authority having jurisdiction, and suitable protective devices shall be installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) If cross connection control devices are properly installed, they create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located near the water heater.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow includes both back pressure and back siphonage.

(a) Air gap. Provides the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap	
	When not affected by near wall (inches)	When affected by near wall (inches)
Lavatories and other		

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fixtures with effective opening not greater than 1/2 inch diameter

1

1 1/2

Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter

1 1/2

2 1/4

Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter

2

3

Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)

1

1 1/2

Effective openings greater than 1 inch

2 x
diameter of
effective
opening

3 x
diameter of
effective
opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps when spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap when spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap in most situations.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions only. These devices are manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. If applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
	On models without built-in vacuum breakers:
Dental units	On models without built-in vacuum breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine if they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. Potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard

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posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.
2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewage Treatment Lawn Sprinklers	A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of USC CSA B.64.4 Sizes 3/4" - 10"
(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats Commercial Pools N O	A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of USC CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants. N T O X I C	A.S.S.E. No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous pressure.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"
		Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Postmix Carbonated Beverage Machine	Special Approvals
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install	Process Tanks Dishwashers Soap Dispensers Washing Machines	A.S.S.E. No. 1001 ANSI A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3"

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		at least 6" above fixture rim. Protection against back siphonage only.		
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Mach. Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

Type of Connection	Degree of Hazard				Acceptable Protection			
	Severe	Moderate	Minor	Air Gap	Backflow		Back siphonage	
					Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic subst.		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump								
	X			X				
B. Outlet to receptacles containing toxic substances								
	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances								
		X		X	X	X	X	X
D. Outlet into domestic water tanks								
			X		Each case treated separately			
E. Flush valve toilets								
	X			X	X		X	X

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F. Flush valve urinals		X		X		X		X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substances	X			X		X		X
2. Nontoxic subst.		X		X		X		X
H. Outlets to recirculating cooling tower:								
1. With chemical additives	X			X		X		
2. Without chemical additives		X		X		X		

Section 3. Water Required. (1) A building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to A building shall not be less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures in the building.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they may be placed in the same trench if:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for purposes other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. An outlet on the nonpotable water distribution system used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. The branches, fittings or valves shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that shall be permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valves shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage. These fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No more than three and one-half (3 1/2) inch fixture branches are supplied from any one-half (1/2) inch pipe.

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4

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Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If mechanical shock absorbers are installed, they shall be in an accessible place.

(b) If mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing produced and labeled as ASTM B-586-73, fusion welded copper tubing produced and labeled as ASTM B-447-72 and ASTM B-251, DWV welded brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade H produced and labeled as ASTM A-268-68, filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-69 or ASTM F-714, cross-linked polyethylene (PEX), produced and labeled as ASTM F-876 for cold water only and ASTM F-877 for hot or cold water applications, cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) produced and labeled as ASTM F-1281, Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) produced and labeled as ASTM F-1282, copper tubing size PE produced and labeled as ASTM D-2737 for water service only if installed with compression couplings, Poly(vinyl chloride) (PVC) plastic pipe produced and labeled as ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe produced and labeled as ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 produced and labeled as ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as ASTM-D-3309-85b with brass or copper fittings. Plastic pipe and fittings shall bear the NSF seal of approval. Polybutylene pipe utilizing insert fittings of brass or copper shall use only copper clamping rings. Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall be produced and labeled as ASTM-D-3309-85b, and polybutylene plastic pipe produced and labeled as ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction. Polyethylene or PVC shall not be used below ground under a house or building. If Chlorinated Poly(vinyl chloride) (CPVC) joints or connections are installed below ground under a house or building, the water distribution system shall be tested to at least 100 psi before backfilling. (Refer also to 815 KAR 20:060 and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature or pressure balance devices to prevent sudden unanticipated changes in water temperature shall be installed to serve all shower compartments and shower-bath combinations.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to other family units or portions of the building.

(4) In buildings other than dwellings, shutoff valves shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and lawn sprinkler openings shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or a group of fixtures shall be valved.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; if a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system (see Section 17).

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. The approval shall be obtained prior to.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent; and

(2) The heat exchanger is pretested by the manufacturer to 450 PSI; and

(3) The water heater has a warning label advising that a nontoxic

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heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES
FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes.

(1) An adequate and safe water supply shall be provided to each mobile home conforming to the administrative regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

Section 22. Conservation of Water (refer to 815 KAR 20:070).

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 6, 1996

FILED WITH LRC: September 9, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 22, 1996 at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 1996, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.

(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: Some cost savings on installations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in 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 after implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Division of Plumbing's revenue will not be affected by the enforcement of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect except to make more quality materials available.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment will result if not implemented.

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

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Different types of pipes are approved for different uses.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Housing, Buildings and Construction

Division of Plumbing

(Amendment)

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation incorporates many of the provisions which have been in effect for some time with regard to residential and public buildings. The department has revised the old administrative regulation to make it easier to interpret. This administrative regulation includes the requirements of the [Department for Natural Resources and Environmental Protection Cabinet as well as the Cabinet for Health Services [Department for Human Resources] and the [Department of Justice Cabinet]. These inclusions simplify the plan process. This amendment is necessary to assure that women's restrooms have as many sanitary fixtures as men's restrooms in places of assembly

as called for in Senate Bill 24 of the 1996 General Assembly. [This amendment is necessary to increase the ratio of state prison inmates to plumbing fixtures while maintaining reasonable health and convenience considerations.]

Section 1. General Requirements. (1) In buildings accommodating males and females it shall be presumed that the occupants will be equally divided between males and females unless otherwise denoted.

(2) The occupancy load factor used to determine the total number of plumbing fixtures required in a building shall be that denoted in Chapter 10, Section 1008 of the 1994 [by Article 8, Section 806 of the 1988] edition of the Kentucky Building Code unless otherwise denoted.

(3) [Section 2.] All types of buildings shall be provided with toilet rooms on each level or floor; however, where the department determines that separate facilities on each level or floor are unnecessary, toilet rooms on every other level or floor shall be sufficient.

(4) [Section 3.] Toilet rooms for males and females shall be clearly marked.

Section 2. [4.] Toilet Floor Construction Requirements. Floors in toilet rooms providing facilities for use by the general public or employees shall be constructed of nonabsorbent materials. This requirement is not intended to restrict the use of wood floors. If [When] more than one (1) water closet and one (1) lavatory is installed, the [such a] toilet room shall have at least one (1) floor drain and one (1) accessible hose bibb.

Section 3. [5.] Theaters, Assembly Halls, Libraries, Museums and Art Galleries. (1) A separate water closet and lavatory shall be provided for males and females in the stage area.

(2) A drinking fountain shall be provided in the stage and auditorium area and a drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.

Section 4. Theaters, assembly halls and similar occupancies, [(3)] separate toilet rooms for males and females shall be provided as indicated in Sections 1 and 2 of this administrative regulation, as follows:

(1) Water closets for males.

(a) One (1) water closet for each 100 males [or females or fraction thereof]; two (2) water closets for 101 to 200 males [or females or fraction thereof]; three (3) water closets for 201 to 400 males [or females or fraction thereof]; over 400 add one (1) water closet for each additional 500 males or fraction thereof [and one (1) for each additional 300 females].

(b) One (1) urinal for eleven (11) to 100 [200] males; two (2) urinals for 101 to 300 [201 to 400]; three (3) urinals for 301 [401] to 600; add one (1) urinal for each additional 300 males or fraction thereof.

(2) Water closets for females. One (1) water closet for each fifty (50) females; two (2) water closets for fifty-one (51) to 100 females; three (3) water closets for 101 to 150 females; four (4) water closets for 151 to 200 females; one (1) water closet for each additional 150 females or fraction thereof.

(3) Lavatories. [(e)] One (1) lavatory for up to 100 males or females; two (2) lavatories for 101 to 200, three (3) lavatories for 201 to 400; four (4) lavatories for 401 to 750; add one (1) lavatory for each additional 500 or less over 750.

(4) Sinks. [(d)] One (1) service sink or slop sink on each floor.

(5) Number of fixtures. [(e)] The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.

Section 5. [(4)-(h)] Libraries, Museums and Art Galleries. Separate

toilet facilities for males and females shall be provided as indicated in Sections 1 and 2 of this administrative regulation, as follows:

(1) ~~[(a)]~~ One (1) water closet and one (1) lavatory for each 100 females or fraction thereof.

(2) ~~[(b)]~~ One (1) water closet and one (1) lavatory for each 200 males or fraction thereof.

(3) ~~[(c)]~~ One (1) urinal for eleven (11) to 200 males; two (2) urinals for 201 to 400; 33 urinals for 401 to 600; add one (1) urinal for each additional 300 males or fraction thereof.

(4) ~~[(d)]~~ One (1) service sink or slop sink on each floor.

(5) ~~[(e)]~~ A drinking fountain shall be provided for each 500 persons or fraction thereof.

(6) ~~[(f)]~~ The above number of fixtures shall be based upon the actual number of persons that can be accommodated.

(7) ~~[(g)]~~ Urinals may be substituted for water closets for males, not to exceed one-third (1/3) of the required total number of water closets but in all cases the minimum number of urinals shall be installed.

(8) ~~[(h)]~~ Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. School Buildings (relates also to 702 KAR 4:070 and 702 KAR 4:080). (1) A drinking fountain shall be provided on each floor and wing of a building and an additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof. The fountains shall be equipped with a protective cowl and the orifice shall be one (1) inch above the overflow rim of the fountain.

(2) Elementary through secondary level school buildings shall be provided with the following:

(a) Water closets for males shall be installed in the following proportions:

1. One (1) water closet for up to twenty-five (25) pupils.
2. Two (2) water closets for twenty-six (26) to 100 pupils.
3. One (1) water closet for each 100 pupils or fraction thereof in excess of 100.

(b) Urinals for males shall be installed in the following proportions:

1. One (1) urinal for up to twenty-five (25) pupils.
2. Two (2) urinals for twenty-six (26) to fifty (50) pupils.
3. Four (4) urinals for fifty-one (51) to 100 pupils.
4. Six (6) urinals for 101 to 200 pupils.
5. Eight (8) urinals for 201 to 300 pupils.
6. Ten (10) urinals for 301 to 400 pupils.
7. Twelve (12) urinals for 401 to 500 pupils.
8. One (1) urinal for each fifty (50) pupils or fraction thereof in excess of 500.

(c) Water closets for females shall be installed in the following proportions:

1. Two (2) water closets for up to twenty-five (25) pupils.
2. Three (3) water closets for twenty-six (26) to fifty (50) pupils.
3. Six (6) water closets for fifty-one (51) to 100 pupils.
4. Eight (8) water closets for 101 to 200 pupils.
5. Ten (10) water closets for 201 to 300 pupils.
6. Twelve (12) water closets for 301 to 400 pupils.
7. Fourteen (14) water closets for 401 to 500 pupils.
8. One (1) water closet for each forty (40) pupils or fraction thereof in excess of 500.

(d) Lavatories for male and female pupils shall be installed in the following proportions:

1. One (1) lavatory for each twenty-five (25) pupils or fraction thereof.
2. Two (2) lavatories for each fifty (50) pupils or fraction thereof.
3. One (1) lavatory for each fifty (50) pupils or fraction thereof over fifty (50).
4. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin when provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.

(3) One (1) service sink or slop sink shall be installed on each

floor of a building.

(4) ~~If [When]~~ detached relocatable classrooms are used, sanitary facilities ~~shall [will]~~ not be required, ~~if [provided]~~ it is within a distance not to exceed thirty-five (35) feet from the main structure and there are sufficient fixtures in the main structure to serve the entire capacity of the school, including the relocatable classrooms.

(5) Water closets for use in the above facilities shall be of the elongated bowl type with a split open front seat.

Section 7. Schools of Higher Education and Similar Educational Facilities. In schools of higher education and similar institutions there shall be installed:

(1) One (1) water closet for each fifty (50) males or one (1) water closet for each twenty-five (25) females or fraction thereof.

(2) One (1) lavatory for each fifty (50) males or females or fraction thereof.

(3) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.

(4) One (1) urinal shall be provided for each thirty (30) males or fraction thereof. One (1) water closet less than the number specified may be provided for each urinal installed except that the number of water closets in such cases shall not be reduced to less than two-thirds (2/3) of the minimum specified.

(5) Water closets for use in above facilities shall be of the elongated bowl type with a split open front seat.

Section 8. Public Garages and Service Stations. Separate toilet rooms with at least a water closet and lavatory for females and a water closet, lavatory and urinal for males shall be provided. Water closets shall be of the elongated bowl type with a split open front seat.

Section 9. Churches. Sanitary facilities shall be provided in churches as follows:

(1) One (1) drinking fountain for each 400 persons or fraction thereof.

(2) One (1) water closet for each 150 females or fraction thereof.

(3) One (1) water closet for each 300 males or fraction thereof.

(4) One (1) urinal for each 150 males or fraction thereof.

(5) One (1) lavatory for each 150 persons or fraction thereof.

Section 10. Transient Facilities (relates also to 902 KAR 10:010).

(1) Hotels and motels with private rooms shall have one (1) water closet, one (1) lavatory and one (1) bathtub or shower per room.

(2) In the public and service areas, there shall be:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof.

(b) One (1) water closet for each fifteen (15) females or fraction thereof.

(c) One (1) lavatory for each twenty-five (25) males or females or fraction thereof.

(d) One (1) urinal for eleven (11) to 100 males then one (1) for each additional fifty (50) or fraction thereof.

(e) One (1) bathtub or shower, if needed, for each ten (10) males or females or fraction thereof.

(f) One (1) drinking fountain for each seventy-five (75) or fraction thereof on each floor.

(g) One (1) service sink or slop sink on each floor.

(3) In residential-type buildings, there shall be one (1) water closet, one (1) lavatory and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.

(4) In rooming houses with private baths, they shall have one (1) water closet, one (1) lavatory and one (1) bathtub or shower per room.

(5) In rooming houses without private baths, there shall be:

(a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) or fraction thereof.

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(b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) or fraction thereof.

(c) One (1) urinal for eleven (11) to 100 males, then one (1) for each additional fifty (50) or fraction thereof.

(d) One (1) lavatory for each ten (10) males or females or fraction thereof.

(e) One (1) bathtub or shower for each ten (10) males or females or fraction thereof.

Section 11. Dormitories: School, Labor or Institutional (relates also to 902 KAR 10:040). In dormitories, there shall be installed:

(1) One (1) water closet for up to ten (10) males or one (1) water closet for up to eight (8) females; add one (1) water closet for each additional twenty-five (25) males or fraction thereof and one (1) water closet for each additional twenty (20) females or fraction thereof.

(2)(a) One (1) urinal for each twenty-five (25) males or fraction thereof. Over 150 males add one (1) fixture for each additional fifty (50) males or fraction thereof.

(b) If ~~Where~~ urinals are provided for women, the same number shall be provided as for men.

(c) If ~~Where~~ urinals are provided, they may be substituted for water closets, not to exceed one-third (1/3) of the required total number of water closets.

(d) Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.

(3)(a) One (1) lavatory for one (1) to twelve (12) persons. Add one (1) lavatory for each twenty (20) males and each fifteen (15) females.

(b) Separate dental lavatories shall ~~should~~ be provided in community toilet rooms. A ratio of one (1) dental lavatory to each fifty (50) persons.

(4) One (1) bathtub or shower for each eight (8) persons. Over 150 persons add one (1) fixture for each twenty (20) persons. For women's dormitories, there shall be installed additional bathtubs at the ratio of one (1) for each thirty (30) women.

(5) One (1) drinking fountain for each seventy-five (75) persons.

(6) One (1) laundry tray or clothes washer for each fifty (50) persons.

(7) One (1) service sink or slop sink for each 100 persons.

Section 12. Hospitals, Nursing Homes and Institutions (relates also to 902 KAR 20:031, 902 KAR 20:046, 902 KAR 20:056, 902 KAR 9:010). Sanitary facilities shall be provided on each floor level and shall conform to the following:

(1) Hospitals.

(a) Wards.

1. One (1) water closet for each ten (10) patients.

2. One (1) lavatory for each ten (10) patients.

3. One (1) tub/shower for each fifteen (15) patients.

4. One (1) drinking fountain for each 100 patients.

(b) Individual rooms: one (1) water closet, one (1) lavatory and one (1) tub/shower.

(c) Waiting rooms: one (1) water closet and one (1) lavatory.

(2) Nursing homes and institutions (other than penal).

(a) One (1) water closet for each twenty-five (25) males or fraction thereof.

(b) One (1) water closet for each twenty (20) females or fraction thereof.

(c) One (1) lavatory for each ten (10) persons or fraction thereof.

(d) One (1) urinal for each fifty (50) males.

(e) One (1) tub or shower for each fifteen (15) persons or fraction thereof.

(f) One (1) drinking fountain on each floor.

(g) One (1) service sink or slop sink on each floor.

(3) Institutions, penal.

(a) Cell.

1. One (1) prison type water closet.

2. One (1) prison type lavatory.

(b) Day rooms and dormitories.

1. One (1) water closet for each eight (8) female inmates or fraction thereof and one (1) water closet for each twelve (12) male inmates or fraction thereof.

2. One (1) lavatory for each twelve (12) inmates or fraction thereof.

3. One (1) shower for each fifteen (15) inmates or fraction thereof.

4. One (1) urinal may be substituted for each water closet but in no instance shall the water closets be reduced to less than one-half (1/2) the number required.

5. One (1) drinking fountain per floor.

6. One (1) service sink or slop sink per floor.

(c) Toilet facilities for employees shall be located in separate rooms from those in which fixtures for the use of inmates or patients are located.

(d) One (1) drinking fountain on each floor.

(e) One (1) service sink or slop sink per floor.

Section 13. Workshops, Factories, Mercantile and Office Buildings. Separate toilet facilities shall be provided for males and females on each floor unless otherwise denoted.

(1) Workshops and factories: Sanitary facilities shall conform to the following:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100.

(b) One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100.

(c) One (1) urinal for eleven (11) to fifty (50) employees.

(d) Two (2) urinals for fifty-one (51) to 100 employees.

(e) One (1) lavatory for each twenty-five (25) females or fraction thereof, up to 100.

(f) One (1) water closet for each fifteen (15) females or fraction thereof up to 100.

(g) When in excess of 100, there shall be an additional water closet for each thirty (30) males and each thirty (30) females or fraction thereof; one (1) lavatory for each additional fifty (50) males and females or fraction thereof; one (1) urinal for each 100 males or fraction thereof.

(h) One (1) shower for each fifteen (15) persons exposed to skin contamination from irritating, infectious or poisonous materials.

(i) One (1) drinking fountain on each floor for each fifty (50) employees. In excess of 100 employees there shall be an additional drinking fountain on each floor for each additional seventy-five (75) persons.

(j) One (1) service sink or slop sink per floor.

(k) Individual sinks or wash troughs may be used in lieu of lavatories. Twenty-four (24) inches of sink or trough, when provided with water, or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.

(2) Mercantile.

(a) Sanitary facilities within each store shall be provided for employees and if ~~when~~ more than five (5) persons are employed, separate facilities for each sex shall be provided. EXCEPTION: For stores containing no more than 3,000 square feet of total gross floor area, employee facilities are provided within a centralized toilet room area or areas having a travel distance of no more than 500 feet.

(b) Sanitary facilities shall be provided for customers when the building contains 5,000 square feet or more. In malls and shopping centers, the required facilities, based on one (1) person per 100 square feet of total area, may be installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of any store does not exceed 500 feet and if accessible to physically disabled persons.

(c) Sanitary facilities shall be provided as stated in this section and shall conform as follows:

1. One (1) water closet for one (1) to 100 persons.

2. Two (2) water closets for 101 to 200 persons.
3. Three (3) water closets for 201 to 400 persons.
4. One (1) water closet for each 500 males, or 300 females, in excess of 400.
5. One (1) urinal for one (1) to 200 males.
6. Two (2) urinals for 201 to 400 males.
7. Three (3) urinals for 401 to 600 males.
8. One (1) urinal for each 300 males, or fraction thereof, over 600.
9. One (1) lavatory for one (1) to 200 persons.
10. Two (2) lavatories for 201 to 400 persons.
11. Three (3) lavatories for 401 to 700 persons.
12. One (1) lavatory for each 500 persons, or fraction thereof, in excess of 700.
13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof.

14. One (1) service sink or slop sink per floor.

(3) Office buildings.

(a) Sanitary facilities within office buildings shall be provided for employees and if ~~when~~ more than five (5) persons are employed, separate facilities for each sex shall be provided. EXCEPTION: For office buildings containing no more than 3,000 square feet of total gross floor area, employee facilities are not required if adequate interior facilities are provided within a centralized toilet room area or areas having a travel distance of no more than 500 feet.

(b) Sanitary facilities shall be provided for customers when the office building or space contains 5,000 square feet or more. In office buildings, the required facilities, based on one (1) person per 100 square feet of total area, may be installed within the individual shops, or in a central toilet room area or areas if the distance from the main entrance of any office does not exceed 500 feet and if accessible to physically disabled persons.

(c) Sanitary facilities shall be provided as stated in this section and shall conform as follows:

1. One (1) water closet for one (1) to fifteen (15) persons.
2. Two (2) water closets for sixteen (16) to thirty-five (35) persons.
3. Three (3) water closets for thirty-six (36) to fifty-five (55) persons.
4. Four (4) water closets for fifty-six (56) to eighty (80) persons.
5. Five (5) water closets for eighty-one (81) to 110 persons.
6. Six (6) water closets for 111 to 150 persons.
7. One (1) water closet for each forty (40) additional persons.
8. One (1) lavatory for one (1) to fifteen (15) persons.
9. Two (2) lavatories for sixteen (16) to thirty-five (35) persons.
10. Three (3) lavatories for thirty-six (36) to sixty (60) persons.
11. Four (4) lavatories for sixty-one (61) to ninety (90) persons.
12. Five (5) lavatories for ninety-one (91) to 125 persons.
13. One (1) lavatory for each forty-five (45) additional persons.
14. If ~~Whenever~~ urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed except that the number of water closets in such cases shall not be reduced to less than seventy (70) percent of the minimum specified.
15. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.

Section 14. Swimming Pool Bathhouses (relates also to 902 KAR 10:120 ~~401 KAR 6:030~~). (1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a tight partition, each designated for "Males" or "Men" and the other "Females" or "Women." (2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather loading, as defined in 902 KAR 10:120 ~~401 KAR 6:030, Section 7(5)~~, and shall conform to the following:

(a) For swimming pools in which the total bather capacity is 200 persons or less:

1. One (1) water closet for each seventy-five (75) males or fraction thereof.

~~2. One (1) water closet for each fifty (50) females or fraction thereof.~~

~~3. One (1) urinal for each seventy-five (75) males or fraction thereof.~~

~~4. One (1) lavatory for each 100 persons or fraction thereof.~~

~~5. One (1) shower per each fifty (50) persons or fraction thereof.~~

~~6. One (1) drinking fountain per each 200 persons or fraction thereof.~~

(b) For toilet facilities in which the total bather capacity exceeds 200 persons, the following minimum fixtures shall be provided:

1. Five (5) water closets for 201 to 400 females; add one (1) for each additional 250 females.

2. Three (3) water closets for 201 to 400 males; add one (1) water closet for each additional 500 males.

3. Three (3) urinals for 201 to 400 males; add one (1) urinal for each additional 500 males or fraction thereof.

(c) One (1) lavatory for up to 150 males or females; two (2) lavatories for 151 to 400 males or females; three (3) lavatories for 401 to 750 males or females; add one (1) lavatory for each additional 750 males or females over 750.

(d) One (1) shower per each fifty (50) persons or fraction thereof up to 150; after that, one (1) shower per each 500 persons.

(e) One (1) drinking fountain per each 500 persons or fraction thereof.

(3) Fixture schedules shall be increased for pools at schools or similar locations where bather loads may reach peaks due to schedules of use. Pools used by groups or classes on regular time schedules of one (1) hour or less shall have one (1) shower for each six (6) swimmers, or one (1) shower for each ten (10) swimmers if the period is two (2) hours.

(4) Satisfactorily designed and located shower facilities, including warm water and soap, shall be provided for each sex. Showers shall be supplied with water at a temperature of no less than ninety (90) degrees Fahrenheit, and at a flow rate of at least three (3) gallons per minute. Thermostatic, tempering or mixing valves shall be installed to prevent scalding of the bathers.

(5) The requirement relating to bathhouse toilet room and shower facilities may be waived if the ~~when such~~ facilities are conveniently available to pool patrons within 150 feet from the pool.

Section 15. Park Service Buildings or Bathhouses (relates to 902 KAR 15:020). (1) Except for self-contained recreational vehicle parks, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified.

(2) Except for self-contained recreational vehicle parks, sanitary facilities shall be provided as follows:

(a) One (1) to fifteen (15) vehicle spaces.

1. Males. One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower.

2. Females. One (1) water closet, one (1) lavatory and one (1) shower.

(b) Sixteen (16) to thirty (30) vehicle spaces.

1. Males. One (1) water closet, one (1) urinal, two (2) lavatories and two (2) showers.

2. Females. Two (2) water closets, two (2) lavatories and two (2) showers.

(c) Thirty-one (31) to forty-five (45) vehicle spaces.

1. Males. Two (2) water closets, one (1) urinal, three (3) lavatories and three (3) showers.

2. Females. Two (2) water closets, three (3) lavatories and three (3) showers.

(d) Forty-six (46) to sixty (60) vehicle spaces.

1. Males. Two (2) water closets, two (2) urinals, three (3) lavatories and three (3) showers.

2. Females. Three (3) water closets, three (3) lavatories and three (3) showers.

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(e) Sixty-one (61) to eighty (80) vehicle spaces.

1. Males. Three (3) water closets, two (2) urinals, four (4) lavatories and four (4) showers.

2. Females. Four (4) water closets, four (4) lavatories and four (4) showers.

(f) Eighty-one (81) to 100 vehicle spaces.

1. Males. Four (4) water closets, two (2) urinals, five (5) lavatories and five (5) showers.

2. Females. Five (5) water closets, five (5) lavatories and five (5) showers.

(g) If ~~When~~ over 100 vehicle spaces are provided there shall be one (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof; one (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and one (1) additional urinal for males per additional 100 vehicle spaces.

Section 16. Residential and Day Camp Sites (relates to 902 KAR 10:040). (1) Each residential and day camp site shall be provided with sanitary facilities for each sex as specified.

(2) Sanitary facilities shall be provided as listed below, but ~~[except, however,]~~ day camps shall not be required to provide shower facilities.

(a) One (1) to eighteen (18) persons served.

1. Males. One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower.

2. Females. Two (2) water closets, one (1) lavatory and one (1) shower.

(b) Nineteen (19) to thirty-three (33) persons served.

1. Males. Two (2) water closets, one (1) urinal, two (2) lavatories and two (2) showers.

2. Females. Two (2) water closets, two lavatories and two showers.

(c) Thirty-four (34) to forty-eight (48) persons served.

1. Males. Two (2) water closets, two (2) urinals, two (2) lavatories and three (3) showers.

2. Females. Three (3) water closets, two (2) lavatories and three (3) showers.

(d) Forty-nine (49) to sixty-three (63) persons served.

1. Males. Three (3) water closets, two (2) urinals, three (3) lavatories and four (4) showers.

2. Females. Four (4) water closets, three (3) lavatories and four (4) showers.

(e) Sixty-four (64) to seventy-nine (79) persons served.

1. Males. Three (3) water closets, three (3) urinals, three (3) lavatories and five (5) showers.

2. Females. Five (5) water closets, three (3) lavatories and five (5) showers.

(f) Eighty (80) to ninety-five (95) persons served.

1. Males. Four (4) water closets, three (3) urinals, four (4) lavatories and six (6) showers.

2. Females. Six (6) water closets, four (4) lavatories, and six (6) showers.

(g) If ~~When~~ over ninety-five (95) persons are served, there shall be provided: One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served; one (1) additional shower for each twenty (20) persons, or fraction thereof, served; one (1) urinal per fifty (50) additional males or fraction thereof.

(h) Water closets may be substituted for urinals if ~~when~~ facilities are to ~~may~~ be used by both sexes.

Section 17. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. (relates to 902 KAR 10:020 and 902 KAR 45:005).

(1) Food stores.

(a) If more than ~~When in excess of~~ five (5) persons of different

sex are employed, separate facilities shall be provided for the employees.

(b) Sanitary facilities shall be provided for customers when the building contains 5,000 square feet or more. In malls and shopping centers, the required facilities, based on one (1) person per fifty (50) square feet, may be installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of any store does not exceed 500 feet.

(c) 1. One (1) water closet for one (1) to 100 persons.

2. Two (2) water closets for 101 to 200 persons.

3. Three (3) water closets for 201 to 400 persons.

4. One (1) water closet for each 500 males or 300 females in excess of 400.

5. One (1) urinal for eleven (11) to 200 males.

6. Two (2) urinals for 201 to 400 males.

7. Three (3) urinals for 401 to 600 males.

8. One (1) urinal for each 300 males or fraction thereof, over 600.

9. One (1) lavatory for one (1) to 200 persons.

10. Two (2) lavatories for 201 to 400 persons.

11. Three (3) lavatories for 401 to 700 persons.

12. One (1) lavatory for each 500 persons or fraction thereof in excess of 700.

13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof.

14. One (1) service sink, utility sink or curbed mop basin per floor as required.

(2) Restaurants.

(a) If more than ~~When in excess of~~ five (5) persons of different sex are employed, separate facilities shall be provided for the employees.

(b) In new establishments or establishments that are extensively altered or changed from another type occupancy to a restaurant, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees. ~~[provided, that]~~ Carryout type food service operations shall be exempted from providing toilet facilities for the use of their patrons.

(c) 1. Two (2) water closets for one (1) to 100 persons.

2. Three (3) water closets for 101 to 200 persons.

3. Four (4) water closets for 201 to 300 persons.

4. One (1) water closet for each additional 200 persons or fraction thereof over 300.

(d) 1. One (1) urinal for eleven (11) to 200 males.

2. One (1) urinal for each additional 150 males or fraction thereof over 150.

(e) 1. One (1) lavatory for one (1) to 200 persons.

2. Two (2) lavatories for 201 to 400 persons.

3. Three (3) lavatories for 401 to 600 persons.

4. One (1) lavatory for each additional 200 persons or fraction thereof over 600.

(f) 1. One (1) drinking fountain for one (1) to 100 persons.

2. Two (2) drinking fountains for 101 to 500 persons or fraction thereof.

(g) If ~~When~~ food is consumed indoors on premises, water stations may be substituted for drinking fountains.

(h) One (1) service sink, utility sink or curbed mop basin on each floor as required.

(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees. ~~[However,]~~ If the service or utility sink is placed in a location readily accessible to the employees as determined by the Cabinet for Human Resources, it may substitute for the lavatory.

Section 18. Temporary Facilities for Construction Projects. Separate sanitary fixtures shall be provided as scheduled below for both males and females:

(1) One (1) water closet per thirty (30) males or fraction thereof.

(2) One (1) urinal per thirty (30) males or fraction thereof.

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- (3) One (1) lavatory per thirty (30) males or fraction thereof.
- (4) One (1) water closet per twenty (20) females or fraction thereof.
- (5) One (1) lavatory per twenty (20) females or fraction thereof.
- (6) One (1) drinking fountain per 100 persons or fraction thereof.

[Section 10. The fixture requirements of this administrative regulation are also compiled in table form which is available from the Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.]

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 6, 1996

FILED WITH LRC: September 9, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 22, 1996 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 1996, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

- (1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.
- (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: May be slight decrease in costs in initial installation due to less facilities in pool settings.
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in 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: No reporting or paperwork required by users of the State Plumbing Code.
 - 2. Second and subsequent years:
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.
 - (4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.
 - (5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Division of Plumbing's revenue will not be affected by the enforcement of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review all proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Convenience for women to assure that women's restrooms have as many fixtures as men's restrooms in places of assembly. Also, in pool settings the previous fixtures were found to be excessive.

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

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

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Different number of fixtures are required depending on the type of occupancy and number of occupants.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (Amendment)

815 KAR 25:010. Manufactured homes.

RELATES TO: KRS 227.550 through 227.660, 227.990, 42 USC 5401

STATUTORY AUTHORITY: KRS 227.570, 227.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.570 and 227.590 requires the Manufactured [Mobile] Home Certification and Licensure Board to establish, and the Office of State Fire Marshal's Office to enforce, [rules and] administrative regulations governing the standards for manufactured housing; and the office of the State Fire Marshal to license manufactured home dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. This administrative regulation is necessary to establish standards for the design, manufacture, installation and sale of new and used manufactured homes, [which are manufactured, sold or leased for use within or outside of the Commonwealth by dealers and manufacturers, or manufactured homes constructed in facilities located within or outside the Commonwealth.] This administrative regulation is consistent with Title 6 of the Federal Housing and Community Development Act of 1974 and is intended to assure safety for owners and occupiers of new and used manufactured homes sold by dealers. This amendment is necessary to bring this administrative regulation into conformity with House Bill 477 enacted by the 1996 Kentucky General Assembly and to otherwise assure that the proper seals and labels are on each home sold, [specify tie-down requirements given to the authority having jurisdiction under referenced standards.]

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Section 1. Definitions. In addition to the following definitions, the definitions of the NFPA 501 (B) incorporated by reference in Section 4(4) of this administrative regulation and the HUD Act shall apply:

(1) "Act" means the Manufactured Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency testing" means, that for purposes of approving the use of ancillary equipment and apparatus in association with the installation of a manufactured home, an independent organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or observe experimental testing of standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification or removal of equipment or installations which may affect the body and frame design and construction, as well as the plumbing, heat-producing, cooling, fuel burning or electrical systems and smoke detectors. It shall include, but not be limited to:

(a) The addition or deletion of windows, doors or partitions;

(b) The addition of an electrical circuit to accommodate a washer or dryer;

(c) The addition of a central air condition system when the unit was not factory installed;

(d) The conversion of a heating, cooling, fuel burning system from one (1) fuel to another, such as electric to gas or gas to electric or oil;

(e) The use of improperly listed materials for the repair of a unit or the installation of an unlisted heating, cooling or fuel burning appliance;

(f) The replacement of equipment in kind, i.e., gas furnace with gas furnace or the replacement or changing of furniture or appliances to accommodate the consumer or other cosmetic changes shall not constitute an alteration or conversion.

(4) "ANSI" means the American National Standards Institute.

(5) "B seal" as defined by KRS 227.550(3) is for application on used manufactured and mobile homes. This definition includes two (2) types of "B" seals.

(a) A "B1 seal" represents that the unit has been inspected and found to be in compliance with applicable standards.

(b) A "B2 seal" represents that the unit has been inspected and found not to be in compliance with applicable codes; that it is a salvage only unit.

(6) "Board" means the Manufactured Home Certification and Licensure Board defined in KRS 227.550(1).

(7) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell manufactured housing within the state to licensed Kentucky dealers.

(8) "Certified inspector" means a person who is not a licensed dealer but who has taken the training and passed the examination approved by the State Fire Marshal to qualify the person to make inspections of manufactured and mobile homes and apply appropriate "B" seals upon request of the owner. This definition shall also include any former employee of the office who shall be issued a certificate based upon experience as a manufactured housing inspector for the office upon approval of their credentials by the board. Completion of the educational courses approved by the board shall also be acceptable in lieu of the training given by the office.

(9) "Certified dealer" means a licensed dealer who has certified to the office that he maintains the capability to perform minor maintenance of plumbing, heating, cooling, fuel burning systems, and

electrical systems of manufactured homes as well as inspects used manufactured and mobile homes under Section 4(1) through (10) of this administrative regulation and repair them, if necessary, before placing a "B" seal on them. Certification to the office shall be made on Form HBCMH #29, August 1996, incorporated by reference in Section 4(8) of this administrative regulation.

(10) "Certified installer" means a person certified by the office pursuant to 815 KAR 25:030 and Section 11 of this administrative regulation as qualified to install and inspect the installation of manufactured and mobile homes.

(11) "Dealer" as defined by KRS 227.550(4).

(12) "Employee" means an individual who is engaged on a regular salaried basis by the company and is required to be directed, supervised or otherwise controlled under the authority of the company. The term "employee" or "in the employ" shall not mean an independent contractor or a person engaged on a contract basis by the company who is not directed, supervised or otherwise controlled under the authority of the company.

(13) "Established place of business" as defined by KRS 227.550(5).

(14) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(15) "HBCMH" means the forms which are necessary to complete application for licensure as a manufacturer or dealer of manufactured homes.

(16) "HUD Act or federal act" as defined by KRS 227.550(6).

(17) "HUD label" means the label affixed to a new manufactured home by the manufacturer after it has been approved by a third party inspector as required under the HUD Act.

(18) "Installation" or "install" means the work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.

(19) "Manufacturer" as defined by KRS 227.550(9).

(20) "Manufactured housing" as defined by KRS 227.550(8).

(21) "Manufactured home" as defined by KRS 227.550(7). Homes or recreational vehicles known as "park trailers" are not included in this definition.

(22) "Mobile home" as defined by KRS 227.550(9).

(23) "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(24) "Offer for sale" means to display, exhibit or otherwise advertise a manufactured home. It also means negotiating the purchase and sale or exchange of manufactured homes for a fee, commission, compensation, or other valuable consideration.

(25) "Office" as defined by KRS 227.550(11).

(26) "Person" means a person, partnership, corporation or other legal entity.

(27) "Red tag" means a written notice which is applied to a manufactured home or mobile home by a representative of the State Fire Marshal's Office in accordance with Section 12 of this administrative regulation signifying that it shall not be sold until corrections are made or appropriate seal applied.

(28) "Registration" means the transfer of title or any other official recording of change of ownership.

(29) "Salvage only unit" means a used manufactured or mobile home which is not approved for human habitation.

(30) "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1 ½) inches.

(31) "Used manufactured home" means any manufactured or mobile home offered for sale or sold after the original purchase. Used manufactured homes are not governed by the HUD Act.

Section 2. Administration and Enforcement. (1) An officer, agent, or employee of the State Fire Marshal's Office shall enter each dealer's place of business in order to inspect manufactured homes for which the office has issued a seal of approval, or to inspect the manufactured home's equipment and its installations to insure compliance with KRS 227.550-660, the HUD Act and this administrative regulation.

(2) Upon complaint and request by the owner or occupant, a privately owned manufactured home requiring a seal may be entered to determine compliance with this administrative regulation.

(3) If it becomes necessary to determine compliance, the inspector may require that a portion of the manufactured home be removed or exposed in order that a compliance inspection can be made.

(4) Upon request of any owner or occupant of a manufactured home, a certified dealer or inspector may make inspections for purposes of applying "B seals" and collect the fee for that service described in Section 4(10) of this administrative regulation. Prior to inspection, the person making the inspection shall notify the owner or occupant what the fee shall be.

Section 3. Exemptions from Licensure as a Dealer. (1) This administrative regulation shall not apply to individual sales of manufactured homes by the owner of the home.

(2) If a person sells or offers for sale more than two (2) homes in one (1) year, a license shall be required pursuant to KRS 227.620.

(3) Manufactured homes brought into this state for exhibition use only, in accordance with Section 9(4) of this administrative regulation, and which shall not be sold in this state, shall be exempt from the licensing and seal requirements of this administrative regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Inspection of Used Manufactured Homes in Manufacturers' or Dealers' Possession. (1) All manufactured and mobile homes taken in trade or purchased by the dealer shall be reinspected and certified as to the status of compliance with requirements of subsections (4) and (5) of this section.

(a) Any existing "Class B seal" shall be removed upon trading or purchase and, after inspection, a new seal affixed to the unit or a new seal may be affixed over the existing seal, prior to offering for sale.

(b) Each "B seal" shall state on its face that the home is in compliance with applicable standards or that it is not in compliance with applicable standards and is for salvage only.

(c) In addition to the requirement that a "B seal" be affixed to each used unit, a "B2 seal" unit shall not be resold unless, prior to signing the purchase agreement, written notice is given to the purchaser that the unit is a "salvage only unit", and the dealer shall specify the items of noncompliance with subsection (5)(a) through (g) of this section. The dealer shall use "Form HBCMH #28, August, 1996", which is hereby incorporated by reference, to the Office of the State Fire Marshal. Copies of Form HBCMH #28 are available for inspection and copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) If a new manufactured home purchased under the provisions of the HUD Act is resold, it shall become a used manufactured home and shall be subject to the provisions of this section.

(3) Licensed dealers may sell units to other licensed dealers without affixing seals.

(4) The following standards are hereby incorporated by reference and are applicable only to the units manufactured during the dates cited:

(a) NFPA 501 (B), 1977 edition, for all homes manufactured prior to 1977;

(b) Manufactured Home Construction and Safety Standards, October, 1984, for all homes constructed between 1977 and April,

1994;

(c) Manufactured Home Construction and Safety Standards, April, 1994, for all homes constructed since April, 1994; and

(d) A copy of each Standard is available for public inspection and copying at the Department of Housing, Buildings and Construction, Manufactured Housing Section, The 127 Building, 1047 US 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

1. The NFPA Standard is published by and copies are also available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

2. The standards referenced in subsection 4(b)-(c) of this section are published by and also available from the United States Department of Housing and Urban Development, 451 Seventh Street SW, Washington, D.C., 20410.

(5) These standards shall be used by the certified dealer or certified inspector to determine and certify compliance or lack thereof, of the following items:

(a) The safe and adequate working condition of the electric, heating, cooling, fuel burning and plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repaired if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows; and

(f) The existence of smoke detectors; and

(g) The existence of two (2) exits.

(6) All manufactured housing shall be installed by a certified installer in accordance with the manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby incorporated by reference; and the installation shall include the tying down and anchoring a minimum of four (4) corners of the home.

(a) Copies of ANSI A225.1/NFPA 501A are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(b) This material is available for public inspection and copying at the Department of Housing, Buildings and Construction, Manufactured Housing Section, The 127 Building, 1047 US 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(7) All used manufactured and mobile homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified inspector, certified dealer or the office and a "B seal" indicating its compliance or noncompliance with applicable standards affixed to the home prior to its registration. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating, cooling or fuel burning system to determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection of the door, window and general structural integrity of the unit.

(f) Inspection for the existence of two (2) exits.

(g) Inspection for storm windows; except that this subsection shall not apply to mobile homes.

(8) Any licensed dealers and other qualified persons desiring to perform the "B seal" inspection and certification service, shall make application to the Office of the State Fire Marshal for appropriate certification as either a certified dealer or a certified inspector on "Form HBCMH # 29, August, 1996", hereby incorporated by reference

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and available for inspection and copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(a) The office shall maintain a list of all certified dealers and certified inspectors.

(b) The board may revoke or suspend the certification of any certified inspector, after a hearing conducted in accordance with KRS Chapter 13B.

(9) Any unit found to be in noncompliance with applicable requirements of subsection (5) of this section, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a "B2 seal".

(10) The fee for the inspection of manufactured homes shall be thirty-five (35) dollars, twenty-five (25) cents per mile measured from the dealer lot or place of business of the inspector and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer or inspector. Inspections performed by the office shall be a thirty-five (35) dollar inspection fee and a twenty-five (25) dollar seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. Questions by any interested person regarding the applicability or interpretation of any provisions of the HUD Act, the code or administrative regulation adopted shall be submitted to the office in writing. It is the policy of the office that with respect to questions regarding NFPA 501 (B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the office shall answer these questions and render the official interpretations, and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) A manufacturer shall not manufacture, import, or sell any manufactured home in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992.

(2) Requirements for issuance.

(a) The manufacturer shall submit and the office shall approve in-plant quality control systems.

(b) A \$500 fee shall accompany the Application "Form HBCMH #1, August, 1996", hereby incorporated by reference, to the Department. Copies of Form HBCMH #1 are available for inspection and copying from Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for general liability insurance including product liability and completed operations in the minimum amount of \$300,000 bodily injury or death for each person, \$400,000 bodily injury or death for each accident, and \$100,000 property damage.

(3) Any new manufactured home or other type of building manufactured in-plant which does not carry a HUD label, shall comply with 815 KAR 7:100, the Kentucky Building Code, and shall be subject to the jurisdiction of the Kentucky Department of Housing, Buildings and Construction.

(4) A manufacturer with a certificate of acceptability shall not modify in any way its manufacturing specifications without prior written approval of the office.

(5) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(6) If the applicant does not comply with this administrative regulation, the applicant shall be so notified in writing by the office within ten (10) working days of the date notified. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be

deemed abandoned and twenty (20) percent of the fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(7) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;

(b) The main address of the company is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;

(d) The location of any manufacturing facility is changed;

(e) A new manufacturing facility is established; or

(f) There are changes in the principal officers of the firm.

(8) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(9) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay, in lieu of part or all of the days of any suspension, the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the manufactured home tongue, or front cross member of the frame at the lower left hand side (while facing the unit). If there is no tongue or cross member, a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A dealer of manufactured housing shall not engage in business in this state without holding a valid license issued by the office for each location at which the dealer seeks to engage in business.

(2) Application shall be made to the office prior to engaging in the business and the application shall be made on "Form HBCMH #2 (a) through (j), August, 1996", hereby incorporated by reference. Copies of the application form are available for inspection and copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(a) A copy of a valid Kentucky sales tax certificate shall accompany the application; and

(b) The applicant shall also comply with zoning and other requirements of the local government necessary for a business to legally operate; and compliance shall be a condition of licensure.

(3) All licenses, unless renewed, revoked or suspended, shall expire on December 31 of the calendar year for which they are granted.

(4) The license fee shall be \$200. The fee shall be paid by check or money order, attached to application form HBCMH #2, incorporated by reference in subsection (2) of this section, and made payable to the Kentucky State Treasurer.

(5) The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of general liability insurance in the minimum amount of \$200,000 for bodily injury or death for each person, \$300,000 bodily injury or death for each accident and \$100,000 for damage to property.

(6) The dealer shall notify the office of changes in the application information within thirty (30) days for the following occurrences:

(a) Dealership name is changed;

(b) Established place of business is changed (move to a different county requires a new license);

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period;

(d) There are changes in the principal officers of the firm; or

(7) Out-of-state dealers with valid Kentucky licenses: Exception: An applicant whose place of business is in another state and who possesses a valid dealer's license in another state shall be licensed upon application and approval by the office in accordance with this administrative regulation. These out-of-state dealers shall provide Kentucky seals for manufactured housing units actually sold for delivery into Kentucky.

(8) If a person who sells manufactured homes does not take possession or ownership of the manufactured homes and offers for sale used manufactured homes only as a negotiator or broker for a fee, commission, compensation or other valuable consideration, the person shall apply for and be issued a license as a dealer for that limited brokering function pursuant to this administrative regulation, as follows:

(a) A hard surfaced lot for display and repair shall not be necessary; and

(b) Each unit shall be inspected by a certified inspector or dealer and the applicable "B seal" shall be affixed to the unit prior to sale.

(c) The licensed broker/dealer shall not take possession of any home prior to its sale and shall not engage in brokering repossessed homes unless he has the required established place of business as required by this administrative regulation.

(9) After the effective date of this administrative regulation, but not before January 1, 1997, each new applicant and each licensed dealer applying for an additional location, or a designated employee, shall successfully complete the educational training and departmental testing program and become a Kentucky certified installer.

(10) Effective January 1, 1998, each company shall maintain in its employ at least one (1) person who has successfully completed the approved educational courses dealing with the installation of manufactured homes.

Section 9. Temporary License. (1) A person, other than one (1) duly licensed in Kentucky pursuant to Section 8 of this administrative regulation, shall not show or offer manufactured homes or mobile homes within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a specified location, the person or company may purchase from the Office of the State Fire Marshal a temporary license. The temporary license shall not exceed fifteen (15) days duration and the license fee shall be \$100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit manufactured housing for sale giving the name, location and time of the proposed event.

(2) Applicants shall meet the following requirements before a temporary license shall be granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Furnish to the office a certificate of insurance to certify that the dealership has general liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 for damage to property;

(c) Possess a valid Kentucky Sales Tax Certificate;

(d) Provide all other information required by on Application "Form HBCMH #2" incorporated by reference in Section 8(2) of this administrative regulation;

(e) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a manufactured home show within the Commonwealth of Kentucky if they do not sell or offer for sale to the general public new or used manufactured homes, and if the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit manufactured homes, giving the

name, location and time of the proposed event.

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state manufactured housing units.

(2) A dealer who has received a license from the office shall not sell or offer for sale a manufactured or mobile home except as permitted between licensed dealers, pursuant to Section 4(3) of this administrative regulation unless it has either a HUD label or a "B seal". A dealer who has acquired a used manufactured home without a seal, shall apply to the office for a Class "B1" seal by submitting an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, and if necessary, repaired, and the unit now complies with the applicable standards; or, the dealer shall apply for Class "B2" seals indicating that the unit is not in compliance with applicable standards and is to be sold for "salvage only" with a detailed list of conditions that are not in compliance with the applicable requirements for electrical, heating, cooling, storm windows and doors, fuel burning systems, smoke detection, plumbing equipment and exits required for a Class "B1" compliance seal.

(3) Application for seals.

(a) Applications for both types of "B seals" shall be filed on "Form HBCMH #30, August, 1996", hereby incorporated by reference, and available for inspection and copying from the Department of Housing, Buildings and Construction, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

(b) The application shall be accompanied by the seal fee of twenty-five (25) dollars for each "B seal".

(4) Affixing seals.

(a) A dealer or certified inspector shall affix a "B1 seal" upon submitting to the Office a Unit Inspection on "Form HBCMH #40, August, 1996", hereby incorporated by reference, certifying either that all electrical, heating, cooling, fuel burning systems, smoke detection, plumbing equipment and exits, have been checked, repaired if necessary, and is now in safe working condition meeting applicable standards. Copies of the Unit Inspection Form HBCMH #40 are available for inspection and copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

(b) If a unit does not qualify for a "B1 seal" because it is found not in compliance with applicable codes as required by this administrative regulation, the dealer or certified inspector shall submit a Unit Inspection "Form HBCMH #40", incorporated by reference in subsection (4)(a) of this section, and affix a "B2 seal" to the unit.

(c) If a dealer has applied a "B2 seal" to a unit but later repairs the unit so that it becomes entitled to a "B1 seal", the dealer may purchase a replacement seal for a fee of two (2) dollars.

(6) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, "B seal" numbers ("B1" and "B2") date manufactured (if known), make, and the name and address of the purchaser. This report shall be on "Form HBCMH #23, August, 1996", hereby incorporated by reference, available for inspection or copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. Report Form HBCMH #23 shall be made available to the field inspector on a monthly basis.

(7) Alterations.

(a) A dealer shall not make any alterations to any new manufactured home without the express written permission of the manufacturer; except that in the case of used manufactured or mobile homes, alteration and conversion shall be in compliance with Section 4(4) of this administrative regulation and the applicable codes adopted herein.

(b) A licensed dealer is authorized to alter or convert equipment

and otherwise make repairs associated with the sale of a used manufactured or mobile home.

(8) Placement of seals.

(a) Each seal shall be assigned and affixed to a specific manufactured or mobile home. Assigned seals shall not be transferable unless assigned between dealers and shall be void when not affixed as assigned. All unused seals shall be returned to the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or administrative regulations.

(b) The seal shall be securely affixed on the door on the handle side at approximately handle height.

(c) Other seals, stamps, covers or other markings shall not be placed within two (2) inches of the seal.

(9) Lost or damaged seals.

(a) If a seal becomes lost or damaged, the office shall be notified immediately, in writing, by the owner. The owner shall specify the manufacturer, the manufactured home serial number, and if possible, the seal number.

(b) All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

(10) A dealer shall not display, sell or offer for sale a new manufactured home unless a HUD label is affixed; or, if it is a used manufactured home, that a "B seal" shall be affixed.

Section 11. Examination for Installation of Manufactured Homes.

The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards set forth in Section 4(4) of this administrative regulation. Any dealer or other person who successfully completes the educational program and the additional examination given by the office shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board.

Section 12. Red Tagging. If a manufactured home is found to be in violation of this administrative regulation, the office shall attach to the home a notice of noncompliance known as a "red tag" and furnish the dealer a copy of same. The "red tag" shall not be removed until corrections have been made and the office has approved the removal.

Section 13. A dealer shall not sell or offer for sale any manufactured home upon which he cannot present a marketable title to the purchaser. The title shall be provided as soon as possible; and, upon complaint of the purchaser, the dealer shall demonstrate to the office good cause for delay. Compliance with this subsection shall be a condition of continued licensure.

[Section 1. Definitions. In addition to the following definitions, the definitions of National Fire Protection Association Pamphlet Number 501(B) listed in Section 4(3) of this administrative regulation and the HUD Act shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency, testing" means an independent organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing, cooling, fuel-burning systems or electrical systems or smoke detectors or their function. It shall include, but not be limited to, the addition or deletion of windows, doors, or partitions; the addition of an electrical circuit to accommodate a washer or dryer; the addition of a central air condition system when the unit was not factory installed; the conversion of a heating, cooling, fuel burning system from one (1) fuel to another such as electrical to gas or gas to electric or oil; the use of improperly listed materials for the repair of a unit or the installation of an unlisted heating, cooling or fuel-burning appliance. However, the replacement of equipment in kind, i.e., gas furnace with gas furnace or the replacement or changing of furniture to accommodate the consumer or other cosmetic changes shall not constitute an alteration or conversion.

(4) "ANSI" means the American National Standards Institute.

(5) "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).

(6) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell manufactured housing within the state to licensed Kentucky dealers.

(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used manufactured homes before registration or title in Kentucky, and repair them, if necessary, under NFPA 501(B) before placing a "B" seal upon them.

(8) "Class "A" seal" as defined by KRS 227.550(2) is for application on new manufactured homes not covered by the HUD Act.

(9) "Class "B" seal" as defined by KRS 227.550(3) is for application on used manufactured homes.

(10) "Dealer" as defined by KRS 227.550(4).

(11) "Established place of business" as defined by KRS 227.550(5).

(12) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) "HUD Act" or "federal act" as defined by KRS 227.550(6).

(14) "Installation" means the work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.

(15) "Manufacturer" as defined by KRS 227.550(8).

(16) "Manufactured housing" as defined by KRS 227.550(7).

(17) "Manufactured home" as defined by KRS 227.550(9). Homes or recreational vehicles known as "park trailers" under the HUD Act are regulated by 815 KAR 25:020.

(18) "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02260.

(19) "Offer for sale" means to display, exhibit or otherwise advertise a manufactured home. It also means negotiating the purchase and sale or exchange of manufactured homes for a fee, commission, compensation, or other valuable consideration.

(20) "Person" means a person, partnership, corporation or other legal entity.

(21) "Red tag" means a written notice which is applied to a manufactured home by a representative of the State Fire Marshal's Office in accordance with Section 10 of this administrative regulation signifying that the manufactured home is not in compliance with applicable laws.

(22) "Registration" means the transfer of title or any other official recording of change of ownership.

(23) "Salvage unit" means any used manufactured home which is identified by the State Fire Marshal and the dealer, or by title, to not

be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

(24) "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one half (1 1/2) inches.

(25) "Used manufactured home" means any manufactured home unit which shall be offered for sale after the original purchase. Used manufactured homes are not covered by the HUD Act.

Section 2. Administration and Enforcement. (1) An officer, agent, or employee of the State Fire Marshal's office shall enter each dealer's place of business in order to inspect manufactured homes for which the office has issued a seal of approval, or to inspect the manufactured home's equipment and its installations to insure compliance with the Act, the HUD Act and this administrative regulation.

(2) Upon complaint and request by the owner or occupant, a privately owned manufactured home requiring a seal may be entered to determine compliance with this administrative regulation.

(3) When it becomes necessary to determine compliance, the inspector may require that a portion of the manufactured homes shall be removed or exposed in order that a compliance inspection can be made.

Section 3. Exemptions from Licensure as a Dealer. (1) This administrative regulation shall not apply to individual sales of manufactured homes by the owner of the home.

(2) If a person sells more than two (2) homes in one (1) year, a license shall be required pursuant to KRS 227.620.

(3) Manufactured housing brought into this state for exhibition use only, in accordance with Section 9(4) of this administrative regulation, and which shall not be sold in this state, shall be exempt from the requirements of this administrative regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Manufactured Homes in Manufacturers' or Dealers' Possession. (1) The office shall enforce standards and requirements for the installation of plumbing, heating, cooling, fuel burning systems, electrical systems and smoke detectors in manufactured housing not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce the standards and requirements for the body and frame design, construction and installation of manufactured housing.

(3) All new manufactured homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky, shall be constructed in accordance with NFPA 501(B), 1977 edition, hereby incorporated by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(4) NFPA 501(B), which is incorporated by reference in subsection (3) of this section, shall be the standard for used manufactured homes, and it shall be used by the dealer upon inspection in accordance with subsection (7) of this section to determine and certify:

(a) The safe and adequate working condition of the electric, heating, cooling, fuel burning and plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repaired if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows.

(5) Used manufactured homes.

(a) All manufactured homes taken in trade by the dealer shall be reinspected and certified that they are in compliance with requirements of subsection (4) of this section. The existing Class "A" or Class "B" seal shall be removed and a new seal affixed to the unit or a new seal may be affixed over the existing seal or label.

(b) If a new manufactured home purchased under the provision of the HUD Act is resold, it shall become a used manufactured home and shall be subject to the provisions of this section.

(c) Class "A" and "B" seals shall not be required if the dealer submits to the office an affidavit that the unit is a salvage unit.

(d) A salvage unit shall not be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer.

(e) Upon prior approval of the office, one (1) licensed dealer may sell units to another licensed dealer without applying seals.

(6) All manufactured housing shall be installed in accordance with manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby incorporated by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection and copying at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday. The installation shall include that the unit or units shall be tied down and anchored at least at each of the four (4) corners of the home.

(7) All new manufactured homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used manufactured homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer or the office and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating, cooling or fuel burning system to determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection for storm windows. EXCEPTION: This paragraph and paragraph (4)(e) of this subsection shall not apply to manufactured homes built prior to the HUD Act.

(8) A licensed Kentucky manufactured home dealer that maintains the capability to perform minor maintenance of plumbing, heating, cooling, fuel burning systems, and electrical systems of manufactured homes shall be permitted to inspect and certify those manufactured homes purchased in another state for use within the Commonwealth of Kentucky. A dealer desiring to perform this service, shall make application to the Office of the State Fire Marshal for appropriate certification as a certified Kentucky dealer. The office shall maintain a list of all certified manufactured housing dealers.

(9) Any unit found to be in noncompliance with the requirements of Section 4(5) or (7) of this administrative regulation, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this administrative regulation. All units requiring repairs or correction prior to unit certification, shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of manufactured homes shall be twenty (20) dollars per hour plus twenty two (22) cents per mile and

a twenty five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollars inspection fee and twenty five (25) dollars seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. Questions regarding the applicability or interpretation of any provisions of the HUD Act, the code or administrative regulation adopted shall be submitted to the office, in writing, by any interested person. It is the policy of the office that with respect to questions regarding NFPA 501(B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the office shall answer these questions and render the official interpretations and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) A manufacturer shall not manufacture, import, or sell any manufactured housing in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.002. Manufactured housing not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501(B) shall not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer shall submit and the office shall approve in-plant quality control systems.

(b) A \$500 fee shall accompany the application. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for general liability insurance to include lot and completed operations insurance in the minimum amount of \$300,000 bodily injury or death for each person, \$400,000 bodily injury or death for each accident, and \$100,000 property damage.

(3) Quality control measures shall be provided for all manufactured housing not covered by the HUD Act (i.e., all office and used units). To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model group for body and frame design, construction, electrical, heating, cooling, fuel burning systems and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one half (8 1/2) inches by eleven (11) inches and the maximum possible size of which is twenty four (24) inches by thirty (30) inches. The manufacturer shall certify that the systems comply with NFPA 501(B).

(b) Also, a copy of the procedure which directs the manufacturer to construct manufactured housing in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection.
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and this administrative regulation shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a HUD label, i.e., mobile offices, add a rooms, duplex units, etc. The unit certification format shall contain the information in the format as outlined in

Section 13 of this administrative regulation.

(5) A manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(7) If the applicant does not comply with this administrative regulation, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(8) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

- (a) The corporate name is changed;
- (b) The main address of the company is changed;
- (c) There is a change in twenty five (25) percent or more of the ownership interest of the company within a twelve (12) month period;
- (d) The location of any manufacturing facility is changed;
- (e) A new manufacturing facility is established; or
- (f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) If the office determines that the standards for manufactured housing units are at least equal to NFPA 501(B) because they comply with the Kentucky Building Code, it may issue a certificate of acceptability for the manufactured homes.

(11) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the manufactured home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A dealer of manufactured housing shall not engage in business in this state without a license issued by the office upon application.

(2) Application shall contain the following information:

- (a) Name and address of the chief managing officer;
- (b) Location of each and every established place of business;
- (c) Social security number; and date of birth of chief managing officer;

(d) Affidavit certifying compliance with the Act and this administrative regulation;

(e) Names of offices, if dealership in corporate form;

(f) Names of partners, if dealership in partnership form;

(g) A copy of a valid Kentucky sales tax certificate;

(h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business;

(3) All licenses shall be granted or refused within thirty (30) days after application, and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be \$200. The fee shall be paid by check

or money order and shall be made payable to the Kentucky State Treasurer.

(5) ~~The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage.~~

(6) ~~Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 14 of this administrative regulation. The report shall be made available to the field inspector on a monthly basis.~~

(7) ~~Alterations.~~

(a) ~~A dealer shall not have the authority to make any alterations to any manufactured home manufactured under the HUD Act or NFPA 501(B) without the express permission of the manufacturer; except that in the case of used manufactured homes, permission may be obtained from the State Fire Marshal's Office in accordance with this administrative regulation.~~

(b) ~~A dealer altering a manufactured home, shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.000.~~

(8) ~~Notification of a change in the application information shall be made within thirty (30) days of any of the following occurrences:~~

(a) ~~Dealership name is changed;~~

(b) ~~Established place of business is changed (move to a different county requires a new license);~~

(c) ~~There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or~~

(d) ~~There are changes in the principal officers of the firm.~~

(9) ~~Out of state dealers with valid Kentucky licenses. Exception: an applicant whose place of business is in another state and who possesses a valid dealers license in another state shall be licensed upon application and approval by the office in accordance with this administrative regulation. These out of state dealers shall provide Kentucky seals for manufactured housing units actually sold for delivery into Kentucky.~~

(10) ~~If a person who sells manufactured homes does not take possession or ownership of the manufactured homes and offers for sale used manufactured homes only as a negotiator or broker for a fee, commission, compensation or other valuable consideration, the person shall apply for and be issued a license as a dealer for that limited function pursuant to this administrative regulation with the following conditions:~~

(a) ~~His established place of business may be his business address and the dealer shall not be required to have a hard surfaced lot for display and repair; and~~

(b) ~~The unit shall be inspected by the office or a certified Kentucky dealer and the "B" seal of approval or salvage label shall be affixed to the unit prior to offering it for sale.~~

Section 9. Temporary License. (1) A person, other than one duly licensed in Kentucky pursuant to Section 8 of this administrative regulation, shall not show or offer manufactured housing within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a specified location, the person or company may purchase from the Office of the State Fire Marshal a temporary license. The temporary license shall not exceed fifteen (15) days duration and the license fee shall be \$100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit manufactured housing for sale giving the name, location and time of the proposed event.

(2) Applicant shall meet the following requirements before a temporary license shall be granted:

(a) ~~Be a duly licensed dealer in a state other than Kentucky;~~

(b) ~~Furnish to the office a certificate of insurance to certify that the dealership has proper liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage;~~

(c) ~~Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used manufactured housing units shall not be permitted to be shown or offered for sale within the Commonwealth of Kentucky by nonresident dealers at any time;~~

(d) ~~Possess a valid Kentucky Sales Tax Certificate;~~

(e) ~~Provide all other information required by the office;~~

(f) ~~The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.~~

(3) ~~Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.~~

(4) ~~Temporary licenses shall not be required for those dealers attending a manufactured home show within the Commonwealth of Kentucky if they do not sell or offer for sale to the general public new or used manufactured homes, and if the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit manufactured homes, giving the name, location and time of the proposed event.~~

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state manufactured housing units not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) A dealer who has received a license from the office shall not sell or offer for sale a manufactured home except as permitted between licensed dealers, pursuant to Section 4(5) of this administrative regulation, unless it has either a HUD seal, an "A" seal, a "B" seal or a salvage label. A dealer who has acquired a used manufactured home without a seal, shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) ~~Acquisition of seal.~~

1. Any manufacturer, except one altering a new manufactured home not covered by the HUD Act bearing a seal, shall qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this administrative regulation.

2. Any dealer, except one altering a manufactured home bearing a seal, shall qualify for acquisition of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) ~~Application for seals.~~

1. A person who has met the applicable requirements of Section 6 or 8 of this administrative regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty five (25) dollars for each Class "A" seal or twenty five (25) dollars for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) ~~Alteration or conversion of a unit bearing a seal.~~

1. Any alteration of the construction, plumbing, heat producing, cooling, fuel burning systems equipment, electrical equipment installations or fire safety in a manufactured home not covered by the HUD

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Act, which bears a seal, shall void the approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for those manufactured homes not covered by the HUD Act:

- a. Repairs with approved component parts.
- b. Conversion of listed fuel burning appliances in accordance with the terms of their listing.
- c. Adjustment and maintenance of equipment.
- d. Replacement of equipment in kind.
- e. Any change that does not affect those areas covered by NFPA 501(B) or the HUD Act.

3. A dealer proposing an alteration to a manufactured home not covered by the HUD Act bearing a seal, shall make application to the office. The application shall include:

- a. Make and model of manufactured home.
- b. Serial number.
- c. State seal number.
- d. A complete description of the work to be performed together with plans and specifications, if required.
- e. Location of the manufactured home where work is to be performed.
- f. Name and address of the owner of the manufactured home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is constructing manufactured housing not covered by the HUD Act (such as office units) according to NFPA 501(B); or, if inspection reveals that any dealer failed to repair a used manufactured home under the standards and procedures set forth in this administrative regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of these administrative regulations and the code have been violated, continues to manufacture, sell or offer for sale manufactured homes in violation of these administrative regulations and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall resubmit an application for seal.

(e) Seal removal. If a manufactured home not covered by the HUD Act is found to be in violation of these administrative regulations, the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office and given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this administrative regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific manufactured home not covered by the HUD Act. Assigned seals shall not be transferable unless assigned between dealers and shall be void when not affixed as assigned, and all seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or administrative regulations.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify

the manufacturer, the manufactured home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a manufactured home not covered by the HUD Act unless an "A" or "B" seal or salvage label is affixed.

Section 11. Examination for Installation of Manufactured Homes. The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards adopted by administrative regulation by the board. Any dealer or other person who successfully completes the examination shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board.

Section 12. A dealer shall not sell or offer for sale any manufactured home upon which he cannot present a marketable title to the purchaser.

Section 13. Manufactured Home Unit Certification Format.

MANUFACTURED HOME UNIT CERTIFICATION FORMAT

Name of Manufacturer

Mailing Address County

City State Zip Code

I hereby certify that the manufactured homes as described hereon have been constructed in compliance with NFPA 501-B.

KY Date

No. Serial # Seal # Mfg. Model Size Dealer

1
2
3
4
5

This form shall be used in reporting units to the Office of the State Fire Marshal. The form shall be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall be mailed to the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

BY

Date Person Authorized to Certify These Units

Section 14. Dealer Certification Format.

DEALER CERTIFICATION FORMAT

Name of Dealer

Mailing Address County

City State Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and administrative regulations

~~thereto and that the new manufactured homes described hereon have the appropriate HUD label.~~

_____ HUD
 _____ LABEL #/
 _____ KY Date _____ Purchaser
 No. Serial # Seal # Mfg. Make & Address

BY _____
~~Date Person Authorized to Certify These Units~~

Contact Person: Judith G. Walden, Office of General Counsel,
Department of Housing, Buildings and Construction, The 127 Building,
1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502)
564-8044, Fax: (502) 564-6799.

(a) Direct and indirect costs or savings: There is no real financial

FISCAL NOTE ON LOCAL GOVERNMENT

Other Explanation:

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Amendment)

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

RELATES TO: KRS 224.60-105, 224.60-135

STATUTORY AUTHORITY: KRS 224.60-135, 227.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135 requires the State Fire Marshal to promulgate administrative regulations requiring any person or organization who installs, repairs, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This administrative regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals and to determine financial capability through proof of insurance. This amendment is necessary to create a new category of contractor whose limited function is lining underground petroleum storage tanks and therefore make corresponding amendments to allow testing and licensure of this limited function, and to incorporate by reference the application for underground tank contractor certification. [This amendment is necessary to clarify that a certified contractor is to be present on site for the installation of piping as well as at the time of final inspection.]

Section 1. Definitions. (1) "Certified contractor" means any individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, removing, closing, and supervising of other employees in the installation, performance of repairs on site for closure or removal of UPST systems. A person or organization may be qualified pursuant to this administrative regulation to engage in the business of removal and closure, or lining only, but the certification shall be limited to removal and closure, or tank lining [and removal] only.

(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a tank or an underground storage tank or any of its components that has caused a release of a product from the system or the modification of the tank or a system component. "Repair" shall not include routine maintenance, ~~or~~ cathodic protection applied to existing installations, or the application or interior lining.

(4) "Remove or removal" means permanently taking an underground storage tank or any of its components out of service by removing it from the ground.

(5) "Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(6) "Underground storage tank" means as defined by KRS 224.810.

(7) "UPST liner" means an individual or organization who applies an interior coating of material to existing steel and fiberglass reinforced plastic (FRP) underground storage tanks used solely for the storage of petroleum and petroleum products.

(8) "UPST system" means an underground storage tank defined by KRS 224.810 and used solely for the storage of petroleum and petroleum products.

Section 2. Effective April 1, 1991. (1) A permit for the installation of any UPST system shall not be issued by the State Fire Marshal

unless the applicant for the permit is a certified contractor, and the applicant assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair, interior line, or close any UPST system unless the installation, removal, repair, interior lining, or closure is made by a certified contractor and unless the installation, removal, repair, interior lining, or closure of the UPST system complies with applicable administrative regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A company may be the certified contractor and may engage in the activities regulated by this administrative regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this administrative regulation.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;

(b) Setting of the UPST system, including placement of any anchoring devices, backfilling to the level of the UPST system and strapping, if any;

(c) Installing piping and any of its components or field coating and cathodically protecting any piping and its components;

(d) Final inspection and pressure testing of any component of the tank or piping components of the UPST system;

(e) Completion of the backfilling and filling of the excavation.

(2) Repairs to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of existing UPST systems;

(b) The actual performance of repairs to the UPST system;

(c) Any time during the repair project in which components of the piping are connected;

(d) Any time during the repair project in which the UPST or its associated piping is pressure tested;

(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overfill protection devices;

(f) The addition of leak detection devices or spill and overfill devices.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the closing in which components of the UPST system are disconnected or capped.

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or any of its components;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the removal in which components of the UPST system are disconnected or capped.

(5) The lining of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The excavation of the tank top;

(c) The cutting of the top of the tank;

(d) The entry of the tank;

(e) The preparation of the interior of the tank;

(f) The application of the lining of the tank; and

(g) The closing and testing of the tank.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall meet all of the following application requirements:

(1) The applicant shall submit an application accompanied by a nonrefundable fee of \$150, to the State Fire Marshal, on application form "SFM/UPST #01, August, 1996", hereby incorporated by reference. ~~[the form furnished by the State Fire Marshal and outlined in Section 11 of this administrative regulation, accompanied by a nonrefundable fee of \$150; and]~~

(a) A copy of application form SFM/UPST #01 may be obtained from the State Fire Marshal, Division of Hazardous Materials, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between 8 a.m. and 4:30 p.m. or requested by telephone at (502) 564-3626.

(b) A copy of application form SFM/UPST #01 may be inspected or copied at the above address, Monday through Friday between 8 a.m. and 4:30 p.m.; and

(2) The applicant shall be an individual, and shall be at least eighteen (18) years of age; and

(3) The individual shall verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site, lining of, closure and removal of UPST systems, as required by Section 6 of this administrative regulation; and

(4) The individual shall complete the examination requirements of Section 7 of this administrative regulation; and

(5) Upon application or prior to the issuance of the certificate, the individual shall provide proof of financial capability for taking corrective action and for compensating third parties for bodily injury and property damage by submitting certificates of general liability insurance in the minimum amount of \$500,000 and pollution liability insurance or other proof of financial capability to respond to damages in the minimum amount of \$25,000 per occurrence; and

(6) If the individual wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, that he has participated in the installation of, performance of repairs on site, closure of, lining of, or removal of a minimum of six (6) underground storage tanks. Of the participations, a minimum of three (3) shall have involved the installation of UPST tanks, except that: ~~[-or]~~

(a) ~~[(2)]~~ Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of this subsection by one-third (1/3); or

(b) ~~[(3)]~~ A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(2) ~~[(4)]~~ An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks; or

(3) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of tank lining shall demonstrate experience in lining of six (6) underground storage tanks.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6(1) of this administrative regulation, the applicant may receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination; and

(2) An applicant shall complete three (3) tank installations within one (1) year of the issuance of the certificate; and

(3) All UPST activities shall comply with applicable codes and statutes; and

(4) An applicant shall not remove, close, line, backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a \$100 add-on inspection fee for each site where a tank is removed, closed or installed.

Section 8. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.

(2) The examination for full certification shall be a written multiple choice examination covering all aspects of the installation, repair, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal only.

(4) An applicant who requests to be a certified contractor for the limited function of interior lining of UPST systems shall be tested on knowledge of cleaning, and lining the interior of underground petroleum storage tanks.

(5) An applicant may request permission to take the examination orally, upon good cause shown.

(6) ~~[(6)]~~ An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(7) ~~[(6)]~~ An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(8) ~~[(7)]~~ Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(9) ~~[(8)]~~ All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(10) ~~[(9)]~~ With the application, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. Certification and Renewal Procedures. (1) Effective April 1, 1991, the State Fire Marshal shall issue a certificate to each individual or company as set forth in Sections 5 through 7 of this administrative regulation. The certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if any of the following occurs:

(a) The applicant fails to provide the information required by the application form SFM/UPST #01, incorporated by reference in Section

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5(1) of this administrative regulation [~~prescribed by the State Fire Marshal and outlined in Section 11 of this administrative regulation~~]; or

(b) The applicant fails to provide the insurance or financial responsibility certificates or the fee required for application and examination; or

(c) The applicant fails to comply with the experience and education requirements of this administrative regulation; or

(d) The applicant does not successfully pass the examination required by this administrative regulation; or

(e) The applicant makes a misrepresentation or submits false statements with the application.

(3) Any certified contractor who fails to renew within a one (1) year period from the most recent expiration date of their certification shall result in the revocation of their certificate. The contractor may become certified at a later date by complying with Sections 5 through 7 of this administrative regulation. Retesting shall be required.

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation may be suspended or revoked by the State Fire Marshal for any of the following reasons:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this administrative regulation or any required code relating to installation, repair, lining, closure or removal; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, close, line, or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:050 [40:040]); or

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance, is no longer employed by the company in whose name the certificate was issued.

(5) The certified contractor failed to renew the certification in accordance with Section 9 of this administrative regulation.

[Section 11. Application Form for Certification of Underground Petroleum Storage Tank Contractors.

APPLICATION FOR CERTIFICATION OF UNDERGROUND PETROLEUM STORAGE TANK CONTRACTORS

TYPE: Full Remover FOR OFFICE USE ONLY
 Application Fee: \$150 Rec'd (Date)
 Examination: \$25 Yes No Money Rec'd
 (Remit by check or money Application #
 order only. Payable to: Certification #
 Kentucky State Treasurer)

PLEASE PRINT OR TYPE AND SIGN

1. Full Name of Qualifying Person

2. Permanent Residence

Street/Box Office Number

City County State Zip

3. Telephone:

Residence Business

4. Birthdate 5. Social Security #

6. Place of Birth

City County State

7. Company Name

Company Address

Street/Box Office Number

City County State Zip

8. Certificate to be issued in:

Company Name Individual Name

9. Send Mail to:

Company Address/#7

Permanent Residence/#2

10. List any schools or training seminars concerning tank installations which you have attended:

Title Presented By Date(s)

11. With whom did you most recently apprentice as a tank installer?

Business name:

Address:

Street City State Zip

Person who supervised you:

Period of apprenticeship:

From To

Month Yr Month Yr

12A. Number of years experience as a tank installer:

12B. Number of years experience as a tank remover:

13. Approximate # of tank installations you have:

	Supervised?	Participated in?
Bare/asphalt-coated steel		
Fiberglass		
Fiberglass-coated steel		
Cathodically-protected steel (STI-P3)		
Dual containment (excavation liner)		
Dual containment (double wall tank)		
TOTALS		

14A. Approximate number of piping installations you have:

	Supervised?	Participated in?
Black iron/galvanized		
Copper		
Fiberglass		
Cathodically-protected steel		
Dual wall		
TOTALS		

14B. Approximate number of tank removals you have:

Supervised Participated in

15. List the names and addresses of at least 3 people (e.g., employer, supervisors) familiar with your work as a tank installer/remover.

Name Address Telephone #

1.
 2.
 3.

16. Attach proof of general liability insurance. (Certificate of Insurance from a company authorized to do business in Kentucky)

17. Attach proof of pollution liability insurance. Certificate of insurance from an authorized insurer countersigned by a licensed Kentucky agent or from an eligible surplus lines insurer obtained through a Kentucky surplus lines broker; surety bond from a Kentucky authorized company or an irrevocable letter of credit

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from an FDIC Kentucky Domicile Bank)
 18. ~~Attach experience, listing of jobs (i.e., name of project, company name, dates, city, county, state, size and number of tanks, etc.) for qualifying individual.~~

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

Signature of Applicant for Company

Date

NOTARIZED BY:

State of _____

County of _____

Subscribed and sworn to before me this _____ day of _____,

19____

Notary Public

My Commission expires

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 6, 1996

FILED WITH LRC: September 9, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 22, 1996, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 1996, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: All companies engaged in the business of installing, repairing, lining, closing or removing underground petroleum storage tanks.

(2) Direct and indirect costs or savings on the: This amendment clarifies the requirements for the contractor being present. No extra cost should be incurred, unless the installation has not been installed correctly.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No increases expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No increases expected.

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

1. First year following implementation: No additional requirements from this amendment.

2. Second and subsequent years: No additional requirements from this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs or savings result from this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paper work is required by this amendment.

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

There is no anticipated effect on local revenue and no increases on state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Costs of administering program are intended to be maintained by the fees charged.

(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: Present regulation was not sufficiently definitive as to when the contractor was required to be on site. Also, a category for lining of tanks only was needed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Better supervision by the contractor results in assuring against leaks and helps to speed the job if an inspection shows a deficiency.

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

(c) If detrimental effect would result, explain detrimental effect: More on-site supervision by the contractor assures the piping is properly without leaks, etc.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no known conflict or duplication of this amended regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Each contractor is certified and qualified based upon the level of work done.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Environmental Health & Community Safety

(Amendment)

902 KAR 105:070. Violations and enforcement.

RELATES TO: KRS 211.870, 211.890, 211.993

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.870, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996 reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. The Cabinet for Health Services [Human Resources] is authorized by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curricula standards for institu-

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tions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. ~~[The purpose of]~~ This administrative regulation ~~establishes [is to establish]~~ uniform enforcement procedures applicable ~~[to the cabinet's administrative regulations relating]~~ to the certification of operators of sources of radiation.

~~Section 1. [Applicability. This administrative regulation shall relate to the enforcement procedures of the cabinet pertaining to the certification of operators of sources of radiation.]~~

~~Section 2.] Denial. Revocation and Suspension of Certificates. The cabinet may deny, revoke or suspend the certificate of a person who:~~

- ~~(1) Has engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;~~
- ~~(2) Has engaged in alcohol and other drug abuse as defined in KRS 222.005(12); [Becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);~~
- ~~(3) Becomes an alcoholic person who suffers from alcoholism as defined in KRS 211.011(3);]~~
- ~~(3) [(4)] Develops a physical or mental disability or other condition that continued practice or performance of this duties may be dangerous to patients or the public; or~~
- ~~(4) [(5)] Fails to comply with any administrative regulation of the cabinet relating to the certification of operators of sources of radiation.~~

~~Section 2. [3.] Hearings. The cabinet shall furnish the certificate holder with written notice setting out the substance of each offense charged with sufficient detail to reasonably apprise a person of the nature, time and place thereof. The person to whom a notice or an order is directed shall comply therewith immediately, but applicants for hearings to the cabinet shall be afforded a hearing in accordance with 902 KAR 1:400. [The certificate holder shall have the right to be present in person, be represented by counsel, to present evidence and to be heard in opposition to the charges which may be instituted. The cabinet shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the Secretary of the Cabinet for Human Resources.]~~

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 5, 1996

FILED WITH LRC: September 11, 1996 at 11 am.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1996 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by October 14, 1996 of their desire to appear and testify at the hearing: William K. Moore, General Counsel, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: The number of persons affected is 4400 by the requirements of KRS Chapter 13B as related to administrative hearings.

(2) Direct and indirect costs or savings to those affected:

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

requested and held and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change from present.

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

1. First year: If a certified operator of radiation producing machines has their certification suspended or revoked, the operator will be required to file for an administrative hearing under KRS Chapter 13B.

2. Second and subsequent years: If a operator has their certification suspended or revoked, this amendment will require the filing for an administrative hearing under KRS Chapter 13B.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Administrative hearing under KRS Chapter 13B will mandate the paperwork requirements under the present amendment.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

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

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

(a) Geographical Area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: No alternatives were available due to compliance with KRS 211.870, 211.890, and 211.993.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is a uniform mechanism for certified operators to address hearings, if a certificate is suspended or revoked.

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

(c) If detrimental effect would result, explain detrimental effect: Without enforcement regulations cabinet could not deny, revoke, or suspend the certificate of a person for regulatory violations and thus health and safety could be threatened.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations.

(a) Necessity of regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, tiering was not applied because all operators of radiation producing machines are required to comply with 902 KAR Chapter 105 and KRS Chapter 13B.

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. No affect.

3. State the aspect or service of local government to which this

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administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? Not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? NA

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

902 KAR 115:020. Enforcement of Water Fluoridation Program.

RELATES TO: KRS 211.180 ~~[211.190]~~

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.180, 211.190(11), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures for the enforcement of the Cabinet for Health Services ~~[Human Resources]~~ Water Fluoridation Programs as directed by KRS 211.190(11), Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and the Dental Health Program under the Cabinet for Health Services.

Section 1. Notice of Violation. (1) If the Cabinet for Health Services ~~[Human Resources]~~ has reasonable grounds to believe that a violation of 902 KAR 115:010 has occurred, it shall serve the alleged violator with cabinet Form DH-36, "Notice of Violation".

(2) The "Notice of Violation" shall state:

(a) In particular, the specific:

1. Violation; and

2. Measures required to be taken to correct the violation; and

(b) The date by which the corrective measures shall be completed;

(c) That the alleged violator has the right to request a hearing which shall be conducted in accordance with 902 KAR 1:400. ~~[before the cabinet, at which he may:~~

~~1. Be represented by counsel;~~

~~2. Present evidence on his behalf; and~~

~~3. Cross-examine witnesses;]~~

(d) That the alleged violator may file an appeal in accordance with 902 KAR 1:400. ~~[That the request for a hearing shall be made on cabinet Form DH-37, "Request For Hearing";~~

~~(e) That a written transcript of a hearing shall:~~

~~1. Not be made unless requested by a party; and~~

~~2. Be paid for by the requesting party; and~~

~~(f) That, within thirty (30) days of the date of the notice, the cabinet shall begin legal proceedings against the alleged violator if he fails to:~~

~~1. Take the corrective measures specified in the notice; or~~

~~2. Request a hearing.]~~

Section 2. Hearing. An administrative hearing shall be conducted in accordance with 902 KAR 1:400. ~~[(1) If an alleged violator requests~~

~~a hearing, the cabinet shall notify him of the:~~

~~a) Time and place of the hearing; and~~

~~(b) Name of the hearing officer;~~

~~(2) Notice of the hearing shall be made on Form DH-38, "Notice of Hearing"; and~~

~~(3) The decision of the hearing officer shall:~~

~~(a) Be written;~~

~~(b) Be made upon the evidence presented; and~~

~~(c) Include findings of fact and conclusions of law.]~~

Section 3. Incorporation by Reference. (1) The form necessary for notifying water companies of a violation is being incorporated by reference. This form is the [following material is incorporated by reference:

~~(a) Form DH-36, "Notice of Violation (4/96 [10/94])";~~

~~(b) Form DH-37, "Request for Hearing (12/94)"; and~~

~~(c) Form DH-38, "Notice of Hearing (7/95)"].~~

(2) This form ~~[These forms]~~ may be inspected, copied, or obtained at the Office of the Commissioner for Public Health ~~[Health Services]~~, 275 East Main Street, Frankfort Kentucky, 8 a.m. to 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 5, 1996

FILED WITH LRC: September 11, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, 9 a.m. in the Health Services Auditorium, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Robert Fowler, Dental Health Administrator

(1) Type and number of entities affected: 215 community water system operators.

(2) Direct and indirect cost to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published so no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published so no written comments were received.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (Note any effects upon competition) for the : Will require recordkeeping and reporting by the water plant operators and maintenance of Fluoride Analysis Reports

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for 5 years by the Dental Health Program.

(3) Effects on the promulgating administrative body: Additional printing costs of regulations, notice of violation forms, and hearing forms and administrative monitoring of the program.

(a) Direct and indirect cost:

1. First year: Minimal

2. Continuing costs: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will remain the same.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulations: Existing general and agency funds.

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

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published so no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published so no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state law.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulation enforcement of proper fluoridation of community water systems would in turn benefit the citizens of Kentucky through the reduction of dental disease.

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

(c) Proper fluoridation of community water systems would not be implemented, therefore citizens would not receive the benefits necessary to maintain proper dental health.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering was not applied because it does not create disproportional impact.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to the operation of community water system fluoridation units.

2. State whether this administrative regulation will affect the local government or only a part or division of local government. Will only affect a part of the local government.

3. State the aspect or service of local government to which this administrative regulation. Relates to fluoridation of community water systems necessary for compliance with KRS 211.180 and KRS 211.190(11).

4. How does this administrative regulation affect the local government or any service it provides. This proposed regulation will define the requirements for enforcement of community water system fluoridation equipment.

CABINET FOR FAMILIES AND CHILDREN Department for Social Services (Amendment)

905 KAR 1:320. Fair hearing.

RELATES TO: KRS 13B.005 to 13B.170, 45 CFR 205.10, 29 USC 794, 42 USC 12101 et seq., 2000a et seq.

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Under Titles IV-A, IV-B, IV-C, IV-E and Title XX of the Social Security Act, the single state agency responsible for the program shall be required by federal regulation, 45 CFR 205.10, to provide a hearing to an applicant or recipient who is aggrieved by an agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services. The Department for Social Services has assured various federal agencies that it shall comply with the provisions of 29 USC 794, 42 USC 12101 et seq., 42 USC 2000a et seq., and with 45 CFR 205.10. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children. This administrative regulation amends provisions to comply with requirements of KRS 13B.005 to 13B.170.

Section 1. Definitions. (1) "Applicant for services" means a person who has applied for services from the Department for Social Services by means of signing an application.

(2) "Client" means a recipient or a person who has been determined to be eligible to receive services from the Department for Social Services and has been registered in a case to receive ongoing services or a person who has been ordered by a court to receive services from the Department for Social Services.

(3) "Complainant" means the applicant for services, client, foster parent or adoptive parent who after submitting their written complaint, is entitled to a fair hearing.

(4) "Hearing officer" means a person who is trained in administrative hearing procedures designated by the Commission for Social Services or designee to conduct fair hearings.

(5) "Local resolution process guidelines" means the local resolution conference consisting of an informal process that gives the complainant the opportunity to discuss his complaint and clarify issues and attempt to resolve those issues. The complainant shall be afforded the opportunity to decide whether he continues to desire a formal hearing following the local resolution process.

(6) "Timely" means that a notice is mailed at least ten (10) days before the date of the action, except that adequate written notice shall be given no later than the date of the action if staff determines that delaying the action endangers the health or well-being of the children or that the health or well-being of children may be endangered if prior notice is given.

Section 2. Right to a Fair Hearing. (1) The department shall not on the basis of race, color, national origin, sex, age, religion or disability:

(a) Deny an individual aid, care, services or other benefits of the department, either directly or through contractual or other agreements.

(b) Provide aid, care, services, or other benefits to an individual which is different or is provided in a different manner from that provided to others.

(c) Subject an individual to segregation or separate treatment in a matter related to his receipt of aid, care, services or other benefits.

(d) Restrict an individual in the enjoyment of an advantage or privilege enjoyed by others receiving aid, care, services or other benefits.

(e) Treat an individual differently from others in determining whether he satisfies eligibility or other requirements or conditions which individuals shall meet to receive aid, care, services or other

benefits.

(f) Deny an individual an opportunity to participate in the program through the provision of services or afford him an opportunity to do so which is different from that afforded others.

(2) A notice of the client's right to a hearing shall be displayed prominently in each Department for Social Services residential treatment facility, clinical programs, day treatment center, group home, and in each Department for Social Services office in a location easily accessible to clients. The notice of right to a hearing shall state:

(a) If you are dissatisfied with the action taken, you may request a fair hearing within thirty (30) days from the date of the action by filing a written request or a DSS-154, Request for Fair Hearing form, incorporated by reference herein, with the Quality Assurance Branch, Department for Social Services, ~~404 Ann Street, Frankfort, Kentucky 40604~~.

(b) You may be represented by an attorney or other spokesman.

(3) Staff of the Department for Social Services, shall have the responsibility of advising applicants, clients, foster parents and subsidized adoptive parents in writing of their right to a fair hearing:

(a) During intake or the initial treatment planning conference, using the DSS-154, Request for Fair Hearing form.

(b) During any action affecting services or assistance:

1. Staff shall give the applicant, client or subsidized adoptive parent timely and adequate notice and an opportunity to object, using the DSS-154A, Notice of Intended Action form, incorporated by reference herein.

2. If a request for a hearing is made within ten (10) days of the notice of an action affecting services, services shall be continued until a decision is rendered after a hearing, unless staff determines that continuation of the services or delay of the action endangers the health or well-being of a child; and

(c) Staff shall give new foster parents, upon approval a written notice of their right to a fair hearing when:

1. A foster home is closed;

2. A child is removed from one (1) foster home to another foster home; and

3. Training provided by the department is denied.

(4) Hearing entitlement.

(a) An applicant or client shall be entitled to a hearing on the following actions:

1. A denial, reduction, material modification, suspension, discontinuance, exclusion from or termination of a service;

2. Dissatisfaction with a service received, inappropriate or inadequate treatment, placement or visitation;

3. Failure of the department to act upon a request for service with reasonable promptness;

4. Failure of the department to take into account a client's choice of service or a determination that the individual shall participate in a service program against his wishes except where required by law; or

5. Discrimination against a client by department staff on account of age, sex, race, national origin, disability or religion.

(b) A foster parent shall be entitled to a hearing on the following decisions:

1. To remove a foster child from one foster home to another foster home except if the child has been the subject of a substantiated report of abuse or neglect by the foster parents;

2. To deny foster parents foster parent training provided and scheduled by the department.

3. To close the foster home;

4. Foster parents are not entitled to a fair hearing if:

a. Sexual abuse or sexual exploitation by the foster parents is substantiated;

b. Substantiation of physical abuse of a child or spouse warranting the removal of the victim;

c. Neglect by the foster parents is substantiated;

d. There is presence of a serious physical or mental illness which

impairs or precludes adequate care of the child by the foster parents;

e. ~~(d)~~ Foster parents are convicted of a felony offense; or

f. ~~(e)~~ Foster parents have not had a placement within five (5) years of the approval date.

(c) Subsidized adoptive parents shall be entitled to a hearing on the decision to deny or reduce adoptive assistance for a special needs child. Adoptive parents eligible for a Title IV-E adoption subsidy for a special needs child are entitled to a hearing for:

1. Failure of the department to advise the adoptive parents of the availability of the adoption assistance for special needs children; and

2. Failure to provide the Title IV-E eligible adoptive parents known relevant facts regarding the child, biological family and child's background prior to finalization.

(5) The following issues shall not be considered through the hearing procedure described herein:

(a) Complaints related to legal issues, for example, actions involved in court cases or the interpretation of any statute or regulation;

(b) A complaint that has not been filed in writing with the Quality Assurance Branch;

(c) A complaint that has been abandoned by failure of the complainant to carry forward with their complaint, to furnish information requested by the hearing officer or to appear at a scheduled hearing;

(d) ~~A complaint of a provider of services under contract or memorandum of agreement, that is day treatment, group homes, private child care facilities or area development districts. Refer to 906 KAR 8:140, Hearing procedures for area agency on aging, contract selector actions, for formal complaint procedure for area agencies on aging;~~

~~(e)~~ A client complaint involving services or discrimination against a contract agency;

~~(e)~~ ~~(f)~~ Discrimination practices in relation to departmental personnel policies and procedures. These grievances shall be handled per instructions in the personnel manual; and

~~(f)~~ ~~(g)~~ A report or investigation of child abuse or neglect and adult abuse or neglect.

Section 3. Request for Hearing. (1) The complainant or legal guardian shall sign the request and submit it to the Quality Assurance Branch. Upon request, departmental staff shall assist individuals in preparation and submission of a request for hearing. Staff shall not assume responsibility for mailing the request. Requests for hearing shall be in writing or filed on the DSS-154, Request for Hearing form and contain:

(a) Specific allegations or complaints against the department;

(b) Name of the staff person, or persons involved if known;

(c) Circumstances under which the alleged act occurred; and

(d) Date and place of alleged act.

(2) Requests shall be filed in writing within thirty (30) days after the alleged act or notice of a decision affecting services. If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery. If the request is filed after the thirty (30) day period, a decision as to acceptance or denial of the complaint for action shall be made by the Commissioner of the Department for Social Services, or designee.

(a) Within five (5) working days of the receipt of the complaint, the Quality Assurance Branch shall notify the complainant of the receipt of the request and the department's policy of attempts at local resolution before a hearing is scheduled.

1. The appropriate family services district manager or designee shall also be notified of the receipt of the request and asked to set a meeting with the complainant to attempt to resolve the issues that led to the complaint.

2. The juvenile services specialist shall arrange a meeting with the complainant to attempt to resolve the issues that led to the complaint if received from youth in residential treatment facilities, Re-

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ed programs, group homes or day treatment programs.

(b) The local resolution facilitator contacts the complainant to:

1. Clarify the issues of the complaint;

2. Determine if the complainant wishes to participate in the local resolution process; and

3. Determine if the complainant is a client or a person filing on behalf of a client. If the complainant is not a client, notify the Quality Assurance Branch Manager immediately.

(c) The complainant may refuse to participate in the local resolution efforts and shall sign an acknowledgement to be forwarded to the Quality Assurance Branch Manager and choose:

1. To request that the complaint be withdrawn; or

2. That the complaint be referred for a formal fair hearing.

(d) If the complainant chooses to be involved in the local resolution process, the local resolution facilitator shall solicit information from the involved parties in an attempt to resolve the complaint in a manner that is acceptable to the complainant. The solicitation of information may include:

1. Interviews with the complainant and named DSS staff;

2. Interviews with other involved parties; and

3. A review of relevant case materials.

(e) Other issues identified as a result of the local resolution conference shall be brought to the attention of appropriate management and supervisory staff.

(4) The family services district manager or his designee or the juvenile services specialist shall forward to the Quality Assurance Branch, in writing, the results of their efforts to achieve local resolution of the complaint not more than thirty (30) days after the filing of the request for hearing. The report shall contain:

(a) Nature of the complaint;

(b) Date of resolution conference;

(c) Persons present at the conference; and

(d) A specific statement of any issues not resolved.

(5) If the complaint is resolved, the complainant shall sign an acknowledgment to be attached to the report. A copy of the local resolution report shall be sent to the complainant and involved staff.

Section 4. Hearing Before the State Agency. (1) If a complaint is not resolved within thirty (30) days after filing, it shall be referred to a hearing officer of the Quality Assurance Branch to conduct a hearing. The hearing shall be held within thirty (30) days after referral. If the complainant agrees to an extension of time, the time for final administrative action shall be correspondingly extended.

(2) The hearing shall be conducted at a reasonable location selected by the hearing officer.

(3) The complainant and representatives, as appropriate, the DSS staff involved in the complaint and their representatives, and Cabinet Office of the Counsel [CHR Department of Law] shall be given twenty (20) [seven (7) working] days written notice prior to the hearing. The hearing officer's notice shall comply with KRS 13B.050(2)(3). The following additional information shall be contained in the hearing officer's notice to the complainant and his representative and staff named in the complaint:

(a) ~~[The specific complaint issues to be heard at the hearing.]~~ The complainant shall be asked to notify the hearing officer in writing within five (5) working days of the receipt of the notice if the complaint issues have not been correctly stated. The hearing officer shall then make a determination as to whether to modify the complaint issues;

(b) Individuals to be present at the hearing;

(c) ~~[The complainant's option of presenting his case himself or with the aid of an authorized representative, for example, legal counsel, relative, friend or other spokesman;~~

~~(d)]~~ That the department shall not be responsible for any legal fees incurred by the complainant related to the hearing;

(d) [(e)] The nature and conduct of the hearing, shall be held in an orderly but informal manner, with an opportunity to present witnesses and to cross examine opposing witnesses~~[-and~~

~~(f) The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access the material under the open records law as governed by KRS 61.870 to 61.884.~~

~~(4) The following information shall be contained in the hearing officer's notice to staff named in the complaint:~~

~~(a) The specific complaint issues to be heard at the hearing;~~

~~(b) Individuals to be present at the hearing;~~

~~(c) The nature and conduct of the hearing, shall be held in an orderly but informal manner, with an opportunity to present witnesses and to cross examine opposing witnesses;~~

~~(d) The Department of Law shall represent the Department for Social Services in fair hearings; and~~

~~(e) The involved staff may present evidence in defense of their actions either on their own or through a representative of their choosing. An attorney from the Department of Law may represent the involved staff provided there is not a conflict of interest. If staff obtain private legal representation, the Department of Social Services shall not be responsible for legal fees incurred.]~~

~~(4) [(6)]~~ Attendance at the hearing shall be limited to:

~~(a) The complainant and representatives;~~

~~(b) Staff involved in the complaint and their representatives;~~

~~(c) The department's attorney;~~

~~(d) A representative of the department;~~

~~(e) A person to operate the recording equipment;~~

~~(f) Witnesses called by either the complainant or staff; and~~

~~(g) The hearing officer.~~

(5) [(6)] The hearing shall be conducted as governed by KRS 13B.080 and 13B.090. ~~[(in an orderly but informal manner, following the rules of procedure applicable to administrative hearings.)~~ Facts relevant to the issue shall be received.

~~(a) The hearing officer shall open the hearing by:~~

~~1. Describing the purpose of the hearing;~~

~~2. Explaining the role of the hearing officer; and~~

~~3. Introducing parties to the hearing.~~

~~4. The hearing officer may direct or grant a continuance for good cause shown.~~

~~5. The hearing officer shall carefully clarify the complaint issues to be heard with the parties to the hearing. The complaint issues shall be the same as those in the written notification of the hearing.~~

~~(b) [Before receipt of testimony, the hearing officer shall administer the oath pursuant to KRS 194.025.~~

~~(c)]~~ The hearing officer shall arrange for the separation of witnesses. Only the client and representatives; staff involved in the complaint and their representatives; the department's attorney; a representative of the department; the hearing officer; and a person to operate the recording equipment are entitled to be in the hearing room throughout the entire hearing. The hearing officer may permit others to remain throughout the entire hearing if circumstances dictate.

~~[(d) A witness shall complete direct testimony and then shall answer questions on cross examination by the adverse party.]~~

~~(c) [(e)]~~ The complainant shall have the burden of proof and shall testify first and may present pertinent evidence, including testimony of witnesses and documents.

~~(d) [(f)]~~ Upon completion of the case for the complainant, the respondents may testify and present other evidence including testimony of witnesses and documents.

~~(e) [(g)]~~ Upon completion of the case for the respondents, the complainant may present additional evidence in strict rebuttal of the evidence presented by respondents. Additional evidence may be presented by either complainant or respondents at the discretion of the hearing officer.

~~(f) [(h)]~~ The hearing officer may, if necessary to secure full information on the issue:

~~1. Postpone the hearing;~~

2. Examine each party who appears, and his witnesses; and
3. Take any additional evidence which he deems necessary including excerpts from the case record.

~~(f) After both parties to the hearing have been given ample opportunity to present their testimony and evidence, the hearing officer shall give each party an opportunity to summarize the salient points of their cases.~~

~~(g) Upon completion of the hearing, the hearing record shall be closed unless the hearing officer grants an exception under proper motion.~~

(g) ~~(f)~~ The hearing officer shall advise the parties that a decision shall be rendered within thirty (30) ~~twenty (20)~~ days from the close of the hearing.

(h) ~~(g)~~ Ex parte communications with the hearing officer shall be prohibited. Ex parte communications with the hearing officers shall be shared with the parties to the hearing and become a part of the official record.

Section 5. Hearing Officer's Recommended Order ~~[Report and Decision]~~. (1) Within ten (10) days after the close of the hearing, the hearing officer shall file a recommended order ~~[written report]~~ with the Quality Assurance Branch. The order ~~[report]~~ shall comply with KRS 13B.110 and at least contain:

(a) Statement of the complaint;
(b) Persons present at the hearing, including witness;
(c) Findings of fact based solely on the evidence introduced at the hearing;

(d) Conclusions as to whether or not the findings support the complaint, citing appropriate policy, procedures and practices in a recommended decision on the issues;

(e) Recommendations as to action to be taken on the complaint; and

(f) Other issues identified by the hearing officer shall be addressed in a separate memorandum ~~[to the branch manager who shall forward them to the commissioner]~~.

(2) Each party to the hearing shall have fifteen (15) days from date of recommended order to file exceptions.

(3) Within twenty (20) ~~ten (10)~~ days after receipt of the hearing officer's recommended order ~~[report]~~ by the Quality Assurance Branch, the commissioner, or designee, shall render a final order ~~[written decision]~~ on the complaint. The final order ~~[written decision]~~ shall be sent to the complainant by certified mail, return receipt requested, and to the staff involved, and shall comply with KRS Chapter 13B.120 and at least contain the following information:

(a) Statement of the complaint;
(b) Findings of fact and conclusion with applicable statutes, policies, procedures and practices in regard to the complaint; and
(c) Decision and action to be taken based on findings of fact.

Section 6. Corrective Action. After reviewing the findings of fact and conclusions and recommendations of the hearing officer, if the commissioner or the commissioner's designee feels that corrective action is warranted, a memorandum shall be forwarded to the appropriate assistant director for family services or residential services requesting that corrective action be initiated. Corrective actions deemed necessary shall be initiated within ten (10) days.

Section 7. Record. The record of each administrative hearing shall comply with KRS 13B.130 ~~[transcript or recording of testimony and exhibits, or an official report containing the substance of the testimony introduced at the hearing, together with all exhibits, papers and requests filed in the proceeding, ex parte communications and the report of the hearing officer shall constitute the exclusive record]~~ and shall be available at the Frankfort office of the Quality Assurance Branch at any reasonable time in accordance with open records. The record of the fair hearing shall be maintained in a locked file separate from the case record of the complainant.

Section 8. Contract Agencies. (1) Contract agencies of the department shall follow procedures outlined in this administrative regulation ~~[manual section]~~ if a client has a complaint related to civil rights, discrimination or service delivery. If the complainant is dissatisfied with the written decision rendered by the contract agency, the client has ten (10) days from the date of the agency's decision to appeal. The agency, if requested, shall assist the complainant in filing an appeal of the decision. An appeal shall be mailed to the office of the commissioner.

(2) The commissioner shall forward the appeal of the decision to the Quality Assurance Branch to be reviewed by a hearing officer. After reviewing the decision made by the contract agency, the hearing officer shall file a written report with the commissioner which shall contain:

(a) Conclusions as to whether the contract agency's finding support the complaint, citing appropriate policy and procedure; and
(b) Recommendations as to action to be taken on the complaint.

(3) After receipt of the hearing officer's report, the commissioner or the commissioner's designee shall render a written decision on the complaint. The written decision shall be sent to the complainant by certified mail, return receipt requested, and shall contain the following:

(a) Statement of the appeal; and
(b) Decision and action to be taken.

Section 9. Material Incorporated by Reference. (1) The DSS-154, Request for Hearing, revised December, 1992 and the DSS-154A, Notice of Intended Action, revised October, 1993 shall be 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.

VIOLA MILLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: September 5, 1996

FILED WITH LRC: September 11, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on October 21, 1996 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify this agency in writing by October 14, 1996. If no notification of intent to attend the hearing is received by that date the hearing may be cancelled. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: William K. Moore, Jr., Office of the Counsel, Cabinet for Families and Children, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Fax# (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are applicants, clients, foster parents or subsidized adoptive parents receiving services from the Department for Social Services. The actual number cannot be determined, but during fiscal year 1995, the Quality Assurance Branch accepted complaints and conducted fair hearings and administrative reviews. The other complaints were either resolved locally, dismissed by the client or ruled inappropriate requests.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. There are no direct and indirect costs or savings on the cost of living and employment in the

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area in which the administrative regulation will be implemented as the proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing was scheduled, but no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. There are no direct and indirect costs or savings on the cost of doing business in the area in which the administrative regulation will be implemented as the proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing was scheduled, but no comments were received.

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

1. First year following implementation: There are no direct and indirect costs or savings for compliance, reporting or paperwork requirements for the clients as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing was scheduled, but no comments were received.

2. Second and subsequent years: There are no direct and indirect costs or savings for compliance, reporting or paperwork requirements for the clients as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing was scheduled, but no comments were received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First Year: There are no direct and indirect first year costs or savings for compliance, reporting or paperwork requirements for the Department for Social Services as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing was scheduled, but no comments were received.

2. Continuing costs or savings: There are no direct and indirect continuing costs or savings for compliance, reporting or paperwork requirements for the Department for Social Services as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing was scheduled, but no comments were received.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing the costs as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A.

(b) Reporting and paperwork requirements: There are no direct and indirect continuing costs or savings for compliance, reporting or paperwork requirements for the Department for Social Services as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sources of revenue to be used for implementation of this administrative regulation are Title IV-A, Title IV-B, Title IV-E, Title XX, which require the fair hearing process and general 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: A public hearing was scheduled, but no comments were received.

(b) Kentucky: A public hearing was scheduled, but no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered because the proposed amendments only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A.

(8) Assessment of expected benefits: The anticipated benefits are compliance with KRS Chapter 13B relating to administrative hearings.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare because the proposed amendments only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on the environment and public health because the proposed amendments only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments:

There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This regulation was not tiered as it implements provisions of KRS Chapter 13B relating to administrative hearings which are applicable statewide.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (Amendment)

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575[~~1992 Ky. Acts ch. 462, Part I, § 52.0-2~~]

STATUTORY AUTHORITY: KRS 194.050, 205.460, [~~1992 Ky. Acts ch. 462, Part I, § 52.0-2~~] 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medicaid Assistance~~]. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet

for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Medicaid Program ~~[cabinet]~~ for hospital inpatient services.

Section 1. Definitions. The following definitions shall be applicable:

- (1) "Acute care hospital" means a hospital appropriately licensed and certified to provide acute care hospital services.
- (2) "Base year" means the cost reporting period upon which a rate is based.
- (3) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.
- (4) "Charity care" means care provided for individuals who have no source of payment for the services rendered, including personal or third-party resources but shall not include bad debt.
- (5) "Cost basis" means the total allowable Medicaid inpatient costs incurred by the provider in the base year.
- (6) "Department" means the Department for Medicaid Services.
- (7) "Disproportionate share hospitals" (DSH) means hospitals that meet the criteria specified in 42 USC 1396r-4(d) and one (1) of the following criteria:
 - (a) As specified in 42 USC 1396r-4(b); or
 - (b) Hospitals that have Medicaid utilization of one (1) percent or higher.
- (8) "DRI" means Data Resources, Inc.
- (9) "Exceptionally high costs or long lengths of stay" means for newborns, those costs and days of stay in:
 - (a) A nondisproportionate share hospital that are thirty (30) days beyond the date of discharge for the mother, and for all other children under age one (1) after thirty (30) days from the date of admission; or
 - (b) A disproportionate share hospital that are thirty (30) days beyond the date of discharge for the mother, and for all other children under age six (6) after thirty (30) days from the date of admission.
- (10) "Indexing factor" means the amount that the cost of providing a service is expected to increase during the rate year.
- (11) "Indigent days" means days in excess of fourteen (14) covered days for Medicaid recipients and all days of service provided to individuals eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days, with eligibility determined in accordance with criteria shown in 907 KAR 1:635, and which are uninsured or unreimbursed by any other source.
- (12) "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time.
- (13) "Pediatric teaching hospital" means a hospital with a pediatric services program which is used as the primary medical teaching facility for the medical students at the University of Kentucky or the University of Louisville.
- (14) "Professional component costs" and "professional costs" means those professional costs resulting from services provided by anesthesiologists, cardiologists, electroencephalographists, pathologists, radiologists, psychiatrists and emergency room physicians and for which the hospital is reimbursed.
- (15) "State teaching hospital" means a hospital which is owned or operated by a state supported university with a medical school. As of the date of this administrative regulation, Kentucky's designated state teaching hospitals are those owned or operated by the University of Kentucky or the University of Louisville.
- (16) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year-end and the beginning of the rate year.
- (17) "Type I hospital status" means those in-state disproportionate

share hospitals with 100 beds or less that participate in the Medicaid Program.

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

(19) "Type III hospital status" means those in-state disproportionate share state university teaching hospitals that have requested a Type III status which has been approved by the Department for Medicaid Services.

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

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

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

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

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

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

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

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

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

~~(4) Use of Prospective Rates. (1) Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.~~

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

~~(b) Once a base year is selected for setting a rate, that base year shall not change. [For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used.]~~

~~(c) [For universal rate years beginning on or after January 1, 1985.] The prospective rate shall not be subject to retroactive adjust-~~

ment, except for ~~to the extent that~~ facilities with a rate based on unaudited data. These facilities shall have their rate appropriately revised for the rate year when the audited cost report for the base year is received from the fiscal intermediary or an independent audit firm under contract with the department.

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

(2) ~~(e)~~ Overpayments shall be recouped by:

(a) ~~(1. By)~~ Payment from the provider of the amount of the overpayment; or

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

Section 4. ~~(2)~~ Use of a Universal ~~(uniform)~~ Rate Year. (1) A universal ~~(uniform)~~ rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The most recent Medicaid cost report available as of November 1 of each year preceding the rate year shall be used for rate setting. If a desk review or audit of the most current cost report is completed after November 1, but prior to the universal rate setting for the year the desk review or audited data shall be utilized for rate setting. ~~[The first uniform rate year for psychiatric hospitals shall be July 1, 1986 through June 30, 1986; however, effective January 1, 1986 the psychiatric hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of]~~

(2) Policy changes shall not change the rate year, although the facility rates may change.

(3) Hospitals ~~shall~~ ~~[are]~~ not be required to change their fiscal years to conform with rate years.

Section 5. ~~(3)~~ Trending of Cost Reports. The following policies shall be used for the trending of cost reports:

(1) Allowable Medicaid cost, excluding capital cost, as shown in cost reports on file in the ~~department~~ ~~[cabinet]~~, both audited and unaudited, shall be trended to the beginning of the rate year in order ~~(so as)~~ to update a facility's Medicaid costs. ~~[When trending, capital costs and return on equity capital are excluded.]~~

(2) The trending factor to be used shall be the inflation factor prepared by DRI ~~[Data Resources, Inc. rate of inflation]~~ for the period being trended.

Section 6. ~~(4)~~ Indexing for Inflation. (1) After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied in order ~~(so as)~~ to project inflationary cost in the universal ~~(uniform)~~ rate year.

(2) The ~~[forecasting]~~ indexing factor to be used shall be the inflation factor ~~[currently in use is]~~ prepared by DRI for the rate year. ~~[Data Resources, Inc. This policy shall be effective August 3, 1985.]~~

Section 7. ~~(6)~~ Peer Grouping. For rate setting purposes, hospitals shall be grouped with other hospitals in accordance with the following provisions: ~~[Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be grouped with other acute care hospitals according to bed size (referred to as "peer grouping").]~~

(1) The peer groupings shall be based on the number of beds licensed as acute, acute rehabilitative, comprehensive physical rehabilitative, pediatric orthopedic, psychiatric rehabilitative, psychiatric, psychiatric adolescent, psychiatric adult rehabilitative, tuberculin, and other hospital beds licensed to provide Medicaid covered care pursuant to KRS Chapter 216B on November 1 preceding the rate year.

(2) ~~(a)~~ The peer groupings ~~[for the payment system]~~ shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds or more ~~[and up]~~.

(3) ~~(b)~~ Designated state teaching hospitals affiliated with or a

part of a ~~[the]~~ university ~~[of Kentucky and the University of Louisville]~~ shall not be included in the array for facilities with 401 beds and up unless the facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in a manner which recognizes the presence of the major pediatric teaching component existing outside the state university hospitals.

~~(c) A facility in the 201-400 peer group shall not have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up.]~~

(4) ~~(d)~~ Psychiatric hospitals shall not be peer grouped but shall be in ~~[have]~~ a separate array of psychiatric hospitals only.

(5) ~~(e)~~ Rehabilitation hospitals and acute care hospitals providing only rehabilitation services ~~[considered to be primarily rehabilitative in nature]~~ shall not be peer grouped, ~~[or]~~ arrayed, or subject to the operating cost upper limits.

Section 8. ~~(6)~~ Use of a Minimum Occupancy Factor. Allowable Medicaid capital cost shall be reduced if the following minimum occupancy factors are not met: ~~[A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid Program.]~~

(1) A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds; and

(2) A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. ~~[Capital costs are interest and depreciation related to plant and equipment.]~~

Section 9. ~~(7)~~ Use of a Reduced Depreciation Allowance. Reduced depreciation allowance shall be applicable, as follows:

(1) The allowable amount for depreciation on building and fixtures, excluding ~~[not including]~~ major movable equipment~~(s)~~, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

(2) The use of a reduced depreciation allowance is not applicable with regard to psychiatric hospitals.

Section 10. ~~(8)~~ Use of Upper Limits and Payment Principles. ~~[with regard to services provided on or after November 20, 1993.]~~

~~(a)~~ The following upper limits and payment principles shall apply to all hospitals with other additional limitations for disproportionate share hospitals shown in Section 11 of this administrative regulation. ~~[paragraph (b) of this subsection.]~~

(1) ~~(1. a. (i))~~ For acute care hospitals with 101 beds and up, ~~[except hospitals with 100 beds or less.]~~ an upper limit shall be established on all costs (except Medicaid capital cost and professional component cost) at the weighted median per diem cost for hospitals in each peer group, ~~[using the most recent Medicaid cost report available as of December 1 of each year].~~

(2) ~~(1. b.)~~ For acute care hospitals with 100 beds or less, the upper limit on all costs (except Medicaid capital cost and professional component cost) shall be established at 110 percent of the weighted median per diem for hospitals in the peer groups, ~~[using the most recent Medicaid cost report available as of December 1 of each year].~~

(3) ~~(1. c.)~~ For psychiatric hospitals:

~~(a)~~ An upper limit shall be established on all costs (except Medicaid capital cost and professional component cost) at the weighted median per diem cost for hospitals in the array.

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

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

(4) After ~~(e. Upon)~~ being set, the arrays and upper limits shall not be altered due to revisions or corrections of data. ~~[i- however]~~ The

arrays or upper limits may be changed as a result of changes of agency policy.

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

[d. Disproportionate share hospitals shall also receive, in addition to regular program payments, disproportionate share hospital payments as described in the Reimbursement Manual at Section 102C.]

(6) [e.] Provider taxes shall be considered allowable cost with that portion attributable to Medicaid utilization included in the per diem rates. [For the rate period beginning November 20, 1993, the allowable cost of the tax shall be added to the hospital rate with no offsets and without regard for usual upper limits. For subsequent rate periods the cost (excluding, effective March 1, 1994, any per diem rate adjustments for the prior rate period relating to provider taxes) shall be shown in the appropriate cost report with adjustment as necessary to reflect an annual amount.]

(7) The following controls shall be applied to the per diem rate increases for acute care hospitals except for those providing only rehabilitation services.

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

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

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

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

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

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

(1) [4.] Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursery [nursing] days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in that peer grouping [the array]. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) as shown in subsection (7) [(9)(b)2] of this section. These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.

(2) [2.] Designated state teaching hospitals owned or operated by a university [and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville)] shall have an upper limit set at 126 percent of the weighted median per diem cost for [all other] hospitals of [comparable size (401 beds and up)]. Designated state pediatric teaching hospitals shall have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group.

(a) The designated state pediatric teaching hospitals shall also be paid, in addition to the facility's [facilities'] base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of

Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. [In addition to the per diem amount computed using the limits specified in this subparagraph, the]

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

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

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

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

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

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

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

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

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

(b) The disproportionate share hospital payments for Type III and IV hospitals shall be equal to 100 percent of the cost of services to Medicaid patients, less the amount paid by Medicaid as usual Medicaid per diem payments, plus the cost of services to uninsured patients, less any cash payments made by the uninsured patients. Type III status shall be granted to a state teaching hospital if the hospital agrees as a part of its request for a Type III status to forego any local or state government contributions for charity care and to provide up to 100 percent of the state matching funds necessary to secure federal financial participation for Medicaid disproportionate share hospital payments to be made during the period of time the hospital is designated as a Type III status hospital.

(c) The disproportionate share hospital payments for Type V hospitals shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

(7) Medically necessary hospital inpatient services provided by all in-state disproportionate share hospitals to children under the age of six (6) with exceptionally high costs or long lengths of stay, after thirty (30) days from the date of admission or the mother's discharge, the payment rate shall be set at 110 percent of the per diem payment rate. These payments apply without regard to length of stay or

number of admissions of the child.

(f) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r 4(b) and (d) and those hospitals which may not meet the criteria but meet the criteria specified in 42 USC 1396r 4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and psychiatric hospitals with Medicaid utilization of thirty five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r 4(e), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. For the period ending June 30, 1994, the following policy shall be in effect:

a. Each disproportionate share hospital shall be paid a minimum disproportionate share payment amount for the type of hospital plus any earned adjustment to which the hospital is entitled. The hospital types, minimum payment amounts, and earned adjustments shall be as follows and shall only remain in effect for the period ending June 30, 1994:

(i) Type I hospitals shall be those acute care and psychiatric in-state hospitals serving a federally designated medically underserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund, when the hospital has fifty (50) beds or less. Minimum amount: ninety five (95) dollars per Medicaid day.

(ii) Type II. These hospitals shall be described in the same manner as Type I, except these hospitals have fifty one (51) beds to 100 beds. Minimum amount: seventy (70) dollars per Medicaid day.

(iii) Type III. These hospitals shall be described in the same manner as Type I except these hospitals have 101 beds to 200 beds and include rehabilitation hospitals. Minimum amount: fifty five (55) dollars per Medicaid day.

(iv) Type IV. These hospitals shall be described in the same manner as Type I except these hospitals have 201 or over beds and include rehabilitation hospitals. Minimum amount: forty five (45) dollars per Medicaid day.

(v) Type V. All acute care and psychiatric in-state hospitals with 100 beds and under except those described as Type I or II. Minimum amount: forty five (45) dollars per Medicaid day.

(vi) Type VI. All acute care, rehabilitation and psychiatric in-state hospitals with 101 beds to 200 beds except those that are Type III. Minimum amount: thirty five (35) dollars per Medicaid day.

(vii) Type VII. These hospitals shall be described in the same manner as Type I, except the type shall be limited to rehabilitation hospitals. Minimum amount: ninety five (95) dollars per Medicaid day.

(viii) Type VIII. These hospitals shall be described in the same manner as Type II, except the type shall be limited to rehabilitation hospitals. Minimum amount: seventy (70) dollars per Medicaid day.

(ix) Type IX. All rehabilitation hospitals, with 100 beds and under except those described as Type VII or VIII. Minimum amount: forty five (45) dollars per Medicaid day.

(x) Type X. All other in-state hospitals. Minimum amount: ten (10) dollars per Medicaid day.

(xi) Type XI. All out-of-state hospitals. Minimum amount: one (1) dollar per Medicaid day.

b. (i) Each Type I through Type X hospital shall have the opportunity for an earned payment adjustment based on the provision of indigent care (i.e., care provided to Medicaid recipients beyond the Medicaid covered days or to individuals or families with income under the poverty level):

(ii) For the period of July 1, 1993 through June 30, 1994, the earned adjustment shall equal ten (10) dollars for each indigent day of care provided plus an amount equal to the cost of the indigent care (at Medicaid rates) provided by the hospital for which there has been no direct or indirect payment (i.e., where the cost of the care has not been paid or cost shifted to other payers) with an adjustment to account for outpatient services so the total indigent care per diem rate shall be up to but not in excess of 140 percent of the Medicaid per diem rate.

(iii) A hospital shall be presumed to have received payment for indigent care to the extent that other patient revenues exceed other patient costs, and to the extent that direct or other indirect payments are made to the hospital for the indigent care.

(iv) A one (1) time disproportionate share payment shall be paid as appropriate for the period of June 15, 1994 through June 30, 1994 to those hospitals qualifying under the following formula:

i. The amount of disproportionate share indigent care payments earned by the hospital using the formula in effect during the period of July 1, 1993 through June 30, 1994 shall be compared to an amount which is derived by computing the amount of earnings that would have been realized during the period of July 1, 1993 through June 30, 1994 using the revised formula taking effect on July 1, 1994 (shown in subparagraph 2 of this paragraph); the one (1) time payment amount shall be the amount (if any) by which the amount derived by using the formula effective July 1, 1994 exceeds the actual amount earned under the formula which was in effect; and

ii. If the one (1) time payments would cause the total of all disproportionate share payments to exceed \$81,000,000 for the period of July 1, 1993 through June 30, 1994, all one (1) time payments shall be reduced proportionately so the total amounts of disproportionate share payments for the period of July 1, 1993 through June 30, 1994 shall equal but not exceed \$81,000,000.

(v) Any acute care disproportionate share hospital with 100 beds or less whose July 1, 1993, or January 1, 1994, per diem payment rate is less than the April 1, 1993 rate paid as of June 30, 1993, and also less than full allowable per diem costs for the services provided by the hospital as of July 1, 1993, or January 1, 1994, respectively, shall receive an adjustment to the hospital's disproportionate share minimum payment for the period March 1, 1994 through June 30, 1994. The payment adjustment for an acute care hospital shall be determined by multiplying the number of the hospital's Medicaid days as follows:

i. For services provided for the July 1, 1993 through December 31, 1993 period by the difference between the hospital's July 1, 1993 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost; and

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

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

e. Each Type XI hospital shall qualify for an earned adjustment

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which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

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

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

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

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

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

Section 12. In-state Nondisproportionate Share Hospitals. In-state nondisproportionate share hospitals shall be compensated in the manner described in Section 11(5)(a) of this administrative regulation for services provided by the hospital to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to 100 percent of the federal poverty level, except for nonemergency care rendered through a hospital emergency room, in accordance with KRS 205.640.

Section 13. [4-] Payments to Participating Out-of-state Hospitals.

(1) [Effective with regard to services provided on or after July 1, 1999] Participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) [Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission,] Participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) in any

hospital; and children under age six (6) in disproportionate share hospitals, without regard to length of stay or number of admissions of the infants and children.

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

Section 14. Material Incorporated by Reference. (1) The "Medicaid Reimbursement Manual for Hospital Inpatient Services" edition of September 1995 shall be incorporated by reference in this administrative regulation.

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

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

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

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

Section 15. Appeal Rights. As specified in the Medicaid Reimbursement Manual for Hospital Inpatient Hospital Services, negative actions may be appealed in accordance with 907 KAR 1:671.

Section 16. [6-] Except as otherwise specified the changes shown in this administrative regulation shall be applicable [effective] with regard to services provided on or after March 8, 1996. [November 29, 1993-]

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick (564-5020) or Karen Doyle

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

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

(a) Cost of living and employment in the geographical area in

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which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Considered budget neutral.

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: Federal and state matching funds.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will provide for continued access to hospital inpatient services for Medicaid recipients.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CAB'NET FOR HEALTH SERVICES Department for Medicaid Services (Amendment)

907 KAR 1.034. Early and periodic screening, diagnosis and treatment services.

RELATES TO: KRS 205.520, 605.115

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396d, 441.50 through 441.62, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medicaid [~~medical assistance~~] to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to the early and periodic screening, diagnosis and treatment service for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program on [in] behalf of both categorically needy and medically needy children under age twenty-one (21).

Section 1. Definition. (1) "By report" service or item means any service for which a maximum allowance has not been established because the item is rarely billed to the Kentucky Medicaid Program or because the service is unusual, variable, or new.

(2) "Department" means the Department for Medicaid Services or its designated agency.

(3) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(4) [~~For the purpose of this administrative regulation,~~] "Periodicity" means the frequency with which an individual may be screened or rescreened.

(5) "Recipient" means a Medicaid eligible child under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(6) "Screening" means the review of the health and health-related conditions of a recipient by a health care professional to determine if any further diagnosis or treatment is needed.

(7) "Services" means health care, treatment, procedures, supplies, items, or equipment.

Section 2. Screening Provider Participation Requirements. Any health care provider meeting the requirements set forth below may be eligible to participate in the [~~Kentucky Medical Assistance~~] (Medicaid) Program as a screening provider:

(1) A physician shall be [duly] licensed in the state of Kentucky;

(2) Any early and periodic screening clinic or other organization qualified to provide screening services, including local health departments, shall be under the direction of a [duly] licensed physician or registered professional nurse currently licensed by the state of Kentucky who shall be responsible for assuring that the requirements of participation are met and that the procedure established by the Medicaid Program are carried out;

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(3) Screening clinics conducted under the direction of a registered professional nurse shall have a ~~[duly]~~ licensed physician acting as medical consultant; and

(4) Screening examinations and tests performed by licensed professional staff, or supportive staff under the direct supervision of the ~~[such]~~ licensed professional, shall be in accordance with the professional practice standards for the profession ~~[e-aet]~~.

Section 3. Screening. EPSDT screening services shall be directed toward the early detection of diseases and abnormalities. The services shall be appropriate for the age and health history of the recipient [child]. These services include, but are not necessarily limited to, the following:

(1) An initial, periodic, or additional health assessment of a recipient provided in accordance with Sections 2 and 5 of this administrative regulation which includes the following:

- (a) ~~[(1)]~~ Health and development history;
- (b) ~~[(2)]~~ Unclothed physical examination;
- (c) ~~[(3)]~~ Development assessment;
- (d) Assessment and provision of ~~[(4)]~~ immunizations as ~~[which are]~~ appropriate for age and health history;
- (e) ~~[(6)]~~ Assessment of nutritional status;
- (f) ~~[(6)]~~ Vision testing;
- (g) ~~[(7)]~~ Hearing testing;
- (h) ~~[(8)]~~ Laboratory procedures appropriate for age and population groups;

(i) Director referral for dental services for diagnosis and treatment ~~[(9)]~~ for children three (3) years of age and over ~~[dental services furnished by direct referral to a dentist for diagnosis and treatment];~~

(j) Anticipatory guidance and health education; or

(2) A health assessment examination, or evaluation of a recipient by a licensed or certified health care professional acting within his scope of practice, at intervals other than those specified in Section 5 of this administrative regulation indicated by medical necessity, to determine the existence of defects, physical or mental illnesses, or conditions; or

(3) Any other recipient encounter with a licensed or certified health care professional that results in the determination of the existence of a suspected:

- (a) Defect;
- (b) Illness;
- (c) Medical condition; or
- (d) A change or complication in a medical condition.

Section 4. Immunizations. Each screening ~~[clinic]~~ provider participating in accordance with Section 2(1), (2), and (3) of this administrative regulation shall be required to make available, at the time of screening, immunizations appropriate for age and health history of the recipient being screened.

Section 5. Periodicity Schedule. The periodicity schedule shall define the age appropriate services and time frames for screenings. The periodicity schedule shall be recommended by the Department for Public Health and approved by the Department for Medicaid Services. Additional medical and dental assessments shall be provided when medically indicated.

Section 6. Diagnosis and Treatment. ~~If, as a result of screening,~~ referral for additional service is indicated as a result of a screening or any other encounter with a licensed or certified health care professional acting within the scope of his practice, further diagnosis and medical treatment services shall be ~~[provided for any service which is considered a]~~ covered if they are: ~~[service under the Medicaid Assistance Program.]~~

- (1) Otherwise covered by the Medicaid Program; and
- (a) Limited to persons under the age of twenty-one (21); or
- (b) Not limited with regard to the age of the recipient; or

(2) Otherwise covered by the Medicaid Program, meet the standard for prior authorization and medical necessity as specified in Section 9 of this administrative regulation; and

- (a) Limited to persons twenty-one (21) years of age or older; or
- (b) Limited in ways unrelated to age; or

(3) Not otherwise covered by the Medicaid Program and meet the requirements for EPSDT special services as provided for in Section 7 of this administrative regulation.

~~[Section 6. Periodicity Limitations. Each eligible recipient may be screened or rescreened within the time frames shown on the periodicity schedule, with additional medical and dental assessments permitted when medically indicated.]~~

Periodicity Schedule (Effective for Services Provided on or After March 15, 1990)

Age:	Medical	Dental
	2-4 weeks	
	2-3 months	
	4-5 months	
	6-7 months	
	9-10 months	
	12-15 months	
	16-19 months	
	23-25 months	
	3	3
	4	
	5-6	6
	7-8	7-8
	9-10	9-10
	11-12	11-12
	13-14	13-14
	15-16	15-16
	17-20	17-20]

Section 7. EPSDT Special Services. EPSDT special services are other health care, diagnostic services, preventive services, rehabilitative services, treatment, and other measures described in 42 USC Section 1396d(a), that are not otherwise covered under the Kentucky Medicaid Program and that are medically necessary, as defined in Section 9 of this administrative regulation, to correct or ameliorate defects and physical and mental illnesses and conditions of recipients.

Section 8. EPSDT Diagnostic and Treatment Provider and EPSDT Special Services Provider Participation Requirements. (1) An EPSDT diagnosis and treatment provider shall meet the requirements for participation in the Kentucky Medicaid Program as specified in 907 KAR for the particular diagnosis and treatment services rendered.

(2) Except as otherwise specified in 907 KAR, a provider seeking to provide EPSDT special services, as defined in Section 7 of this administrative regulation, shall first contact the department in writing or by telephone to apply for enrollment to become an EPSDT special services provider. In order to be enrolled, the provider shall supply documentation or other evidence which establishes that all of the following conditions are met:

(a) The provider is licensed or certified under state laws to provide the services, or; if the license or certification is not available under such state laws, is otherwise authorized under state laws to provide the service, and is not suspended or otherwise disqualified.

(b) If the provider is out of state, the provider shall meet comparable requirements in the state in which he does business.

Section 9. Prior Authorization for EPSDT Diagnosis and Treatment Services and EPSDT Special Services. Except as otherwise

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provided for in this section or in 907 KAR, those EPSDT diagnosis and treatment services and EPSDT special services which are not otherwise covered by the Kentucky Medicaid Program shall be covered subject to prior authorization if the requirements of subsections (1) and (2) of this section are met. The department shall review requests for services to determine medical necessity without regard to whether the screen was performed by a Kentucky Medicaid provider or a non-Medicaid provider.

(1) Requests for prior authorization for EPSDT services set forth in Section 6(2) and (3) of this administrative regulation shall state that the request is for EPSDT services, and shall be accompanied by the following information:

- (a) The primary diagnosis and significant associated diagnoses.
- (b) Prognosis.
- (c) Date of onset of the illness or condition, and etiology if known.
- (d) Clinical significance or functional impairment caused by the illness or condition.

(e) Specific types of services to be rendered by each discipline with physician's prescription where applicable.

(f) Therapeutic goals to be achieved by each discipline and anticipated time for achievement of goals if applicable.

(g) The extent to which health care services have been previously provided to address the defect, illness, or condition, and results demonstrated by prior care where applicable.

(h) Any other documentation necessary to justify the medical necessity of the requested service.

(2) Except as otherwise provided for in 907 KAR, requests for approval of services shall meet the standard of medical necessity for EPSDT if the following criteria, where applicable, are met:

(a) The services shall be to correct or ameliorate defects and physical and mental illnesses and conditions.

(b) The services to be provided shall be medical or remedial in nature.

(c) The services shall be individualized and consistent with the recipient's medical needs.

(d) The services shall not be requested primarily for the convenience of the beneficiary, family, physician or another provider of services.

(e) The services shall not be unsafe or experimental.

(f) If alternative medically accepted modes of treatment exist, the services shall be the most cost-effective available.

(g) The requests for diagnostic and treatment services in community-based settings shall not be approved if the costs would exceed those of equivalent services at the appropriate institutional level of care as appropriate.

(h) The services to be provided shall be:

1. Generally recognized by the appropriate medical profession as an accepted modality of medical practice or treatment;

2. Within the authorized scope of practice of the provider; and

3. An appropriate mode of treatment for the medical condition of the recipient.

(i) Scientific evidence, if available, shall be submitted consisting of:

1. Well designed and well conducted investigations published in peer-review journals, demonstrating that the service may produce measurable physiological outcomes;

2. In the case of psychological or psychiatric services, measurable psychological outcomes, concerning the short and long term effects of the proposed service on health outcomes;

3. Opinions and evaluations published by national medical organizations, consensus panels and other technology evaluation bodies supporting provision of the benefit, when available.

(j) The predicted beneficial outcome of the services outweighs potential harmful effects.

(k) The services improve the overall health outcomes as much as, or more than, established alternatives.

(3) If reimbursement is being sought on a "by report" basis, a

description of the service, the proposed unit of service, and the requested dollar amount shall be included with the request for authorization.

(4) Prior authorization requests for EPSDT services shall be reviewed for medical necessity without regard to the source of the referral to the service.

(5) School-based health services provided in accordance with 907 KAR 1:715 which are included in an authorized Individual Education Program (IEP) shall be considered to be medically necessary and shall not be subject to further Medicaid prior authorization requirement. In accordance with the provisions of KRS 605.115, this subsection of this administrative regulation shall be applicable for services provided on and after January 1, 1995.

Section 10. Material Incorporated by Reference. (1) The "Early and Periodic Screening, Diagnosis, and Treatment Services Manual", edition of August 1996 shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40601.

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

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

Section 11. Appeal Rights. Recipients have rights of appeal as specified in 907 KAR 1:560.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick (564-5020) or Karen Doyle

(1) Type and number of entities affected: Eligible Medicaid children under age 21 and local school districts who wish to participate as school-based health services Medicaid providers.

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

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

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

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from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: See companion regulation 907 KAR 1:715.

2. Continuing costs or savings: See companion regulation 907 KAR 1:715.

3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:715.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: Local education funds will be conserved.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that medically necessary health care services are available to Medicaid recipients.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (Amendment)

907 KAR 1:035. Payments for early and periodic screening, diagnosis, and treatment [screening] services.

RELATES TO: KRS 205.520, 605.115

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40(b), 447 Subpart B, 42 USC 1396a, b, d, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medical Assistance~~]. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of Medicaid [~~medical assistance~~] to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Department for Medicaid Services [~~cabinet~~] for early and periodic screening diagnosis, and treatment [~~screening~~] services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agency.

(2) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(3) "Recipient" means a Medicaid eligible individual under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(4) "Usual and customary charge" means as defined in 907 KAR 1:002.

Section 2. Physicians and primary care centers shall be reimbursed for screening services in accordance with the payment provisions set forth by administrative regulations 907 KAR 3:010 [~~1:040~~] and 907 KAR 1:055 for those service providers.

Section 3. [2.] Reimbursement of Enrolled Screening Providers [~~Clinics~~]. The department [~~cabinet~~] shall reimburse participating enrolled screening providers [~~clinics or agencies~~] on the basis of a preestablished fee which shall be related to the cost of service. The preestablished fees [~~amounts~~] payable shall be in accordance with the following:

(1) For a complete screening which includes all items or procedures listed in Section 3, 907 KAR 1:034, appropriate to age and health history of the recipient [~~child~~], the fee shall be twenty (20) dollars per recipient [~~individual~~] screened;

(2) For a partial screening, with some but not all items listed in Section 3, 907 KAR 1:034 [~~items or procedures appropriate to age and health history of the child not~~] completed, but at no fault of the screening clinic or agency, the fee shall be twelve (12) dollars per recipient [~~individual~~] screened [~~when preauthorized by the cabinet~~]; and

(3) For completion of a partial screening with some items or procedures appropriate to age and health history of the recipient [~~child~~] provided as a follow-up to a partial screening as established in subsection (2) of this section, (whether the partial screening is provided by a physician, primary care center, or screening clinic or

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agency), the fee shall be eight (8) dollars per recipient ~~(individual)~~ screened.

(4) ~~A [In no instance may the]~~ fee paid in accordance with subsection (1) to (3) of this section shall not exceed the usual and customary charge [fee] of the provider for the service.

Section 4. Reimbursement of EPSDT Diagnostic and Treatment Providers. The department shall reimburse EPSDT diagnosis and treatment providers participating in compliance with Section 8(1) of 907 KAR 1:034 as specified in 907 KAR applicable to reimbursement for the particular diagnosis and treatment services rendered.

Section 5. Reimbursement of EPSDT Special Services Providers. Except as specified in Section 6 of this administrative regulation, the department shall reimburse EPSDT special service providers a percentage of the usual and customary charges or a fee negotiated by the department adequate to obtain the service. The percentage of charges or negotiated fee shall not exceed 100 percent of the usual and customary charges. If the item is covered under Medicare, the payment amount shall not exceed the amount that would be paid using the Medicare payment methodology and upper limits.

Section 6. Reimbursement of School-based Health Services Providers. The department shall reimburse school-based health services providers for services included in an individual education program which are provided to Medicaid eligible recipients based on a fee-for-service system designed to approximate cost for all participating providers in the aggregate without settlement to exact cost. Payment rates for services provided on or after January 1, 1995, shall be established using the following methodology:

(1) Interim payment rates for services provided from January 1, 1995, through June 30, 1996, shall be based on a reasonable sample of providers statewide. Payments for services shall be adjusted up or down as appropriate when final rates are established.

(2) Interim payment rates for services provided after June 30, 1996, and annually thereafter shall be based on cost data in accordance with subsection (3) of this section for the previous state fiscal year and shall be adjusted up or down as appropriate when final payment rates are established.

(3) Final rates shall be set based on the following:

(a) Except as specified in paragraphs (d) and (e) of this subsection, a payment rate for a particular service shall be based on the lower of the mean or median of the participating providers' cost of providing the service.

1. The statewide mean and median cost for a service shall be based on the contracted hourly service cost and the cost associated with publicly employed professionals;

2. The mean and median hourly cost shall be calculated, for each class of qualified professionals, from an array of hourly cost data falling within one (1) standard deviation of the mean.

(b) Cost for publicly employed professionals shall be computed in the following manner:

1. Salary, fringe benefits, and indirect overhead shall be included.

2. Annual professional salaries (including full time equivalent employees) shall be converted to hourly wages using 185 work days per year and six (6) work hours per day.

3. The applicable fringe benefit cost based on the actual percentage rate for classified and certified employees shall be added to the hourly salary wage.

4. An indirect overhead cost consisting of seven (7) percent of the hourly wage shall be added to the hourly salary wage.

(c) Payments for professional services shall be based on units of service which are fifteen (15) minute increments.

(d) Payments for medical transportation shall be based on the average cost per mile of pupil transportation as calculated by the Department of Education.

(e) Payments for assistive technology and medical equipment

shall be based on actual invoiced cost including cost of shipping and handling, for the authorized equipment included in an individual education program.

(f) Except as provided for in paragraph (g) of this subsection, the due date for the required cost data is July 31 following the end of the state fiscal year (June 30 of each year).

(g) The due date for the required cost data for the 1995 fiscal year is November 1, 1996.

(h) A one (1) month grace period shall exist for the submittal of the cost data. If the cost data is not submitted either timely or within the specified grace period, the school based health services provider shall be terminated from the program.

(i) For rate years ending June 30, 1997 and thereafter the final rates for prior years shall be set using cost data available as of September 1 of the current rate year. For the rate year ending June 30, 1996, the final rates for the rate year shall be set using cost data available as of December 1, 1996.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick (564-5020) or Karen Doyle

(1) Type and number of entities affected: Eligible Medicaid children under age 21 who have an individual education plan with the local school district and local school districts who wish to participate as school-based health services Medicaid providers.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: See companion regulation 907 KAR 1:715.

2. Continuing costs or savings: See companion regulation 907 KAR 1:715.

3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:715.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: Local educational funds will be conserved.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that access to medically necessary health care services is available to Medicaid recipients.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (Amendment)

907 KAR 1:140. Alternative intermediate [home and community-based] services for individuals with mental retardation or developmental disabilities [the mentally retarded (AIS/MR)].

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subpart G, 42 USC 1396a, b, d, n, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance]. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the [coverage] provisions relating [applicable] to home and community based services provided to individuals with mental retardation or developmental disabilities [the mentally retarded] as an alternative to intermediate care facility services for the mentally retarded for which payment shall be made by the Medicaid Program on behalf of both categorically needy and the medically needy beneficiaries.

Section 1. Definitions. (1) "AIS-MR services" means alternative intermediate services for individuals with mental retardation or developmental disabilities.

(2) "Department" means Department for Medicaid Services.

(3) "Survey agency" means an agent designated by the department to survey and certify facilities to provide AIS-MR services to eligible recipients.

Section 2. General Medicaid Coverage Provisions. (1) The home and community based services described in this administrative regulation shall be provided only to those individuals eligible for Medicaid who meet intermediate care for the mentally retarded patient status criteria as set forth in 907 KAR 1:022.

(2) These services are designed to prevent or reduce institutionalization at the intermediate care level and shall [therefore] be provided only to individuals with mental retardation or developmental disabilities in community residence living situations. [These services are termed alternative intermediate services for the mentally retarded (AIS/MR).]

Section 3. [2.] Provider Participation. (1) Any qualified provider may provide AIS-MR services, upon application to the department [cabinet] for a provider participation agreement accompanied by data sufficient in the opinion of the department [cabinet] to show that the provider is qualified [under applicable law] to provide the services pursuant to the AIS-MR Manual. [and has the capability to do so.]

(2) Providers certified by the cabinet shall be considered qualified to enter into a Medicaid Program [the appropriate AIS/MR] provider participation agreement. Certification shall be determined by a surveying agency as [the Division of Licensing and Regulation, Office of the Inspector General, or other agency] designated by the department [for Medicaid Services] in accordance with the qualifications in Section 4 [3] of this administrative regulation.

(3) Participating providers shall be required to provide, or arrange for the provision of, services appropriate to their certification described in this administrative regulation.

Section 4. Certified Providers. (1) [3. Provider Certification.]

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Providers shall be certified to provide Medicaid services after the completion of a survey by the survey agency, if the provider has been found to be in substantial compliance with the provider qualification requirements shown in the AIS-MR Manual, as follows:

- (a) Case management;
- (b) In-home training;
- (c) Homemaker and home health aide;
- (d) Personal care;
- (e) Residential care;
- (f) Habilitation;
- (g) Day habilitation;
- (h) Respite care; and

(i) Multiservice providers, ~~after survey by the certification agency if the provider has been found to be in major compliance with the provider qualification requirements shown in the AIS-MR provider qualifications manual, dated November 1, 1991, herein incorporated by reference.~~

(2) Providers requesting certification under this administrative regulation shall be considered certified through the date of their first survey to provide any services which were provided by that agency, ~~during the period from September 1, 1991 through the effective date of this administrative regulation~~ if those services were provided by or through contract with a participating provider. ~~The AIS-MR provider qualifications manual shall be on file in the Commissioner's Office, Department for Medicaid Services, Third Floor East, CHR Building, 275 East Main Street, Frankfort, Kentucky 40601 and will be available for review on normal working days (Monday through Friday) from 8 a.m. through 4:30 p.m. Copies may be obtained from that office upon payment of an appropriate fee which approximates cost.~~

Section 5. Medicaid [4-] Covered Services. Except for room and board, the following services shall be covered as AIS-MR services:

(1) Residential care services to include: ~~provision of training, homemaker and home health aide support, and personal care. Room and board shall be excluded.~~

(a) Client training including ~~which includes~~ services designed to facilitate the acquisition of communication, sensory-motor, independent living, and social skills.

(b) Homemaker and home health aide support including ~~which includes~~ the provision of laundry services, meal planning and preparation, shopping and light housekeeping.

(c) Personal care including ~~which includes~~ services to assist and train in ambulation, grooming, feeding, and other related skills [etc].

(2) Case management services, including ~~which includes~~ the following:

- (a) Provision of intake;
- (b) Evaluation or assessment;
- (c) Access to and assuring freedom of choice of AIS-MR providers ~~of AIS-MR~~;
- (d) Plan-of-care development and coordination;
- (e) Monitoring and support;
- (f) Operation of the core residence;
- (g) Assuring the availability of needed waiver services;
- (h) Meeting with and providing information to clients, parents or legal representatives;

(i) Establishing and overseeing a human rights committee for review of overall procedures and individual behavioral plans; and

(j) Acting on behalf of the client to assist ~~him~~ in gaining access to and receiving services from qualified AIS-MR service providers;

(k) Providing assistance to ~~[In addition to the above, the case management provider shall assist]~~ the client, his family or legal representatives in accessing other services, as needed;

(l) ~~The case management provider shall be responsible for~~ Monitoring the health, safety and welfare of the client, including assuring that each ~~[Each]~~ core residence stay shall be limited to no more than ninety (90) days per client ~~[patient]~~.

(3) In-home training including ~~which includes~~ services designed

to facilitate the acquisition, retention and improvement of language and communication, sensory-motor, social and self-help skills.

(4) Homemaker and home health aide support including ~~which includes~~ services to clients in their ~~own family~~ homes including the provision of laundry services, meal planning and preparation, shopping and house cleaning.

(5) Personal care including ~~which includes~~ services to assist and train in ambulation, dressing, grooming, eating, toileting, and other related skills [etc].

(6) Habilitation services including ~~which includes~~ behavior management services, psychological services, minor home physical adaptations ~~including in home and alternate living units other than group homes~~, medical services, occupational therapy, physical therapy, speech therapy, expressive therapies and leisure and recreation therapy. Services required to be provided by other agencies under 29 USC 701 relating to Individuals with Disabilities Act and 20 USC 1400 relating to vocational rehabilitation and other rehabilitation services shall not be covered by the Medicaid Program. ~~[Services shall be available to both adults and children if not required to be provided by the local schools and if directed at the resolution of problems not associated with mental illness.]~~

(7) Day habilitation services shall be provided for:

(a) A minimum of four (4) hours per day, five (5) days per week, twelve (12) months per year, in nonresidential noninpatient settings.

(b) Services shall be age appropriate.

1. Adult means an individual ~~not less than~~ eighteen (18) years of age or older.

2. For children, day habilitation services shall be covered only during the summer months when school is not in session.

(c) Day habilitation services may include supported employment and prevocational training for eligible persons, including ~~if any~~ those participating individuals who have been deinstitutionalized.

(8) Respite care including ~~which includes~~ short-term care and supervision of the AIS-MR client provided for the temporary relief of the family or staff, or for the safety or relief of the client, except that no respite care shall be provided for those clients residing in group homes or staff residences. Coverage shall be limited to a maximum of sixty (60) days per calendar year for clients ~~[excluding those residing in group homes or staff residences];~~ with no more than thirty (30) consecutive days of respite.

Section 6. Client ~~[5- Patient]~~ Status Determinations. The department ~~[cabinet]~~ shall make client ~~[patient]~~ status determinations using the criteria specified under patient status determinations pursuant to ~~[in]~~ 907 KAR 1:022.

Section 7. ~~[6-]~~ Authorization for Services~~[- Hearing Rights]~~. (1) The department ~~[cabinet]~~ shall authorize AIS-MR services:

(a) To insure that client ~~[patient]~~ status is met in accordance with Section 6 of this administrative regulation;

(b) That ~~[AIS-MR services]~~ are adequate for the needs of the client; and

(c) That ~~[AIS-MR services are financially feasible (i.e.,)]~~ do not cost significantly more than ~~[would]~~ institutional services.

(2) A client found unsuitable due to failure to meet any of the specified reasons shall be denied AIS-MR services.

(3) An individual, if eligible for AIS-MR services, shall be given the choice of AIS-MR services or traditional intermediate care facility services for the mentally retarded.

Section 8. AIS-MR Waiting List. Clients shall be placed on a waiting list maintained by the department. The components of the AIS-MR waiting list are as follows:

(1) Application. Any person who wishes to apply for placement on the waiting list shall complete an MAP-620 form, Application for AIS-MR Services. Attached to the MAP-620 shall be any written documentation of request made prior to September 27, 1995, made contemporaneously.

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aneously with that request.

(2) AIS-MR waiting list placement.

(a) The order of placement on the AIS-MR waiting list shall be determined chronologically by date of receipt of the MAP-620 by the Department for Medicaid Services, unless an emergency situation which meets specified criteria supersedes the chronological order. Emergency criteria shall be defined as:

1. Death or loss of the immediate care provider.

2. Emergency hospitalization of the immediate care provider.

3. Other circumstances which relate to client's or caregiver's situation may also be considered as emergency criteria on a case-by-case basis.

(b) If multiple MAP-620 forms are received on the same arrival date, a lottery shall be held to determine placement on the AIS-MR waiting list.

(c) A written notification of the date and placement on the AIS-MR waiting list shall be mailed to the client or his legal representative and case management provider within ten (10) days of receipt of the MAP-620 by the department.

(3) Maintenance of the AIS-MR waiting list. The department shall, at least annually, update the AIS-MR waiting list. The client or his legal representative and the case management provider shall be contacted in writing to verify the accuracy of the data on the AIS-MR waiting list and the continued desire to pursue placement in the AIS-MR Program. The requested data shall be received by the department within ten (10) days from the date of the letter, excluding holidays and weekends.

(4) Conditions and criteria relating to removal from the AIS-MR waiting list.

(a) The removal from the waiting list shall not preclude the resubmittal of a new MAP-620 at a later date for the client.

(b) The criteria for removal from the waiting list shall be:

1. After a documented attempt, unable to locate the client or his legal representative.

2. If the AIS-MR placement for services is offered and the client or his legal representative refuses the offer of placement or does not complete the application process with the Department for Medicaid Services within sixty (60) days of the placement allocation date, without good cause.

3. Client is deceased.

(c) Written notification shall be mailed to the client or his legal representative and the case manager if the client is removed from the AIS-MR waiting list.

Section 9. Appeal Rights. (1) A Medicaid beneficiary [Any denial of service] may appeal an adverse action pursuant to 907 KAR 1:560. [be appealed in the manner provided for by 907 KAR 1:075 or 904 KAR 2:055 as appropriate.]

(2) No decision to involuntarily terminate a client or to reallocate placement subject to appeal shall be final until the hearing officer issues a decision.

Section 10. [7-] Auditing and Reporting. (1) All participating providers shall be required to maintain fiscal and service records and to provide reports determined necessary by the department [cabinet] for the effective functioning and administration of the program.

(2) Providers shall be required to make available upon request all service and financial records to representatives or designees of:

(a) Commonwealth of Kentucky, [the] Cabinet for Health Services [Human Resources];

(b) United States [the federal] Department of Health and Human Services, Comptroller General; [and]

(c) Department of Health and Human Services, Health Care Financing Administration; [and the]

(d) General Accounting Office; and [and their designees, for auditing and monitoring purposes.]

(e) Commonwealth of Kentucky, Office of the Auditor of Public

Accounts.

Section 11. Material Incorporated by Reference. (1) The Medicaid Alternative Intermediate Service-Mental Retardation (AIS-MR) Manual, dated March 1, 1996 is incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621.

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

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

[Section 8. The amendments to this administrative regulation shall apply to certification of providers on November 1, 1991 and with regard to services provided on or after January 1, 1992.]

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Anita Moore (564-5020) or Karen Doyle

(1) Type and number of entities affected: All potential recipients of the Medicaid Program for alternative intermediate services for individuals with mental retardation or developmental disabilities and participating service providers.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Budget neutral.

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2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will provide for greater access to health care services for Medicaid recipients.

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

(c) If detrimental effect would result, explain detrimental effect: Could lead to reduced access to health care services for Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED AS OF NOON, SEPTEMBER 13, 1996

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(New Administrative Regulation)

12 KAR 2:017. Product purpose statement.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: The function of this administrative regulation is to define criteria establishing uniformity in product purpose statement.

Section 1. The statement of purpose shall contain the specific species and animal class(es) for which the feed is intended as defined in 12 KAR 2:018.

Section 2. The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, species and purpose while being consistent with the category of animal class defined in 12 KAR 2:018 which may include, but is not limited to weight range(s), sex, or ages of the animal(s) for which the feed is manufactured.

Section 3. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

Section 4. The indication for animal class(es) and specie(s) is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class(es) or specie(s).

Section 5. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user. (This section applicable to commercial feeds regulated under 12 KAR 2:018, Section 11(k).)

Section 6. The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds. (This section is applicable to commercial feeds regulated under 12 KAR 2:018, Section 11(k).)

Section 7. The purpose statement of a direct fed microbial product shall state "Contains a Source of Live (Viable) Naturally Occurring Microorganisms". This statement may appear elsewhere on the label provided it is sufficiently conspicuous as to render it easily read by the purchaser.

Section 8. The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented in any manner.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation

12 KAR 2:017, Product purpose statement, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies that manufacture livestock feed. Not applicable to pet foods.

(a) Direct and indirect costs or savings to those affected:

1. First year: A minimal cost for revising labels to include product purpose statement.

2. Continuing costs or savings: No additional cost after label revision.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Minimal. One time registration revision.

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs and savings: None

1. First year: Minimal. Will require some reallocation of time to work with regulated industry to achieve transition. Several firms have implemented changes.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Requirements are based on uniform feed requirements developed by national consensus of feed control officials and feed industry representatives.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All feed products are formulated with an intended purpose and required labeling is equally applicable to products manufactured by all size firms.

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UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(New Administrative Regulation)

12 KAR 2:018. Guaranteed analysis.

RELATES TO: KRS 250.491 TO 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, and CONFORMITY: To establish uniform format and nutritional guarantees required on the label to inform the purchaser.

Section 1. Crude protein, equivalent crude protein from nonprotein nitrogen, amino acids, crude fat, crude fiber, acid detergent fiber, calcium, phosphorus, salt and sodium shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, international units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure.

Section 2. Required Guarantees for Swine Formula Feeds. (1) Animal classes for swine.

- (a) Prestarter - two (2) to eleven (11) pounds.
- (b) Starter - eleven (11) to forty-four (44) pounds.
- (c) Grower - forty-four (44) to 110 pounds.
- (d) Finisher - 110 to 242 pounds or market weight.
- (e) Gilts, sows and adult boars.
- (f) Lactating gilts and sows.

(2) Guaranteed analysis for swine complete feeds and supplements (all animal classes).

- (a) Minimum percentage of crude protein.
- (b) Minimum percentage of lysine.
- (c) Minimum percentage of crude fat.
- (d) Maximum percentage of crude fiber.
- (e) Minimum and maximum percentage of calcium.
- (f) Minimum percentage of phosphorus.
- (g) Minimum and maximum percentage of salt (if added).
- (h) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
- (i) Minimum selenium in parts per million (ppm).
- (j) Minimum zinc in parts per million (ppm).

Section 3. Required Guarantees for Formula Poultry Feeds (Chicken and Turkey). (1) Animal classes for layer chickens that are grown to produce eggs for food.

(a) Starting and growing - from day of hatch to approximately ten (10) weeks of age.

(b) Finisher - from approximately ten (10) weeks of age to time first egg is produced. (Approximately twenty (20) weeks of age).

(c) Laying - chickens from time first egg is laid throughout the time of egg production.

(d) Breeders - chickens that produce fertile eggs to hatch replacement layers that produce eggs for food.

(2) Animal classes for broiler chickens that are grown for human food.

(a) Starting and growing - from day of hatch to approximately five (5) weeks of age.

(b) Finisher - from approximately five (5) weeks of age to market, forty-two (42) to fifty-two (52) days.

(c) Breeders - hybrid strains of chickens whose offspring are grown for human food (broilers), any age and either sex.

(3) Animal classes for breeder chickens whose offspring (broilers) are grown for human food.

(a) Starting and growing - from day of hatch until approximately

ten (10) weeks of age.

(b) Finishing - from approximately ten (10) weeks of age to time first egg is produced, approximately twenty (20) weeks of age.

(c) Laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

(4) Animal classes for turkeys.

(a) Starting and growing - turkeys that are grown for human food from day of hatch to approximately thirteen (13) weeks of age (females) and sixteen (16) weeks of age (males).

(b) Finisher - turkeys that are grown for human food, females from approximately thirteen (13) weeks of age to approximately seventeen (17) weeks of age, males from sixteen (16) weeks of age to twenty (20) weeks of age, (or desired market weight).

(c) Laying - female turkeys that are producing eggs, from time first egg is produced, throughout the time they are producing eggs.

(d) Breeder - turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately thirty (30) weeks of age), both sexes.

(5) Guaranteed analysis for poultry complete feeds and supplements (all animal classes).

(a) Minimum percentage of crude protein.

(b) Minimum percentage of lysine.

(c) Minimum percentage of methionine.

(d) Minimum percentage of crude fat.

(e) Maximum percentage of crude fiber.

(f) Minimum and maximum percentage of calcium.

(g) Minimum percentage of phosphorus.

(h) Minimum and maximum percentage of salt (if added).

(i) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

Section 4. Required Guarantees for Beef Cattle Formula Feeds.

(1) Animal classes for beef cattle.

(a) Calves (birth to weaning).

(b) Cattle on pasture (may be specific as to production stage; e.g., stocker, feeder, replacement heifers, brood cows, bulls, etc.).

(c) Feedlot cattle.

(2) Guaranteed analysis for beef complete feeds and supplements (all animal classes).

(a) Minimum percentage of crude protein.

(b) Maximum percentage of equivalent crude protein from nonprotein nitrogen (if added).

(c) Minimum percentage of crude fat.

(d) Maximum percentage of crude fiber.

(e) Minimum and maximum percentage of calcium.

(f) Minimum percentage of phosphorus.

(g) Minimum and maximum percentage of salt (if added).

(h) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(i) Minimum percentage of potassium.

(j) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(3) Guaranteed analysis for beef mineral feeds (if added).

(a) Minimum and maximum percentage of calcium.

(b) Minimum percentage of phosphorus.

(c) Minimum and maximum percentage of salt

(d) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(e) Minimum percentage of magnesium.

(f) Minimum percentage of potassium.

(g) Minimum copper in parts per million (ppm).

(h) Minimum selenium in parts per million (ppm).

(i) Minimum zinc in parts per million (ppm).

(j) Minimum vitamin A, other than precursors of vitamin A, in

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international units per pound.

Section 5. Required Guarantees for Dairy Formula Feeds. (1) Animal classes for dairy cattle.

(a) Veal milk replacer - milk replacer fed to calves for veal production.

(b) Herd milk replacer - milk replacer fed to calves for herd replacement and other uses.

(c) Starter - calf from approximately three (3) days to three (3) months of age.

(d) Growing heifers, bulls and dairy beef:

1. Grower 1 - three (3) months to twelve (12) months of age.

2. Grower 2 - more than twelve (12) months of age.

(e) Lactating dairy cattle.

(f) Nonlactating dairy cattle.

(2) Guaranteed analysis for veal and herd milk replacer.

(a) Minimum percentage of crude protein.

(b) Minimum percentage of crude fat.

(c) Maximum percentage of crude fiber.

(d) Minimum and maximum percentage of calcium.

(e) Minimum percentage of phosphorus.

(f) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(3) Guaranteed analysis for dairy cattle complete feeds and supplements.

(a) Minimum percentage of crude protein.

(b) Maximum percentage of equivalent crude protein from nonprotein nitrogen (if added).

(c) Minimum percentage of crude fat.

(d) Maximum percentage of crude fiber.

(e) Maximum percentage of acid detergent fiber (ADF).

(f) Minimum and maximum percentage of calcium.

(g) Minimum percentage of phosphorus.

(h) Minimum selenium in parts per million (ppm).

(i) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(4) Guaranteed analysis for dairy mixing and pasture mineral (if added).

(a) Minimum and maximum percentage of calcium.

(b) Minimum percentage of phosphorus.

(c) Minimum and maximum percentage of salt.

(d) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(e) Minimum percentage of magnesium.

(f) Minimum percentage of potassium.

(g) Minimum selenium in parts per million (ppm).

(h) Minimum vitamin A, other than the precursors of vitamin A, in international units per pound.

Section 6. Required Guarantees for Equine Complete Feeds and Supplements (All Classes). (1) Equine animal classes.

(a) Foal.

(b) Mare.

(c) Breeding.

(d) Maintenance.

(2) Guaranteed analysis for equine complete feeds and supplements (all animal classes).

(a) Minimum percentage of crude protein.

(b) Minimum percentage of crude fat.

(c) Maximum percentage of crude fiber.

(d) Minimum and maximum percentage of calcium.

(e) Minimum percentage of phosphorus.

(f) Minimum copper in parts per million (ppm).

(g) Minimum selenium in parts per million (ppm).

(h) Minimum zinc in parts per million (ppm).

(i) Minimum vitamin A, other than the precursors of vitamin A, in

international units per pound (if added).

(3) Guaranteed analysis for equine mineral feed.

(a) Minimum and maximum percentage of calcium.

(b) Minimum percentage of phosphorus.

(c) Minimum and maximum percentage of salt (if added).

(d) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(e) Minimum copper in parts per million (ppm).

(f) Minimum selenium in parts per million (ppm).

(g) Minimum zinc in parts per million (ppm).

(h) Minimum vitamin A, other than the precursors of vitamin A, in international units per pound (if added).

Section 7. Required Guarantees for Goats and Sheep Formula Feeds. (1) Animal classes.

(a) Starter.

(b) Grower.

(c) Finisher.

(d) Breeder.

(e) Lactating.

(2) Guaranteed analysis for goat and sheep complete feeds and supplements (all animal classes).

(a) Minimum percentage of crude protein.

(b) Maximum percentage of equivalent crude protein from nonprotein nitrogen (if added).

(c) Minimum percentage of crude fat.

(d) Maximum percentage of crude fiber.

(e) Minimum and maximum percentage of calcium.

(f) Minimum percentage of phosphorus.

(g) Minimum and maximum percentage of salt (if added).

(h) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(i) Minimum and maximum copper in parts per million (ppm) (if added, or if total copper exceeds twenty (20) ppm).

(j) Minimum selenium in parts per million (ppm).

(k) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Section 8. Required Guarantees for Ducks and Geese Formula Feeds. (1) Duck animal classes.

(a) Starter - zero to three (3) weeks of age.

(b) Grower - three (3) to six (6) weeks of age.

(c) Finisher - six (6) weeks to market.

(d) Breeder developer - eight (8) to nineteen (19) weeks of age.

(e) Breeder - twenty-two (22) weeks to end of lay.

(2) Geese animal classes.

(a) Starter - zero to four (4) weeks of age.

(b) Grower - four (4) to eight (8) weeks of age.

(c) Finisher - eight (8) weeks to market.

(d) Breeder developer - ten (10) to twenty-two (22) weeks of age.

(e) Breeder - twenty-two (22) weeks to end of lay.

(3) Guaranteed analysis for duck and geese complete feeds and supplements (for all animal classes).

(a) Minimum percentage of crude protein.

(b) Minimum percentage of crude fat.

(c) Maximum percentage of crude fiber.

(d) Minimum and maximum percentage of calcium.

(e) Minimum percentage of phosphorus.

(f) Minimum and maximum percentage of salt (if added).

(g) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

Section 9. Required Guarantees for Fish Complete Feeds and Supplements. (1) Animal species shall be declared in lieu of animal

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class.

- (a) Trout.
- (b) Catfish.
- (c) Species other than trout or catfish.
- (2) Guaranteed analysis for all fish complete feeds and supplements.
 - (a) Minimum percentage of crude protein.
 - (b) Minimum percentage of crude fat.
 - (c) Maximum percentage of crude fiber.
 - (d) Minimum percentage of phosphorus.

Section 10. Required Guarantees for Rabbit Complete Feeds and Supplements. (1) Rabbit animal classes.

- (a) Grower - four (4) to twelve (12) weeks of age.
- (b) Breeder - twelve (12) weeks of age and over.
- (2) Guaranteed analysis for rabbit complete feeds and supplements (all animal classes).
 - (a) Minimum percentage of crude protein.
 - (b) Minimum percentage of crude fat.
 - (c) Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than five (5.0) units).
 - (d) Minimum and maximum percentage of calcium.
 - (e) Minimum percentage of phosphorus.
 - (f) Minimum and maximum percentage of salt (if added).
 - (g) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
 - (h) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Section 11. The required guarantees of grain mixtures with or without molasses and formula feeds and ingredients other than those specifically described in Sections 2 through 10 of this administrative regulation shall include the following items, unless exempted in Section 12 of this administrative regulation, and in the order listed.

- (1) Product purpose statement as specified in 12 KAR 2:017.
- (2) Guaranteed analysis.
 - (a) Minimum percentage of crude protein.
 - (b) Minimum or maximum percentage of equivalent crude protein from nonprotein nitrogen as required in 12 KAR 2:021 (if added).
 - (c) Minimum percentage of crude fat.
 - (d) Maximum percentage of crude fiber.
 - (e) Minerals in formula feeds to include in the following order:
 - 1. Minimum and maximum percentage of calcium.
 - 2. Minimum percentage of phosphorus.
 - 3. Minimum and maximum percentage of salt (if added).
 - 4. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
 - 5. Other minerals.
 - (f) Minerals in feed ingredients as specified by the official definition of the Association of American Feed Control Officials.
 - (g) Vitamins in such terms as specified in 12 KAR 2:021.
 - (h) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.
 - (i) Viable lactic acid producing microorganisms when used in silage products and direct fed microbial products guaranteed in terms specified in 12 KAR 2:021.
 - (j) Enzymatic activity for enzyme products and formula feeds represented as a source of enzymes guaranteed in terms specified in 12 KAR 2:021.
 - (k) A commercial feed (e.g., vitamin and mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose.

Section 12. Exemptions. (1) A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers, is not required when:

- (a) The feed or feed ingredient is not intended or represented or does not serve as a principle source of that mineral to the animal; or
- (b) The feed or feed ingredient is intended for nonfood producing animals and contains less than six and five-tenths (6.5) percent total mineral.
- (2) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.
- (3) Guarantees for crude protein, crude fat and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as a Type A drug article, mineral or vitamin supplements and molasses.
- (4) Guarantees for microorganisms and enzymes are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product and no specific label claims are made.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:018, Guaranteed analysis, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

- (1) Type and number of entities affected: 650 feed companies that manufacture livestock feed. Not applicable to pet food.
 - (a) Direct and indirect costs or savings to those affected:
 - 1. First year: A minimal cost to revise labels estimated at \$32 per label.
 - 2. Continuing costs or savings: None
 - 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements: One time reregistration.
- (2) Effects on the promulgating administrative body: Minimal
 - (a) Direct and indirect costs and savings: None
 - 1. First year: Minimal. Will require some reallocation of time to work with regulated industry to achieve label revision. Considerable progress has already been achieved.
 - 2. Continuing costs or savings: None
 - 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Requirements were a consensus developed nationally by feed control officials and feed industry representatives.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Uniform labeling requirements are equally applicable to all manufacturers and necessary for purchasers of feed.

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(New Administrative Regulation)**

12 KAR 2:066. Suitability.

RELATES TO: 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To establish suitability criteria for commercial feeds.

Section 1. The nutritional content of commercial feed shall be as purported or is represented to possess by its labeling. Such animal feed, its labeling and intended use must be suitable for the intended purpose of the product.

Section 2. Commercial feeds for swine, poultry, fish, veal and herd milk replacer for calves, when fed according to directions, must meet the nutritional requirements established by:

(1) The Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences; or

(2) A signed affidavit attesting to the nutritional adequacy of the feed based upon valid scientific evidence. Such affidavit shall be submitted to the director upon request as set forth in Section 6 of this administrative regulation.

Section 3. An affidavit certifying the feed sponsor has valid scientific knowledge which assures suitability of the nutritional content of the feed product shall be submitted to the director only when the suitability of a product is challenged.

Section 4. Submission of a completed "Affidavit of Suitability" shall serve as proof of suitability and therefore the feed sponsor shall not be required to provide scientific information nor any reference thereto unless the director has reason to believe that such product is not suitable for its intended use. In such case the director shall have the authority to conduct a hearing requiring the feed sponsor to produce sufficient scientific and other evidence of the product's suitability.

Section 5. Upon receipt of a complete "Affidavit of Suitability", the feed sponsor may continue to market the product. When such affidavit is not adequately submitted, the director may continue to stop sale the feed and order its removal from the marketplace as well as all other feeds manufactured or distributed under the same product name.

Section 6. The Affidavit of Suitability shall contain the following information:

(1) The feed company's name.

(2) The feed's product name.

(3) The name and title of the affiant submitting the document.

(4) The statement that the affiant has knowledge of the nutritional content of the listed feed product and is familiar with the nutritional requirements for the animal species and animal class(es) for which the product is intended as established by the National Research Council of the National Academy of Sciences.

(5) The statement that the affiant has knowledge of valid scientific evidence that supports the suitability of the product for the intended animal species and animal class(es) for which the feed is intended. Provided, the manufacturer states on the label a nutrient guarantee below the minimum NRC nutrient recommendation the manufacturer shall have valid scientific evidence to demonstrate a feed containing the minimum guaranteed nutrient content is suitable for its intended purpose and so specify in the Affidavit of Suitability.

(6) The date of submission.

(7) The signature of the affiant notarized by a certified notary public.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:066, Suitability, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 650 feed companies manufacturing livestock feed.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Generally feeds are now required to be suitable and monitoring indicates most feed products are presently formulated to be suitable for their intended purpose.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None unless suitability of feed comes into question.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs and savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (6) Any additional information or comments:
TIERING: Was tiering applied? No. Distribution of feeds that are suitable for their intended purpose is applicable to all feeds and necessary for consumer protection.

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(New Administrative Regulation)**

12 KAR 3:042. Statement of caloric content.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: To provide a uniform procedure for determining the caloric content of dog and cat foods and expression of the caloric content on product labels.

Section 1. The label of a dog or cat food may bear a statement of caloric content, provided:

(1) The statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Calorie Content"; and

(2) The statement shall be measured in terms of metabolizable energy (ME) on as fed basis and must be expressed as "kilocalories per kilogram" ("Kcal/kg") of product, and may also be expressed as kilocalories per familiar household measure (e.g., cans, cups, pounds); and

(3) An affidavit shall accompany the request for label review or registration, substantiating that the caloric content was determined:

(a) By calculation using the following "Modified Atwater" formula:
$$ME \text{ (kcal/kg)} = 10 [(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$$

where: CP = % crude protein as fed; CF = % crude fat as fed; NFE = % nitrogen-free extract (carbohydrate) as fed; and the percentages of CP and CF are the arithmetic averages from proximate analyses of a least four (4) production batches of the product, and the NFE is calculated as the difference between 100 and the sum of CP, CF and the percentages of crude fiber, moisture and ash (determined in the same manner as CP and CF). The results of all the analyses used in the calculation must accompany the affidavit, and the claim on the label or other labeling must be followed parenthetically by the word "calculated".

(b) In accordance with a testing procedure established by the Association of American Feed Control Officials. The summary data used in the determination of caloric content must accompany the affidavit. The value stated on the label shall not exceed or understate the value determined by the Modified Atwater formula by more than fifteen (15) percent.

(4) Comparative claims shall not be false, misleading or give undue emphasis and must be based on the same methodology for both products.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 12 KAR 2:017, Product purpose statement, shall be held on Monday, October 21, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by October 14, 1996 five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the

public. Any person who wishes to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, 103 Regulatory Services Building, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Contact: Wilbur Frye

(1) Type and number of entities affected: 200 manufacturers of dog and cat food.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Voluntary option available to manufacturers of dog and cat food to enable labeling of caloric content. Cost to establish caloric content is minor to those choosing to participate.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Minor. Company must submit affidavit substantiating caloric content at time of registration.

(2) Effects on the promulgating administrative body: Limited due to requirement for company to self-substantiate and small number of firms participating.

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

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Submission of affidavit at registration.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Adopts recognized national labeling practices.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Option equally appropriate for all manufacturers.

TOURISM CABINET (New Administrative Regulation)

300 KAR 2:010. Kentucky Tourism Development Act Sales Tax Credit Program.

RELATES TO: 1996 Ky. Acts ch. 335, sec. 1 to 7

STATUTORY AUTHORITY: 1996 Ky. Acts ch. 335, sec. 3

NECESSITY, FUNCTION, AND CONFORMITY: 1996 Ky. Acts ch. 335, sec. 3 requires the Tourism Cabinet to establish standards for the making of an application for inducements and the recommendation to the Kentucky Economic Development Finance Authority of an eligible company and its tourism attraction project pursuant to the Kentucky Tourism Development Act Sales Tax Credit Program. This administrative regulation establishes these standards.

Section 1. Definitions. (1) "Agreement" is defined in 1996 in 1996 Ky. Acts ch. 335, sec. 1.

(2) "Authority" is defined in 1996 Ky. Acts ch. 335, sec. 1.

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- (3) "Eligible company" is defined in 1996 Ky. Acts ch. 335, sec. 1.
- (4) "Inducements" is defined in 1996 Ky. Acts ch. 335, sec. 1.
- (5) "Preliminary approval" is defined in 1996 Ky. Acts ch. 335, sec. 1.
- (6) "Tourism attraction project" is defined in 1996 Ky. Acts ch. 335, sec. 1.

Section 2. Eligibility Standards. When submitting a written request to the authority for consideration of preliminary approval of the eligible company and its tourism attraction project, the secretary of the Tourism Cabinet shall base the request upon the information in the application and any written or oral communications with the eligible company.

Section 3. Kentucky Tourism Development Act Sales Tax Credit Program Application. (1) An eligible company wishing to participate in the Kentucky Tourism Development Act Sales Tax Credit Program shall file three (3) copies of an application with the secretary of the Tourism Cabinet.

(2) The following information and materials shall be submitted as a part of the application:

- (a) Eligible company name, address, phone and telefax numbers, contact person and federal employer tax identification number;
- (b) Location of tourism attraction project;
- (c) Form of organization of eligible company;
- (d) Previous participation of eligible company in Kentucky tax incentive programs;
- (e) Ownership of eligible company;
- (f) Bankruptcy history of eligible company;
- (g) Governmental denial, suspension or revocation of licenses of eligible company;
- (h) Attorney for eligible company, including address, phone and telefax numbers;
- (i) Contact person of bank for eligible company, including address, phone and telefax numbers and contact person;
- (j) Accountant for eligible company, including address, phone and telefax numbers;
- (k) Tourism attraction project description;
- (l) Eligible company ownership or leasing of tourism attraction project;
- (m) Estimated tourism attraction project costs;
- (n) Proposed sources of financing tourism attraction project;
- (o) Contractor for tourism attraction project, including address, phone and telefax numbers and contact person;
- (p) The total number of jobs projected upon completion of and within two (2) years after completion of the tourism attraction project;
- (q) Five (5) year history of attendance at tourism attraction project for an expansion;
- (r) Five (5) year attendance projections for tourism attraction project;
- (s) Months of the year during which the tourism attraction project is open;
- (t) Marketing plans and media type to be used for the tourism attraction project, including five (5) year proposed advertising budget;
- (u) Value of Kentucky tangible property before and after completion of the tourism attraction project;
- (v) Ten (10) year estimate of tourism attraction project payroll;
- (w) Estimated federal and state income tax liability of eligible company for first three (3) fiscal years of the eligible company after commencement of operations of the tourism attraction project;
- (x) If the tourism attraction project is an expansion, federal and state income tax liability of eligible company for the past three (3) fiscal years;
- (y) Ten (10) year estimated revenue of eligible company subject to Kentucky sales tax from the tourism attraction project;
- (z) Ten (10) year estimated additional revenue the tourism

attraction project will generate to the community; and

(aa) A completed Cabinet for Economic Development Economic Incentive Disclosure Statement as required by 307 KAR 2:020, Section 2.

(3) The application to be filed with the secretary of the Tourism Cabinet shall contain notice of the following fees to be paid to the authority by the eligible company in accordance with 307 KAR 2:020, Section 5:

(a) An administrative fee of one-tenth (1/10th) of one (1) percent of the estimated maximum inducements for the entire period which are due and payable to the authority in accordance with 307 KAR 2:020, Section 5, upon execution of the agreement; and

(b) The legal fees for the preparation of the agreement by the authority's counsel which are payable upon execution of the agreement in accordance with 307 KAR 2:020, Section 5.

Section 4. Written Recommendation. The secretary of the Tourism Cabinet shall provide its recommendation required by 1996 Ky. Act ch. 335, sec. 3 based upon:

(1) The eligible company's satisfaction of the statutory requirements of 1996 Ky. Act ch. 335, sec. 1 to 7;

(2) The findings of the consultant's report required by 1996 Ky. Act ch. 335, sec. 3; and

(3) The application submitted to the secretary under Section 3(2) of this administrative regulation, and written and oral communications with the eligible company.

Section 5. Incorporation by Reference. (1) The "Application for the Kentucky Tourism Development Act Sales Tax Credit Program (9/96)" is incorporated by reference.

(2) A copy of the form of application may be inspected, copied or obtained at the office of the Tourism Cabinet, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

ANN LATTA, Secretary

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 13, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 22, 1996, at 1 p.m. in Room G2, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 1996, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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 by a person in his notification of intent to attend the hearing. Individuals may submit written comments on the proposed administrative regulation. Written notification of intent to be heard at the public hearing and written comments on the proposed administrative regulation should be sent to the agency contact person: Sarah O. Hernandez, Assistant General Counsel, Room 1212, Tourism Cabinet, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky 40601, (502) 564-2172, FAX: (502) 564-1512.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah O. Hernandez

(1) Type and number of entities affected: This regulation affects companies which apply for tax incentives under the Kentucky Tourism Development Act Sales Tax Credit Program. This program was codified in HB 815 during the 1996 meeting of the General Assembly

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(1996 Ky. Acts ch. 335). Since the program is new, we are unsure of the number of entities which will be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings to those affected entities because the regulation does not require information in excess of the requirements mandated by 1996 Ky. Acts ch. 335.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None known.

(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 by the cabinet. The Kentucky Economic Development Finance Authority may require progress and financial reports as part of an agreement.

2. Second and subsequent years: None by the cabinet. The Kentucky Economic Development Finance Authority may require progress and financial reports as part of an agreement.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This administrative regulation will not result in any direct or indirect costs or savings to the cabinet since the regulation merely clarifies the requirements set forth in 1996 Ky. Acts ch. 335.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All reporting or paperwork requirements for the cabinet will be in reviewing and assessing documents submitted by an applicant during the application process or during follow-up compliance review.

(4) Assessment of anticipated effect on state and local revenues: 1996 Ky. Acts ch. 335 creates the sales tax credit program which affects state revenues by reducing future revenues to the Commonwealth of Kentucky through the granting of sales tax credits to eligible companies which has received final approval. However, the regulation itself has no anticipated effect on state and local revenues since it merely clarifies the standards for approving applications for incentives by eligible companies.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing agency funds. No additional funds should be required by the cabinet in implementing and administering 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: The sales tax credit program should attract tourism development employers to the geographical area. The administrative regulation should not have any additional effect in this regard.

(b) Kentucky: The sales tax credit program should attract tourism development employers to Kentucky. The administrative regulation should not have any additional effect in this regard.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is expected.

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

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

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. No tiering was applied because all eligible companies applying for benefits under the tax incentive program will be treated in a uniform manner.

ECONOMIC DEVELOPMENT CABINET

Kentucky Economic Development Finance Authority (New Administrative Regulation)

307 KAR 2:020. Kentucky Tourism Development Act Sales Tax Credit Program.

RELATES TO: KRS 11A.233, 154.20-010(1), 1996 Ky. Acts ch. 335, sec. 1 to 7

STATUTORY AUTHORITY: KRS 11A.233, 154.20-010(1), 1996 Ky. Acts ch. 335, sec. 4

NECESSITY, FUNCTION, AND CONFORMITY: 1996 Ky. Acts ch. 335, sec. 4 requires the authority to establish standards for preliminary approval and final approval of an eligible company and its tourism attraction project for inducements granted pursuant to the Kentucky Tourism Development Act Sales Tax Credit Program. This administrative regulation establishes such standards.

Section 1. Definitions. (1) "Agreement" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(2) "Approved company" is defined in 1996 Ky. Acts ch. 335, sec.

1.

(3) "Approved costs" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(4) "Authority" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(5) "Eligible company" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(6) "Final approval" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(7) "Inducements" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(8) "Preliminary approval" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(9) "Tourism attraction project" is defined in 1996 Ky. Acts ch. 335, sec. 1.

Section 2. Preliminary Approval Standards. The authority shall grant preliminary approval to an eligible company and its tourism attraction project based upon:

(1) The information contained in the written request submitted to the authority by the secretary of the Tourism Cabinet;

(2) The application submitted to the Tourism Cabinet for a tourism attraction project in accordance with Section 3 of 300 KAR 2:010; and

(3) A completed Cabinet for Economic Development Economic Incentive Disclosure Statement filed with the secretary of the Tourism Cabinet as part of the application in accordance with Section 3 of 300 KAR 2:010.

Section 3. Final Approval Standards. The authority shall grant final approval to an eligible company and its tourism attraction project based upon:

(1) The information contained in the written request submitted to the authority by the secretary of the Tourism Cabinet;

(2) The application submitted to the Tourism Cabinet for a tourism attraction project in accordance with Section 3 of 300 KAR 2:010;

(3) The written recommendation of the secretary of the Tourism Cabinet in accordance with Section 4 of 300 KAR 2:010; and

(4) The written report of the consulting firm engaged by the secretary of the Tourism Cabinet which evaluates the eligible company's tourism attraction project.

Section 4. Agreement Contents. As part of an agreement the

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authority may require the approved company to:

- (1) Grant access of its records to the authority;
- (2) Submit annual, quarterly, or monthly progress reports to the authority; and
- (3) Submit annual, quarterly, or monthly financial reports to the authority.

Section 5. Fees. As part of an agreement the authority shall require the approved company to pay to the authority the following fees:

- (1) An administrative fee of one-tenth (1/10th) of one (1) percent of the estimated maximum inducements for the entire period which is due and payable upon execution of the agreement; and
- (2) The legal fees for the preparation of the agreement by the authority's counsel which are payable upon execution of the agreement.

Section 6. Incorporation by Reference. (1) The "Cabinet for Economic Development Economic Incentive Disclosure Statement (9/96)" is incorporated by reference.

(2) A copy of the disclosure statement form may be inspected, copied or obtained at the office of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chair

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 13, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 22, 1996, at 1 p.m. in Room G2, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 1996, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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 by a person in his notification of intent to attend the hearing. Individuals may submit written comments on the proposed administrative regulation. Written notification of intent to be heard at the public hearing and written comments on the proposed administrative regulation should be sent to the agency contact person: Lori H. Flanery, General Counsel, Kentucky Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670, FAX: (502) 564-1535.

REGULATORY IMPACT ANALYSIS

Contact Person: Lori H. Flanery

(1) Type and number of entities affected: This regulation affects companies which apply for sales tax credits under the Kentucky Tourism Development Act Sales Tax Credit Program. This program was codified in HB 815 during the 1996 meeting of the General Assembly (1996 Ky. Acts ch. 335.) Since the program is new, we are unsure of the number of entities which will be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments receive: There are no direct or indirect costs or savings to those affected entities because the regulation does not require information in excess of the requirements mandated by 1996 Ky. Acts ch. 335.

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

administrative regulation will be implemented, to the extent available from the public comments received: None known.

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

1. First year following implementation: The authority may require progress and financial reports from the applicant and access to his records as part of an agreement.

2. Second and subsequent years: The authority may require progress and financial reports from the applicant and access to his records as part of an agreement.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This administrative regulation will not result in any direct or indirect costs or savings to the Kentucky Economic Development Finance Authority since the regulation merely clarifies the requirements set forth in 1996 Ky. Acts ch. 335.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All reporting or paperwork requirements for the authority will be in reviewing and assessing documents submitted by an applicant during the application process or during follow-up compliance review. Current authority staff perform this review and assessment for all incentive programs administered and implemented by the authority.

(4) Assessment of anticipated effect on state and local revenues: 1996 Ky. Acts ch. 335 creates the sales tax credit program which affects state revenues by reducing future revenues to the Commonwealth of Kentucky through the granting of sales tax credits to an eligible company which has received approval. However, the regulation itself has no anticipated effect on state and local revenues since it merely clarifies the standards for approving applications for sales tax credits by eligible companies.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing agency funds and administrative and legal fees received from applicants who receive final approval for their projects. No additional funds should be required by the authority in implementing and administering 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: The sales tax credit program should attract tourism development employers to the geographical area. The administrative regulation should not have any additional effect in this regard.

(b) Kentucky: The sales tax credit program should attract tourism development employers to Kentucky. The administrative regulation should not have any additional effect in this regard.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is expected.

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

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

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

(10) Any additional comments: None

(11) TIERING: Is tiering applied? No. No tiering was applied

because all eligible companies applying for benefits under the sales tax credit program will be treated in a uniform manner.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(New Administrative Regulation)**

401 KAR 5:006. Wastewater planning requirements for regional areas.

RELATES TO: KRS 224.10, 224.70, 224.73, 224A.040, 224A.050, 224A.055, 224A.070, 224A.080, 33 USC 1251 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 224A.111, 224A.112, 224A.113, 40 CFR 25.4, Parts 35, 130, 33 USC 1281, 1285, 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. The Clean Water Act, 33 USC 1281 et seq. and more specifically, 33 USC 1313(e), requires the implementation of a continuing planning process by governmental bodies to provide for the control of water pollution. 33 USC 1288 requires the governor of the state to designate a boundary for areas within the state and single representative organizations within the areas to develop a wastewater treatment management plan applicable to all wastewaters generated within an area. 40 CFR Part 130 specifies further detail for compliance with Section 208 of the Clean Water Act, including the requirement that the state establish and maintain a continuing planning process that includes the process for incorporating elements of any applicable areawide wastewater treatment management plans under Section 208, applicable basin plans under Section 209 of the Clean Water Act, and a process for updating and maintaining water quality management plans, including schedules for revision. 40 CFR 130.6(e) also requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation implements the required planning process for point sources of pollution for the Commonwealth of Kentucky in order to conform with federal requirements and provides for the preparation of wastewater treatment management plans by governmental agencies for point sources of pollution.

Section 1. Applicability. This administrative regulation shall govern the regional planning process for the development of water quality management plans to control point sources of pollution in given areas throughout the Commonwealth. This administrative regulation establishes the process by which regional planning agencies and the Commonwealth shall comply with Sections 201, 205, 208, and 303(e) of the Clean Water Act to provide planning for wastewater control in particular areas for point sources of pollution.

Section 2. Requirements. (1) No new regional facility shall be constructed, no average daily design capacity of an existing regional facility shall be expanded by more than thirty (30) percent, or no existing regional sewage collection system shall expand its equivalent population served by more than thirty (30) percent of the existing population, without the regional planning agency submitting a regional facility plan and the cabinet approving the plan. All regional facility plans shall be prepared by a registered professional engineer.

(2) A regional planning agency shall submit a regional facility plan or regional facility plan update when the following occurs:

(a) A new regional facility is proposed to be constructed within the

planning area;

(b) The average daily design capacity of an existing regional facility is proposed to be expanded by more than thirty (30) percent;

(c) The equivalent population served by an existing regional sewage collection system is proposed to be expanded by more than thirty (30) percent of the existing population served;

(d) A regional facility or other governmental agency applies for a grant from the U.S. EPA or applies for a loan from the federally assisted wastewater revolving fund pursuant to the requirements of 40 CFR Part 35 and 200 KAR Chapter 17. A plan of study shall be submitted to the cabinet for the project to be eligible to be placed on the project priority list and receive priority points;

(e) A regional planning agency considers the submission of the plan to be in the best interest of the public and the environment; or

(f) It has been twenty (20) years since the regional planning agency or its successor has submitted a regional facility plan.

Section 3. Regional Planning Agencies. (1) Governmental entities such as cities, counties, and other public bodies that are created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220 may apply to the cabinet to become a regional planning agency, if they have not already been designated as a regional planning agency, by submitting a regional facility plan. The cabinet may designate the entity as a regional planning agency if it finds that the proposed area is not served by another regional planning agency; the development of this agency would be in the best interest of the public and the environment; or the agency has the legal, institutional, managerial, and financial capability, and specific activities necessary to carry out its responsibilities in accordance with Section 208(c)(2)(A) through (I) of the CWA.

(2) Designation. Regional planning agencies may be designated by the cabinet in accordance with Section 208(a)(2) and (3) of the CWA and this administrative regulation. Designations and de-designations shall be subject to approval by the U.S. EPA in accordance with Section 208(a)(7) of the CWA.

(3) De-designation. The cabinet may modify or withdraw the planning designation of a regional planning agency if:

(a) The regional planning agency requests the cancellation;

(b) The regional planning agency fails to meet its planning requirements as specified in grant or loan agreements, contracts, or memoranda of understanding; or

(c) The regional planning agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(4) Impact of de-designation. When a regional planning agency's designation has been withdrawn, the cabinet shall assume direct responsibility for continued water quality planning and oversight of implementation of planning activities within the area.

Section 4. Contents of Plan. The regional facility plan shall include the necessary information to allow for an environmental assessment and to assure that the most cost-effective and environmentally sound means of achieving the established water quality goals can be implemented. These plans shall contain the following information:

(1) Maps showing the planning area. In the determination of a planning area, appropriate attention shall be given to include the entire area where cost savings, regionalization, other management advantages, or environmental gains may result from interconnection of individual sewage facilities or collective management of the systems. At least one (1) original seven and one-half (7½) minute USGS topographic map shall be submitted showing the planning area. Computer generated USGS data compatible with the cabinet's computer system may be substituted for the USGS map.

(2) A description of the existing regional facilities, including physical condition, hydraulic and organic design capacities, characteristics of wastewater, ability to meet permit limits, method of sludge

handling and disposal, existing flows including average and peak flows, a waste load allocation for the proposed project, inflow and infiltration problems including location and frequency of bypasses or overflows, combined sewers if any, the collection system including location of pump stations and their capacities, and operation and maintenance problems. The location and identification of any other sewage treatment plants located in, or serving a part of, the planning area shall also be shown.

(3) A description of the planning area characteristics, including the location of wetlands, delineation of the 100 year floodplain area, topography, groundwater, surface streams, geology, soils with specific mention of suitability or unsuitability of soils, and topography for on-site sewage disposal systems.

(4) If there is a proposed project, a discussion of the need for the project including current compliance status, applicable permit limits, and if proposed sewers are involved, documentation as to why on-site systems are not acceptable. Discussions and documentation of any water quality or public health problems in the area shall be included. The applicant shall also describe any type of state or federal enforcement actions that may exist against any wastewater treatment plant within the area.

(5) A discussion of the current and projected population in the planning area including existing population in the current service area, twenty (20) year projected population in the current service area, existing population in unsewered parts of the planning area, and twenty (20) year projected population in the unsewered parts of the planning area. Current and projected industrial and commercial users of the system shall be included. When appropriate, those areas of the planning area not currently sewered should be divided into three (3) time frames: present to two (2) years, three (3) to ten (10) years, and eleven (11) to twenty (20) years. The current and projected populations shall be shown for each area on the planning area map. If available, a local planning and zoning land use map shall be included.

(6) A detailed evaluation of alternatives, along with a twenty (20) year present worth cost analysis for each alternative. All wastewater management alternatives considered, including no action, and the basis for the engineering judgement for selection of the alternatives chosen for detailed evaluation, shall be included. Sufficient detail shall be provided to allow for a thorough cost analysis to be conducted. Nonmonetary effectiveness criteria shall be limited to implementability, environmental impact, engineering evaluation, public support, and regionalization. The alternatives shall reflect a comprehensive regional plan for the planning area and shall minimize the number of point source discharges. Intended sources of funding shall be listed along with estimated user fees.

(7) In addition to the cost for the current project being proposed, cost estimates shall be given for the entire twenty (20) year planning period. Cost estimates shall be provided for each time frame identified in subsection (5) of this section and shall be broken down by the following categories: secondary wastewater treatment, advanced wastewater treatment, inflow and infiltration correction, major sewer rehabilitation, new collector sewers, interceptor sewers, combined sewer overflow corrections, and storm water pollution corrections.

(8) Documentation of public participation. A copy of the advertisement for the public hearing required by Section 5 of this administrative regulation and a copy of the minutes of the public hearing and any written comments and responses shall be submitted as part of the regional facility plan. If more than one (1) public hearing was held or if there were public meetings or public notices of the project, copies of all documentation of these events shall be submitted as part of the plan. At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.

Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to the approval of the regional facility plan, the regional facility planning agency shall give public notice of its draft

plan and shall hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing on the draft plan shall be given pursuant to KRS Chapter 424.

(2) All public notices issued under this administrative regulation shall contain the following information:

(a) The name and address of the regional planning agency which drafted the plan;

(b) A brief description of the contents of the draft plan and the area to be served;

(c) The name, address, and telephone number of persons from whom interested persons may obtain further information including copies of the draft regional facility plan;

(d) A brief description of the procedures for the public's right to comment required by this administrative regulation;

(e) A reference to the date of any previous public notices relating to the draft regional facility plan;

(f) The date, time, and place of the hearing on the draft plan; and

(g) A brief description of the nature and purpose of the hearing.

(3) The public shall be given an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public hearing or until the termination of the hearing, whichever is later. Commentors may request longer comment periods, which may be granted by the regional planning agency, if appropriate.

(4) Any person may submit written or oral statements and data to the regional planning agency concerning the draft regional facility plan. Reasonable limits may be set up on the time limit for oral statements and the submission of statements in writing may be required.

(5) All persons who believe any condition of the draft plan is inappropriate shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Action on the Plan. (1) An environmental assessment report will be written by the cabinet which summarizes the regional facility plan. The cabinet will submit the assessment report to the State Clearinghouse for review and comments. Mitigative measures may be required to address any negative comments as a result of this review.

(2) If the cabinet finds that the regional facility plan has been properly submitted and is in the best interest of the environment and the public, the cabinet will approve the plan.

Section 7. Consistency with Plans. Construction grant, loan, and permit decisions shall be made in accordance with certified and approved water quality management plans, including regional facility plans, as described in 40 CFR 130.12(a) and (b) and this administrative regulation.

Section 8. Nonpoint Source Controls. Regional planning agencies may implement plans for nonpoint source controls, other than plans for agricultural nonpoint source controls, in their designated areas. Regional planning agencies may develop plans for agricultural nonpoint source controls in their areas, if the plans are developed in coordination with the Agriculture Water Quality Authority, established pursuant to KRS 224.71. These plans may be included in the comprehensive water quality management plan that may include the regional facility plan.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation is scheduled for October 28, 1996, at 1:30 p.m. (eastern time), in the Auditorium of the Capital Plaza Tower, Mero

Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by October 21, 1996 of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on October 28, 1996. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before October 21, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, 502/564-3410 (Voice), 502/564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation requires regional planning agencies to plan for their future wastewater treatment and collection needs. The types of entities that would be affected include municipalities, sanitation districts, and county fiscal courts that are responsible for the wastewater treatment needs under their jurisdictions. There are approximately 265 entities that presently have sewer systems and would potentially be affected by this regulation; there are also about 85 other incorporated cities that do not have systems, but could be affected if they decide to construct wastewater treatment systems in their areas in the future. There are about 210 regional planning agencies that have previously approved facility plans and would be required to update their plans no later than every 20 years, if they don't update them before that time. Finally, there are about 55 wastewater treatment plants (WWTPs) that do not have facility plans, but they would be affected by this regulation, and would be required to prepare a facility plan if they upgraded their systems in the future. Most entities would not be required to prepare plans immediately upon promulgation of this regulation. Federal law requires the submission of the plans "as needed" (40 CFR 130.6(c)(3)). "Ten States' Standards," incorporated by reference in 401 KAF: 5:005, also requires plans for facilities under construction. The regulation stipulates that plans would be required if the facility intended to expand its sewage treatment facility by more than 30% or expand the population served by a regional sewage collection system by more than 30%, if the facility applied for a grant from the U.S. EPA or a loan from the federally assisted wastewater revolving fund, if the facility wanted to prepare a plan, or if it has been 20 years or more since its last regional facility plan was submitted to the cabinet. It is unknown how many facilities would want to upgrade their facilities, update their plans, or apply for a grant or loan. There are currently about 28 facilities whose plans are at least 20 years old; those entities would be required to submit a regional facility plan update under this regulation. Also, about 50 additional facilities will be required to update their plans in the next 5 years following implementation of this regulation, if they don't upgrade their facilities before then. Selected entities would also be affected by the requirement of a plan of study when they want to be placed on a priority list for funds

under the federally assisted wastewater revolving fund. While the information required in the plan of study is ultimately required of all projects, the information in a plan of study will be submitted to the cabinet prior to the formal filing of the complete plan. This submittal of the plan of study prior to the complete plan will enable the cabinet to determine the priority of the project with available funds. It is estimated that an entity may want to be placed on the priority list about once every 10 years. Most entities which upgrade their systems apply for assistance from the federally assisted wastewater revolving fund, Community Development Block Grants, and Rural Community Development Administration. Since these plans are already required by the U.S. Environmental Protection Agency before the entity can receive funding, the regulation would not place an additional requirement on those entities.

(2) Direct and indirect costs or savings on the affected entities: If an entity is receiving funds from the federally assisted wastewater revolving fund, these costs for planning are not new and must be incurred, even without the promulgation of this regulation. Federal requirements for planning exist apart from federal funding requirements (40 CFR 130.5), but have developed, hand-in-hand, with funding programs. If an entity is required to plan under this regulation and is requesting funds from the federally assisted wastewater revolving fund pursuant to 40 CFR 35.3125 and 35.3130(f), then this regulation would require that the entity first prepare a plan of study. The plan of study will be used to assist the cabinet in prioritizing the necessity for the facility, and the availability of funds for the project. The cost of a plan of study would depend on the size of the planning area, municipality, sanitation district, or county, and could range from \$1,500 for small communities to \$20,000 for the larger cities with extensive planning needs. Most larger communities with these extensive planning needs are already engaged in the planning process and these costs are not new or additional to them. Also, the requirement for communities to plan already exists in federal law, therefore these costs are not new costs to communities. The plan of study is a part of a regional facility plan; the information will be used in the completed regional facility plan. Therefore the plan of study is not a cost in addition to the facility plan; the information is just submitted at different times in the planning process. Regional facility plans are required for all municipalities that reach the trigger points. Such plans are currently required of municipalities that request funds under the federally assisted wastewater revolving fund. Presently more than 200 municipalities have received federal funds in the form of loans or grants in the past 20 years. The cost for a complete regional facility plan could range from about \$15,000 for small communities to about \$100,000 for larger metropolitan areas. Funds through the form of loans from the Kentucky Infrastructure Authority which includes the wastewater revolving fund are available to entities for the design and construction of the regional facility, as well as the planning aspects of the project. These loans can help communities plan for their futures.

(a) Effect on the 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 known or expected impacts on the cost of living and employment in the geographical area; no comments were received.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received for the public hearing relating to the cost of doing business, although subsequent comments indicated that local expenditures could range from \$1500 to \$20,000 for just the plan of study. The information obtained for the plan of study is then used in the larger facilities plan. It should be noted moreover, that conscientious planning over a twenty year period should create a more efficient wastewater system that will allow for managed growth and development.

(c) Effect on the compliance, reporting, and paperwork require-

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ments, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No comments were received.

2. Second and subsequent years: No comments were received.

(3) Effects on the promulgating administrative body: The agency will review and approve the plans of study and updates of regional facility plans before any construction begins. The number of reviews of facility plans is not expected to increase. The reviews of plans of study will not require additional staff. The information gathered from the plans will simplify the current data gathering process and provide more consistent information statewide. Facility plans, when properly updated, provide critical information for statewide environmental management.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The U.S. EPA presently provides funding to the Division of Water through its Section 106 grants to implement its part in planning and review activities; such funding is expected to continue, at least for the immediate future. Also, the U.S. EPA provides Kentucky with a grant of loan monies from the federally assisted wastewater facilities fund for municipalities and other public entities. Kentucky partially matches the grant (83% federal, 17% state) and distributes the low-interest loans to municipal facilities through the Kentucky Infrastructure Authority. Such loans may be used for the design and construction of regional wastewater treatment facilities, as well as the planning aspects of the regional facility plan and the plan of study.

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

(a) Geographical area in which administration regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: One alternative considered was to continue the present procedures. This was rejected to provide better planning for communities and to provide a better means of prioritizing projects that use federal funds. Eventually, those funds will cease, necessitating states to have a mechanism in place to allocate the funds that are available by the state.

(8) Assessment of expected benefits of the administrative regulation: This regulation is expected to benefit communities by providing better planning for their wastewater treatment needs. This will result in improved regional wastewater facilities, a reduction in the number of small package treatment plants which do not have good reliability, and improved quality for the waters of the Commonwealth. This regulation should also result in the prevention of pollution, the protection of public health, and help keep communities from facing enforcement actions for overflows and bypasses of untreated sewage. One of the largest benefits of implementing this regulation is that it takes what is already required in the United States Code (USC), the Code of Federal Regulations (CFR), and 401 KAR Chapter 5 and puts those requirements in one location that is easily understood and easy to reference.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The entire state will benefit from improved wastewater treatment facilities.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No more than currently exists.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known statute, regulation, or government policy is in conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: N/A

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

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes; tiering is applied. While all regional facilities would be required to update their plans eventually, they may do so over a staggered, or tiered time, up to the maximum period of every twenty years. Other instances of when a facility plan would be required are: if a regional facility wants to propose a new facility, if the average daily design capacity of an existing regional facility is proposed to be expanded by more than 30%, or if it just wants to update the plan on its own.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect incorporated cities, county fiscal courts, and sanitation districts.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to those incorporated cities, county fiscal courts, and sanitation districts which provide sewer services.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This regulation will affect a local government the first year only if that entity proposes a new regional facility, or any of those other activities which would cause it to be under this regulation. Local governments normally upgrade their sewer systems about once every 10 years, depending on their rate of growth. Those upgrades may be of the size to cause the local government to be under this regulation. However, it is important to note that these requirements are currently in effect for those entities receiving funds from the federally assisted wastewater revolving fund through the Kentucky Infrastructure Authority; no new expenses are incurred in these cases. In addition, larger urban areas that do not receive these funds engage in their own extensive planning which satisfies the requirements of this regulation.

Revenues (+/-): Revenues would not be affected.

Expenditures (+/-): The cost for a plan of study or a regional facility plan would be dependent on the size of the agency or facility. The regulation would only apply the first year following implementation to an entity that expanded its facility or was one of the 28 facilities that has not updated its facility plan in at least 20 years.

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Sections 201, 205, 208, and 303 of the Clean Water Act (33 USC §§ 1281, 1285, 1288, and 1313), and 40 CFR Parts 25, 35, and 130.

2. State compliance standards. 401 KAR 5:006 requires that regional planning agencies plan for their future wastewater treatment and collection needs. Specifically, Section 2 details the conditions under which plans are required from regional planning agencies; Section 3 details how an entity becomes designated as a regional planning agency; Section 4 details what the regional facility plan shall

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contain; Section 5 specifies the requirements for public notice, opportunity for public comments, and public hearings; and Section 7 specifies that approval of construction grants, loans, and permit applications shall be based on approval of a water quality management plan and this regulation.

3. Minimum or uniform standards contained in the federal mandate. Section 208 of the Clean Water Act (33 USC §1288) requires areawide waste treatment management planning; 33 USC §1313 requires states to have a continuing planning process consistent with 33 USC Chapter 26 (33 USC §1313(e)(1) and e(3)(B)); and 33 USC §1288(a)(2) and (b) set forth requirements for regional planning. The Code of Federal Regulations set forth additional requirements at 40 CFR Part 130. These statutes and regulations address areawide waste treatment management plans, including those done by local authorities which this regulation has defined as "regional facility plans." Regional facility plans are those water quality management plans referred to in 40 CFR 130.6(c)(3) and, in the past, have often been called "201 Plans." The Governor of each state is required to identify areas within the state that have water quality control problems, designate the boundaries of the area, and designate a single representative organization to develop areawide waste treatment management plans. Many regions develop their own regional planning agencies to enable them to better deal with local issues. The state is required to act as a planning agency for all portions of the state that have no regional agencies. Not later than one year after the date of the designation of a regional planning agency, 33 USC § 1288(b)(1)(A) requires the organization to have in operation, a continuing areawide waste treatment planning process consistent with the Clean Water Act. Customarily these local plans are 20 year plans; 40 CFR 130.6(e) requires these plans to be updated "as needed". Such plans are required to contain alternatives for waste treatment management and be applicable to all wastewater generated within the area (33 USC §1288(b)(1)(A)). This regulation is being proposed to meet that federal mandate for regional planning. 40 CFR 130.5(b) specifies the minimum requirements of the areawide waste treatment planning process: One portion or part is the incorporation of elements of any applicable areawide waste treatment management plan created under Section 208 of the Clean Water Act (40 CFR 130.5(b)(2)); a process for updating and maintaining water quality management (WQM) plans, including schedules for revision (40 CFR 130.5(b)(4)); and the process for assuring adequate authority for intergovernmental cooperation with the implementation of the state water quality management plan (40 CFR 130.5(b)(5)). Thus, this proposed regulation fulfills one element of the state's continuing planning process to work with regional agencies and develop a regional plan. The U.S. EPA further defines this planning process at 40 CFR 130.5. Other requirements for water quality management planning are found throughout 40 CFR Part 130. The proposed regulation was developed to be consistent with concepts found in the federal regulation, including water quality management plan and areawide agency as defined in 40 CFR 130.2. 40 CFR Part 35 relating to the grants program provides further specificity for the development of water quality management plans in order to receive grants and loans from the U.S. EPA. This regulation proposes to incorporate those requirements along with requirements found by certain documents incorporated by reference elsewhere in the cabinet's regulations (see 401 KAR 5:005). The minimum standard contained in the federal mandate is to plan and update plans and to plan with regional agencies where possible. In addition, some limited standards are set for the requirement of the approval of the regional agency found in 33 USC § 1288(c)(2) and there are minimum requirements for the contents of the regional plan found in 33 USC § 1288 as a part of the broader planning requirements; these are more fully specified in the Code of Federal Regulations at 40 CFR 130.5 and 130.6 and in certain documents incorporated by reference currently in 401 KAR Chapter 5. In addition, 40 CFR Part 35 further sets forth planning requirements for receiving funds and grants, and

40 CFR 25.4 outlines the procedures for public participation of activities required by the Clean Water Act.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. The federal mandates in federal statutes and regulations require states to have a planning program in place and this regulation satisfies that planning program requirement. This regulation takes the federal mandates and puts them in one, easy-to-read, comprehensive place. The federal mandate is broad and offers few details on how it should be fulfilled. For example, plans are to be updated "as needed" (40 CFR 130.6(e)). 401 KAR 5:006, Section 2 specifies that plans shall be updated no later than every 20 years, unless other construction projects or other "trigger points" as specified in Section 2 occur before then. However, whenever the Code of Federal Regulations provides detail, such as on the designation and de-designation of facilities, this regulation conforms to the federal regulation (See 40 CFR 130.9 on which Section 3(2), (3), and (4) are based). The planning program in 40 CFR 130.9 follows the procedure which the cabinet has been following to be in compliance with 33 USC § 1288. Federal law involving grants and loans also require these plans before funds are provided. At the present time, the federal statutes require a continuous planning process, but do not set a clear "floor" on minimum planning requirements. The standards proposed in this regulation represent the minimum standard "as needed" and "continuous" that the federal authorities would consider adequate and thus are not in conflict with the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

**TRANSPORTATION CABINET
Department of Highways
Division of Operations
Department of Vehicle Regulation
Division of Motor Carriers
(New Administrative Regulation)**

603 KAR 5:330. Annual overweight permits for nondivisible loads.

RELATES TO: KRS 189.222, 189.2717, 23 CFR 658.17

STATUTORY AUTHORITY: KRS 189.2717

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 168 passed by the 1996 General Assembly created a new section of KRS Chapter 189 which authorizes the Department of Highways to issue an annual \$500 permit for the movement of a motor vehicle whose nondivisible load does not exceed a gross weight of 120,000 pounds. This administrative regulation establishes the procedures for application and safety requirements necessary in the interest of highway safety and convenience for the issuance of this overweight permit.

Section 1. Definitions. (1) "Nondivisible load" means a load which cannot be dismantled or divided without incurring substantial cost or delay.

(2) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established for a highway segment in 603 KAR 5:301;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The bridge weight limit established by 603 KAR 5:066; or

(d) The gross weight limit posted at a bridge or other structure.

Section 2. Application for Permit. (1) An application for an annual overweight permit issued pursuant to this administrative regulation shall contain the following information:

(a) The name, address, and telephone number of the applicant;

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(b) The purpose of the movements for which a permit is requested;

(c) The portions of the state primary road system requested to be used;

(d) Description and identity of the vehicle for which the application is made including the following:

1. Vehicle identification number of the power unit;
2. Year, make, and model of the power unit;
3. License plate number of the power unit, if required; and
4. State which issued the license plate.

(e) An axle-by-axle breakdown of the weight of the combined vehicle and load;

(f) The gross weight of the vehicle and load for which the application is made;

(g) The KYU number required by 601 KAR 1:200 under which the overweight motor vehicle will be operated;

(h) Requested issue date for the permit; and

(i) A certification that the tractor, towing unit, or overweight vehicle has sufficient horsepower and braking capacity to safely transport the overweight load.

(2) A highway map showing each of the proposed routes for which application is being made shall also be attached to the application.

(3) A separate permit application and fee shall be required for each tractor or power unit which the applicant intends to operate under the provisions of this administrative regulation.

Section 3. Limits on Permits. (1) This annual overweight permit shall only be issued to a tractor or power unit which is:

(a) Registered in Kentucky for a combined gross weight of 80,000 pounds;

(b) Apportioned registered in another licensing jurisdiction to operate in Kentucky with a gross weight of 80,000 pounds; or

(c) Is not required to be registered or licensed in order to operate the vehicle in Kentucky.

(2) All trailers or semitrailers used in conjunction with the tractor or power unit shall be registered and licensed:

(a) In Kentucky; or

(b) If in another jurisdiction, apportioned registered to operate in Kentucky.

(3) Each annual permit issued shall be limited to designated portions of the state primary road system.

(4) An overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle weight exceeds the product of 700 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle.

(5) An annual overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle or axle group weight exceeds the limits set forth in subsection 2 of KRS 189.2717.

Section 4. Denial or Restriction of Permit Application. The Transportation Cabinet shall have the right to deny or restrict a permit for the use of any route which may be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:

(1) The strength of all bridges and structures on the route;

(2) Traffic congestion on the route;

(3) Horizontal and vertical alignment of the route;

(4) The availability of alternate routes that afford greater safety;

(5) Urban development in residential and commercial areas on the route;

(6) The proximity of schools to the route;

(7) Highway construction or reconstruction scheduled for the route; and

(8) Any other condition that would unduly compromise public safety and convenience.

Section 5. Permit Availability. (1) The original of the annual permit or a copy authenticated by the Department of Vehicle Regulation by embossing shall be carried in the overweight vehicle at all times.

(2) The annual permit shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) An unauthenticated photocopy of the annual permit shall not be valid.

Section 6. Overdimensional Loads. If any movement to be made under an annual permit issued under this administrative regulation involves a motor vehicle which exceeds the dimension limits for the routes requested, the permit holder shall apply for an overdimensional permit under the provisions of KRS Chapter 189.

Section 7. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the permit requested shall be subject to the fees set forth in KRS Chapter 189.

Section 8. Permit Validity. (1) The annual permit issued under the provisions of this administrative regulation shall be valid for one (1) year from the date of issuance.

(2)(a) If the conditions on an approved route change, the permit holder shall notify the Transportation Cabinet of the change in order for the cabinet to determine if the route is still available for use by the overweight vehicle.

(b) If the route is unavailable for overweight vehicles, the Transportation Cabinet shall attempt to reroute the permit holder.

(c) If an alternative route is approved, the Transportation Cabinet shall, free of charge, issue a supplemental permit to the permit holder. The supplemental permit shall expire either when the initial route is again available for use or at the end of the permit year.

(d) If an alternative route is unavailable, the permit holder shall not operate overweight until the initial route is again available for use.

ED LOGSDON, Commissioner

J.M. YOWELL, State Highway Engineer

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: August 28, 1996

FILED WITH LRC: September 6, 1996 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 29, 1996 at 1:30 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by October 22, 1996 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 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on October 29, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

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REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: Only the few transportation companies which will be eligible for the annual overweight permit. Since most of the overweight loads in Kentucky are divisible, the transporters are not eligible for this permit. Other transporters need a new route each trip and therefore will not apply for an annual permit, but will continue to apply for a trip permit pursuant to 603 KAR 5:075. The few companies which will be eligible are those which deliver a commodity, such as a single coil of steel from one plant to another.

(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: Public comment hearing held did not address this issue. However, there appears to be no impact.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comment hearing did not address this issue. However, HB 168 (rather than this administrative regulation) will decrease the cost of transporting certain products, reducing the cost of doing business for those particular companies.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Since HB 168 authorized an annual permit, the amount of paperwork will decrease significantly for those few companies able to take advantage of the annual permit. Currently, they must purchase a single trip permit each time a movement is made.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The passage of HB 168 will reduce the overweight permit fees collected by the Transportation Cabinet, but will also reduce the administrative duties of the cabinet. The net result should be \$0. 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: Road funds authorized in the biennium budget for the Transportation Cabinet's Department of Vehicle Regulation and Department of Highways.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered including all of the routes over which the permit holders could operate on the preprinted permit. However, such a list is not available and will take considerable effort to prepare.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation is only applicable in very restricted circumstances. All applicants for this permit should undergo the same administrative process.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Mines and Minerals

Division of Explosives and Blasting

(New Administrative Regulation)

805 KAR 4:093. Permit to purchase or possess explosives.

RELATES TO: KRS 351.367

STATUTORY AUTHORITY: KRS 351.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and administrative regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which have a direct bearing on safety to life and property. This administrative regulation effects the provisions of that statute.

Section 1. (1) Each person, firm, association, or corporation intending to purchase or take possession of explosives shall complete the application form (EC-52), revised August 1996. This form may be obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m.

(2) Each holder of a permit to purchase or possess explosives shall provide a copy of his permit to the explosive dealer or distributor prior to the transfer of the explosive materials.

(3) A permit to purchase or possess explosives shall be obtained prior to purchasing or taking possession of any explosive materials, including all high explosives, blasting agents, and detonators, and two (2) component, binary explosive compounds.

(4) The following materials are exempt from the requirement to obtain a permit:

(a) Oil well perforating charges of less than ninety (90) grams each;

(b) All grades of blackpowder suitable for firearms;

(c) All fireworks; and

(d) Any propellant powder for firearms or rockets.

(5) Any person who signs the application for a permit, either as an individual or as a representative of a corporation, firm, or association, shall be accountable for the explosives purchased under the terms of the permit.

(6) A permit holder may purchase explosives for use on several different business locations or construction sites, provided that the person designated on the permit application shall be the central agent ordering the explosives, and shall be responsible for the security and disposition of the explosives at all sites.

(7) If a single corporation or company has multiple business sites, each of which purchases explosives independently, each site shall obtain its own permit.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: September 5, 1996

FILED WITH LRC: September 13, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Friday, October 25, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of

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Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 18, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Larry C. Schneider, Director, Division of Explosives and Blasting, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, Telephone: (606)246-2026, Fax: (606)246-2038.

REGULATORY IMPACT ANALYSIS

Contact Person: Larry C. Schneider

(1) Type and number of entities affected: This proposed administrative regulation will affect the 400 companies and individuals and the 800 licensed coal mines that annually purchase explosives in the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although no public comments were received in response to the Notice of Intent to Promulgate this administrative regulation, no effect on the cost of living or on employment in the Commonwealth due to this administrative regulation is anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although no public comments were received in response to the Notice of Intent to Promulgate this administrative regulation, no effect on the cost of doing business in the Commonwealth is anticipated. The fee required for the permit to purchase, receive, or take possession of explosives is set by statute; this administrative regulation does not therefore impact upon any 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: For compliance with this proposed administrative regulation, all individuals and companies intending to purchase explosives shall complete a one-page application form (EC-52). This is the only added paperwork or reporting requirement established by this administrative regulation. Licensed coal mines are exempted by statute from this application process and paperwork.

2. Second and subsequent years: The completion of the application form (EC-52) would be required during the second and all subsequent years. The enabling statute of this proposed administrative regulation specifies that any permit issued is valid for no more than one year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will create no direct or indirect costs or savings for the Department of Mines and Minerals in the first year of its implementation.

2. Continuing costs or savings: This administrative regulation will create no continuing costs or savings for the Department of Mines and Minerals.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The Department of Mines and Minerals, Division of Explosives and Blasting, will receive and process the approximately 400 applications submitted by companies and individuals, annually. Reports and lists of permits will be maintained by the division.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues. The fees associated with this program are set by statute.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenues will be required for the implementation and enforcement of this administrative regulation, since the Division of Explosives and Blasting currently issues explosives permits, as mandated by statute. The revenue used to implement the current program is paid for out of both General Fund appropriations and trust and agency funds.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received concerning the economic impact of this administrative regulation; however, the department envisions no impact on economic activities due to this administrative regulation.

(b) Kentucky: As indicated above, no public comments concerning economic impact were received. The administrative regulation neither increases nor decreases the cost of complying with statutes already in force.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to several parts of this administrative regulation were considered. In paragraph (2), materials for which a permit to purchase is required were specified, and in paragraph (3), materials exempted from the permit system were listed. Various federal agencies publish definitions or lists of "explosive materials" that fall under their jurisdiction. Consideration was given to the U.S. Department of Transportation Table of Hazardous Materials, classified as explosives, and to the Bureau of Alcohol, Tobacco and Firearm's "List of Explosives," published in the Federal Register. Both of these lists contain materials specifically exempted from this department's jurisdiction, such as black powder and fireworks. Furthermore, other items, such as oil-well-perforating charges, pose little, if any security risk, and in the opinion of the department do not need to be permitted. An alternative was also considered to the requirement in paragraph six (6) allowing a corporation or company with multiple business locations to use a single permit to purchase and distribute explosives under the control of a central purchasing agent. The obvious alternative would be to require each physical location to obtain a separate permit to purchase explosives. This alternative was rejected, since no added security or control of the explosive materials would be gained as long as the same central agent is responsible for the explosives. The only effect this rejected alternative would have is to increase the number of permit applications submitted and permits issued.

(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 has no effect on public health or environmental welfare of any specific geographic area of the Commonwealth. The statute to which this administrative regulation relates, KRS 351.367, provides added security to protect public safety from unauthorized access to explosives.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the environment or public health.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This

agency is aware of no statute, administrative regulation, or government policy which may conflict with, overlap, or duplicate this administrative regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was used in the development of this administrative regulation to the extent that corporations or companies who purchase explosives through a central agent are required to hold only a single permit, although the explosives may be used at different physical locations. So long as this central purchasing authority maintains control over the disposition and security of the explosives, additional individual permits are unnecessary to accomplish the objective of the statute mandating these permits. Alternately, companies or corporations that conduct operations involving explosives at multiple locations, where each location acts independently of the others, must apply as separate permit holders. This is essential, since no central authority in such companies is responsible for maintaining security of the explosives. Tiering was also used in specifying those explosive materials for which a permit is required to purchase or possess them. Items that can fall into various definitions of "explosives" are exempted, such as perforating charges, fireworks, and blackpowder. The distinction made with respect to these materials was based upon:

(a) The statutory authority of this department, and

(b) The department's assessment of the explosive materials' potential danger to public safety, due to these specific items.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(New Administrative Regulation)

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

RELATES TO: KRS 304.17A-100(6), 304.17A-300, 304.17A-310

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-300, 304.17A-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-300 requires that provider sponsored networks obtain a certificate of filing before doing business in Kentucky. This administrative regulation sets forth the requirements for applying for a certificate of filing.

Section 1. Definitions. A provider-sponsored network is a provider sponsored integrated health delivery network as defined in KRS 304.17A-100(6).

Section 2. A provider-sponsored network shall apply for and obtain a certificate of filing from the commissioner in order to provide, directly or through arrangements with others, a health benefit plan to consumers voluntarily enrolled with the organization on a per capita or a predetermined, fixed prepayment basis.

Section 3. (1) Each application for a certificate of filing for a provider-sponsored network shall be filed on Form 996 and verified by an officer or authorized representative of the applicant.

(2) Each application shall set forth or be accompanied by the following:

(a) Name, address, principal place of business, owners, officers, managers, and sponsors of provider-sponsored networks.

(b) Address where books and records of the provider-sponsored network will be maintained at all times.

(c) The providers who sponsor, own, govern, or manage the provider-sponsored network shall provide a copy of their licenses and affidavit confirming good standing with their licensure board.

(d) A copy of the organizational documents of the applicant including:

1. Articles of incorporation;
2. Articles of association;
3. Partnership agreement;
4. Trust agreement;
5. Bylaws;
6. Organizational chart; and
7. Other applicable documents and amendments.

(e) A copy of the policies, procedures, and other documents explaining how the provider-sponsored network will:

1. Administer health plans;
2. Have ability, experience, and structure to arrange for appropriate level and type of health care services;
3. Conduct utilization management activities;
4. Achieve, monitor, and evaluate the quality and cost effectiveness of care provided;
5. Monitor access to its provider network; and
6. Use standardized electronic claims and billing processes and formats.

(f) Names, addresses, and biographical information of the following:

1. Board of directors;
2. Board of trustees;
3. Executive committee or other governing body;
4. Each owner of five (5) percent or more of the provider-sponsored network;
5. Principal officers;
6. Partners; and
7. Persons responsible for the conduct of the applicants affairs and day to day operations.

(g) Financial statements audited by an independent certified public accountant in conformity with statutory accounting practices prescribed or otherwise permitted by the commissioner that reflect the following:

1. Financial position of the applicant;
2. Results of its operation;
3. Cash flows; and
4. Changes in capital and surplus.

(h) If the "as of" date of the financial statements filed pursuant to paragraph (f) of this subsection is more than ninety (90) days from the date of the application, interim financial statements compiled by an independent certified public accountant as of a date less than ninety (90) days from the application containing the same information as the audited financial statements.

(i) List of providers including name, address, license number, and health services provided.

(j) A statement or map reasonably describing the counties to be served and written assurance that health services will be provided to enrollees within fifty (50) miles of their residences.

(k) Proposed contracts and agreements including the following:

1. Applications or individual enrollment forms;
2. Master contract forms for group enrollment;
3. Evidence of coverage or handbook;
4. Riders or endorsements; and
5. Rates with actuarial justifications.

(l) A copy of the following professional agreements:

1. Provider agreements;
2. Third party administrators agreements;
3. Service agreements;
4. Administrative agreements; and
5. Reinsurance agreements.

(m) A copy of grievance procedures to be utilized for the investigation and resolution of enrollee and provider complaints and

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grievances.

(n) A copy of the applicant's plan for handling insolvency as required by KRS 304.17A-310(6).

(o) Financial program setting forth a three (3) year projection of operations on a quarterly basis which shall include the following:

1. Detailed enrollment projections;
2. Projection of balance sheets;
3. Projection of cash flow statements showing any capital expenditures;
4. Projection of purchase and sale of investments and deposits;
5. Projection of income and expense statements anticipated from the start of operation until the organization has had net income for one (1) year; and
6. Statement of the sources of working capital as well as other sources of funding.

Section 4. If any of the information filed with the department pursuant to Section 3 of this administrative regulation changes or becomes incorrect, then the provider-sponsored network shall immediately notify the department in writing of the change and immediately give the department the correction.

Section 5. Form numbered "996", revised June 1996, is prescribed by the department and incorporated by reference. Copies may be obtained from the Department of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (ET).

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 10, 1996

FILED WITH LRC: September 12, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10:00 a.m. (ET), on October 21, 1996, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032, Ext. 239, Fax Number (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: The department does not know how many providers will apply for a certificate of filing as a provider-sponsored network. At this time, there are none in existence.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

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

administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(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 requires filing of information to determine if a provider meets all of the requirements in KRS 304.17A-100(6), 304.17A-300, and 304.17A-310 to become a provider-sponsored network.

2. Second and subsequent years: The only additional information filed with regard to this administrative regulation would occur if something in the original filing changed.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will have an additional responsibility of evaluating the provider-sponsored networks. However, at this time the department cannot predict the costs since we do not know how many providers will apply to be provider-sponsored networks.

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: The number of applicants.

(b) Reporting and paperwork requirements: The department will have to review all of the filings. The department will have to send a certificate of filing or rejection to the applicants.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received at this time.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is necessary for the Department of Insurance to determine whether to grant a certificate of filing to an applicant. Applicants need the administrative regulation so they can make an adequate filing with the Department of Insurance.

(8) Assessment of expected benefits: The department will be able to make an informed decision when approving provider-sponsored networks. Applicants will know all of the information to file with the Department of Insurance.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Consumers in Kentucky may have more choices in health care benefit plans.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied equally to all applicants of provider-sponsored networks.

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PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (New Administrative Regulation)

806 KAR 17:120. Accountable health plan certification.

RELATES TO: KRS 304.17A-070

STATUTORY AUTHORITY: KRS 304.17A-070(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.17A-070(2) requires the promulgation of administrative regulations relating to the certification of accountable health plans eligible to serve members of the Kentucky Health Purchasing Alliance. This administrative regulation applies to all accountable health plans that seek to offer services to Kentucky Health Purchasing Alliance members.

Section 1. Accountable Health Plan Application Process. (1) An authorized officer of an accountable health plan shall apply for certification by submitting a complete and accurate original application and three (3) copies to the Kentucky Health Purchasing Alliance on the form "Application for Accountable Health Plan Certification" incorporated herein by reference.

(2) Applications shall be filed with the Kentucky Health Purchasing Alliance. Applications shall be evaluated in order of their receipt. Within thirty (30) days of receiving an application, the Kentucky Health Purchasing Alliance shall provide the applicant with written notice of its findings. That notice shall:

(a) Specify approval or rejection of the application and the grounds for that decision; or

(b) Specify additional information needed to clarify the application and a deadline for submitting that information. If additional information is not provided by the deadline, the application shall be rejected. Within thirty (30) days of receiving timely additional information, the Kentucky Health Purchasing Alliance shall provide a written notice of findings, as described in paragraph (a) of this subsection.

(3) In evaluating and authorizing accountable health plans, the following criteria shall be considered:

(a) The accountable health plan's conformity with the criteria set forth in Section 2 of this administrative regulation;

(b) The adequacy of the financial and organizational resources of the accountable health plan; and

(c) The ability of the accountable health plan to meet the evaluation requirements described in KRS 304.17A-070.

Section 2. Revocation of Accountable Health Plan Certification.

(1) The Kentucky Health Purchasing Alliance may revoke the certification of an accountable health plan at any time if one (1) or more of the following conditions exist:

(a) The accountable health plan does not comply with the provisions of this administrative regulation;

(b) The certificate of authority of the insurer or health maintenance organization is suspended or revoked; or

(c) There has been a misrepresentation of a material fact in the accountable health plan application or any subsequent report required of the accountable health plan.

(2) The Kentucky Health Purchasing Alliance shall provide written notice of an intent to revoke certification to the accountable health plan setting forth the basis of the revocation and granting the accountable health plan fifteen (15) days from the date of the notice to make a written response.

(3) After reviewing the response, the Kentucky Health Purchasing Alliance shall issue an order directing the accountable health plan to remedy specific defects, and may revoke the accountable health plan certification or, at the discretion of the alliance, set a time and place for hearing.

Section 3. Examination of Records. The Kentucky Health Purchasing Alliance or the department may make or cause to be

made examinations of the books and records of an accountable health plan to ensure compliance with this administrative regulation and the representations made by the accountable health plan on its application for certification or recertification.

Section 4. Incorporated by Reference. The Application for Accountable Health Plan Certification herein incorporated by reference is available for copying at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday or the offices of the Kentucky Health Purchasing Alliance, 909 Leawood Drive, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 10, 1996

FILED WITH LRC: September 12, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10:00 a.m. (ET), on October 21, 1996, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032, Ext. 239, Fax Number (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: This administrative regulation will apply to all proposed accountable health plans ("HP"). The number of AHPs which may apply for future certification is indeterminable. However, at the present there are 12 AHPs in existence.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

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

1. First year following implementation: Proposed AHPs must submit an application in order to receive certification in accordance with KRS 304.17A-070.

2. Second and subsequent years: The same application for certification process will be in effect for the second and subsequent years for AHPs proposing to do business in Kentucky.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department does not anticipate any effect on costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Kentucky Health Purchasing Alliance ("Alliance") is required to certify the AHPs. KRS 304.17A-070 places the department in a consultation role for the Alliance which will involve review and evaluation responsibilities.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received at this time.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is the best way for an AHP to demonstrate that it meets the qualifications of an AHP as set forth in KRS 304.17A-070(2). The alliance and the department must have this information in order to evaluate and determine if an AHP should be certified.

(8) Assessment of expected benefits: The application for certification process enables the Alliance, in consultation with the department, to make an informed decision regarding certification of each AHP.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The criteria for the uniform certification of AHPs assures that all plans have the ability to offer services to members of the alliance by requiring proof of certain qualifications as specified in KRS 304.17A-070(2).

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, neither the Alliance nor the department would be able to properly evaluate the qualifications of an AHP. Consequently, there would be no uniform standards in effect for certification of an AHP without this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: Same as (b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this proposed administrative regulation applies to all AHPs seeking certification in Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 17:130. Twenty-four (24) Hour Pilot Insurance Program.

RELATES TO: KRS 216.2960, Chapter 342

STATUTORY AUTHORITY: KRS 216.2960

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 216 and 342 require the promulgation of administrative regulations relating to the Twenty-four (24) Hour Pilot Insurance Program to cover general health care for purposes of general health insurance and Workers' Compensation. This administrative regulation applies to all employers, insurers, and health care providers that apply to combine group health insurance with workers' compensation under a twenty-four (24) hour pilot program.

Section 1. Definitions. (1) "Twenty-four (24) hour pilot insurance program" or "pilot insurance program" means a combined program including health coverage plus the medical portion of worker's coverage, as required by KRS 342.020 providing twenty-four (24) hour coverage and approved by the Department of Insurance.

(2) "Compensable condition" means an injury or disease for which the employer is liable for medical benefits under KRS 342.020.

(3) "Group health plan" means an insurance contract under which medical services for nonwork related conditions are extended to the employees of an employer subject to KRS Chapter 342.

(4) "Pilot insurance program administrator" means the entity which provides the day-to-day administration of a pilot insurance program.

Section 2. Prohibitions. (1) An insurer shall not issue an insurance contract providing health care benefits for both compensable and noncompensable conditions unless the contract qualifies as a twenty-four (24) hour pilot insurance program under this administrative regulation.

(2) Liabilities or expenses shall not be transferred between or among insurers whose coverages have been combined into a twenty-four (24) hour pilot insurance program.

Section 3. Pilot Insurance Programs in General. (1) A pilot insurance program shall deliver twenty-four (24) hour coverage through one (1) or more insurers as defined in KRS 304.17A-010(12). Each insurer shall provide only the type of coverage it is authorized by law to provide. Each program shall be designed and operated to eliminate, or minimize, differences in the delivery and administration of medical services for compensable and noncompensable conditions.

(2) A pilot insurance program may provide twenty-four (24) hour coverage to employees of one (1) or more employers only to the extent each insurer may lawfully provide coverage for the employees of one (1) or more employers. The program may cover all or a portion of the subject workforce of a participating employer. If only a portion of the workforce is covered by a pilot insurance program, compensable medical coverage for the remainder shall be governed by KRS 342.020 and noncompensable medical coverage for the remainder shall be governed by KRS Chapter 304.

Section 4. Application Process. The pilot insurance program shall apply for authorization to operate the program by submitting an application in quadruplicate to the Department of Insurance on a prescribed form. The pilot insurance program shall provide the following information:

(1) The name, address, and telephone numbers of the pilot insurance program administrator and a description of the administrator's role in funding, insuring, and operating the pilot insurance program;

(2) The name, address, and telephone numbers of each sponsor

of the pilot insurance program and a description of each sponsor's role in funding, insuring, and operating the pilot insurance program. Sponsors shall include the employer or employers' association, workers' compensation insurer and health insurer for the pilot insurance program;

(3) A full description of how the pilot insurance program will operate, including participating and nonparticipating employees, participating and nonparticipating work sites, plan benefits, coverage limitations, premiums, provider networks, managed care provisions and administrative procedures of the program;

(4) A listing of participating providers by service category;

(5) A draft of all materials describing the pilot insurance program that are intended for distribution to employees and their families;

(6) A description of how the pilot insurance program is expected to benefit each of the following: employees, employers, medical providers and insurers;

(7) A description of the financial and organizational resources supporting the pilot insurance program;

(8) A description of the methodology and identification of the personnel that the pilot insurance program administrator will utilize to produce an analysis comparing the pilot insurance program results with predicted results under traditional workers' compensation insurance, with and without managed care in the following areas:

(a) Number of employees treated by the pilot insurance program.

(b) Number of work-related injuries or diseases by ICD-9 code treated under the Pilot Insurance Program and during the twelve (12) month period preceding the adoption of the plan.

(c) Breakdown by ICD-9 codes of injuries and diseases treated.

(d) Total medical costs for a noncompensable condition for the first twelve (12) months of the pilot insurance program and for the twelve (12) month period preceding adoption of the pilot insurance program.

(e) Average medical cost per injured employee by type of injury.

(f) Average medical cost per diseased employee by type of disease.

(g) Breakdown of medical cost elements as to type of physician utilized, hospital costs, drug costs, and other costs during the year preceding adoption of the plan and for one (1) year afterwards.

(h) Number of days by type of injury and disease for which an employee has been released from work during the year preceding adoption of the plan and for one (1) year afterwards.

(i) In lieu of the above, a methodology to compare each employer's preplan expenditure for both compensable and noncompensable medical to those expenditures made after adoption of the plan.

(9) If the health services contractor has not been approved to operate a managed care plan pursuant to 803 KAR 25:110, a variance shall be requested and the program administrator shall provide a description of the means by which the following will be achieved for compensable conditions:

(a) Reasonable provider choice;

(b) Quality care;

(c) Availability of emergency care;

(d) Strong case management; and

(e) Utilization review.

(10) The program administrator shall list the terms and conditions of network coverage and a listing of all participating providers by service category and shall fully disclose the same in the pilot insurance program application and to all program members.

Section 5. Authorization of Pilot Plans. (1) The Commissioner of Workers' Claims and the Department of Insurance shall authorize twenty-four (24) hour pilot insurance programs. Applications will be evaluated in order of their receipt. Within thirty (30) days of receiving a complete application, the Department of Insurance shall provide a written notice of findings upon review to the pilot insurance program administrators. That notice shall:

(a) Specify approval or rejection of the application and the

grounds for that decision; or

(b) Specify additional information needed to clarify the application and a deadline for submitting that information. If additional information is not provided by the deadline, the application shall be rejected. Within thirty (30) days of receiving timely additional information, the Commissioner of Workers' Claims and the Department of Insurance shall provide a written notice of findings, as described in paragraph (a) of this subsection.

(2) In evaluating and authorizing pilot insurance programs, the following criteria shall be considered:

(a) The extent to which the pilot insurance programs archives a diversity of participants, program designs and geographic regions;

(b) The potential of the pilot insurance program to mutually benefit workers', employers, medical providers and insurers;

(c) The adequacy of the financial and organizational resources of the pilot insurance program administrator and sponsors;

(d) The ability of the pilot insurance program administrator to meet the evaluation requirements described in KRS 342.352 and 216.2960; and

(e) The availability of resources to monitor the pilot insurance program.

Section 6. Revocation of Pilot Insurance Program Authority. (1) The Department of Insurance and the Commissioner of Workers' Claims may revoke the authority of a pilot insurance program at any time if, one (1) or more of the following, or similar, conditions exist:

(a) The pilot insurance program or the pilot insurance program administrator does not comply with the provisions of KRS Chapter 216 or 304;

(b) A participating insurer becomes subject to suspension or revocation of its certificate of authority;

(c) The pilot insurance program is deficient in its management or claims adjustment practices, or the health care services contractor fails to observe standards of provider choice, quality care, utilization review or grievance resolution;

(d) A breach of the pilot insurance program agreement occurs or there has been a misrepresentation of a material fact in the pilot insurance program application or on any subsequent report required of the pilot insurance program administrator or health care services contractor or insurer; or

(e) The successful operation of the pilot insurance program is jeopardized by a weakness in the financial or operations status of the pilot insurance program administrator, program sponsor, or health care services contractor, or insurer.

(2) The Department of Insurance and the Commissioner of Workers' Claims shall provide written notice of an intent to revoke to the pilot insurance program administrator setting forth the basis of the revocation and granting the pilot insurance program administrator fifteen (15) days from the date of the notice to make a written response.

(3) After reviewing the response, the Department of Insurance and the Commissioner of Workers' Claims may issue an order directing the pilot insurance program administrator, the health care services contractor, or the insurer to remedy specific defects; may revoke the authorization to operate a pilot program; or in the discretion of the Commissioner of Workers' Claims and the Department of Insurance may set a time and place for a hearing.

Section 7. Dispute Resolution. (1) Each twenty-four (24) hour pilot insurance program shall contain an expeditious, informal grievance procedure to resolve disputes by employees and providers relative to the rendition of medical services. A detailed description of the employee grievance procedure shall be included in all provider contracts or appended materials.

(2) The grievance procedure shall meet the following requirements:

(a) A grievance is made when a written complaint or written

request is delivered by the employee or provider to the twenty-four (24) hour pilot insurance program administrator, health care services contractor, or insurer setting forth the nature of the complaint and remedial action requested.

(b) The employee or provider shall file a grievance within thirty (30) days of the occurrence of the event giving rise to the dispute.

(c) The twenty-four (24) hour pilot insurance program administrator, health care service contractor, or insurer shall render a written decision upon grievance within thirty (30) days of the filing of the grievance.

(d) The twenty-four (24) hour pilot insurance programs may provide for alternate means of dispute resolution including arbitration and mediation. In that event, final resolution of a grievance shall not be subject to the time constraints set forth in paragraph (c) of this subsection. In all cases, resolution mechanisms shall be expeditious and where treatment matters are at issue reflect the need for resolution.

(3) The twenty-four (24) hour pilot insurance shall maintain a record for a minimum of two (2) years of each formal grievance to include the following:

(a) A description of the grievance, the employee's or provider's name and address, names and addresses of the health care service providers relevant to the grievance, and the health care contractor's name and address;

(b) A description of the administrator's findings, conclusions, and deposition of the grievance; and

(c) Number of grievances filed and summary of action taken.

(4) Any employee or provider dissatisfied with the pilot insurance program administrator's, health care service contractor's, or insurer's resolution of a grievance relating to a purportedly compensable condition, may apply for review by a workers' claims administrative law judge by filing a request for resolution within thirty (30) days of the date of the final decision. Upon review by a workers' claims administrative law judge, the movant shall be required to prove that the administrator's final decision is unreasonable or otherwise fails to conform with KRS Chapter 342 or 216.

Section 8. Provider Networks. A pilot insurance program may deliver medical services through a limited network of participating health care providers as follows:

(1) Noncompensable conditions. Coverage may be restricted in accordance with the provisions of the group health care portion of the program; and

(2) Compensable conditions. Coverage may be restricted in accordance with the provisions of a managed care plan previously approved by the Commissioner of Workers' Claims pursuant to 803 KAR 25:110 or pursuant to a variance approved in the application for a twenty-four (24) hour pilot insurance program.

Section 9. Pilot Plan Coverage. (1) Medical services.

(a) Coverage of compensable injuries shall comply with all provisions of KRS Chapter 342. It is the responsibility of the pilot insurance program administrator to ensure that all required medical services are provided for every compensable condition;

(b) Coverage of noncompensable conditions shall comply with the terms of the group health plan portion of the pilot insurance program; and

(c) Nothing in these rules shall be construed to establish concurrent or double coverage of the same injury or illness under paragraphs (a) and (b) of this subsection.

2) Coordinator of medical coverage. Coverage of medical services that are included in the group health portion of a pilot insurance program, but are excluded from coverage under KRS Chapter 342, shall not be denied to pilot insurance program members solely because the plan member claims a compensable injury.

(3) Copayments and deductibles.

(a) Coverage of compensable conditions shall not require any

copayment or deductible to be paid by pilot insurance program members. Coverage of noncompensable conditions may require copayments or deductibles to be paid by members;

(b) If any copayment or deductible is paid by a pilot insurance program member for medical services that are later determined to be compensable, the amounts paid shall be refunded within thirty (30) days of the determination.

(4) Effective date of coverage. Coverage under a pilot insurance program shall begin on the effective date specified in the pilot insurance program agreement. Workers' compensation coverage shall not be interrupted because of the initiation of a pilot insurance program. Coverage under a pilot insurance program shall not be delayed for any injured worker on account of an existing compensable condition. Ongoing medical services for an existing compensable condition shall comply with the provisions of KRS Chapter 342.

(5) Payments of premiums.

(a) Premiums for the group health plan portion of a pilot insurance program plan may be shared by the employer and the covered member in accordance with the terms of that portion of the pilot insurance program. Premiums for the workers' compensation portion shall be fully paid by the employer, as required under KRS Chapter 342.

(b) In integrated and single policy plans, a delineation of the premiums attributable to the two (2) portions of coverage must be maintained by the pilot insurance program administrator.

Section 10. Claims Administration. Nothing in the operation of a pilot insurance program shall hinder workers from submitting claims or encourage workers to seek group health plan coverage for compensable conditions in lieu of workers' compensation coverage.

Section 11. Examination of Records. The Department of Insurance and the Commissioner of Workers' Claims may make or cause to be made examinations of the books and records of the administrator of a pilot insurance program to ensure compliance with these rules and the pilot insurance program agreement.

Section 12. Statistical Reporting. (1) The workers' compensation portion of a pilot insurance program. The administrator and sponsors of a pilot insurance program shall provide the reporting required under KRS Chapter 342 for the workers' compensation portion of a pilot insurance program.

(2) The group health portion of a pilot insurance program. The administrators of a pilot insurance program shall report the experience of the group health portion of the pilot insurance program in accordance with the administrative regulations of the Department of Insurance.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 10, 1996

FILED WITH LRC: September 12, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on October 21, 1996, in order to receive consideration. Send

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written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032, Ext. 239, Fax Number (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Pursuant to KRS 216.2960, the total number of participants in the pilot project cannot exceed 5% of all insured persons who are covered by workers' compensation and general health insurance. At this time, 2 companies are involved in the pilot project.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department has already been involved in this project with the Health Policy Board and Department of Workers' Claims. Therefore, there should be no additional costs or savings.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will receive the applications for participation in the pilot project and approve the policies.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received at this time.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Department of Insurance must promulgate an administrative regulation to fulfill the requirements of KRS 216.2960, and this administrative regulation is virtually identical to the administrative regulation promulgated by the Kentucky Health Policy Board.

(8) Assessment of expected benefits: The twenty-four (24) hour pilot project will continue without interruption.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The pilot project will help review its effect on controlling the increasing costs of workers' compensation medical benefits. The project is too new to know the benefits.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(New Administrative Regulation)

806 KAR 18:060. Filing requirements for associations.

RELATES TO: KRS 304.17A-120(9), 304.18-020, 304.18-050

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner of Insurance may promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.18-050 allows eligible associations to offer group health insurance if approved by the Department of Insurance pursuant to Subtitle 18 and applicable administrative regulations promulgated under that subtitle.

Section 1. An association in existence prior to January 30, 1996 but not offering group health insurance prior to January 30, 1996 shall demonstrate eligibility and obtain approval from the commissioner to offer group health insurance.

Section 2. In order to demonstrate eligibility and obtain approval as required by Section 1 of this administrative regulation, each association shall submit for approval an application for exemption on or before September 1, 1996 to the commissioner which shall set forth or be accompanied by:

(1) The name of the association, location of its principal office, date of organization, purpose of the association, and a description of persons solicited for membership;

(2) Names and addresses of trustees;

(3) The association's constitution;

(4) The association's by-laws;

(5) The base organizational documents;

(6) Group insurance policy or proposed group insurance policy;

(7) Contracts or proposed contracts between association or trustee and insurer;

(8) Contracts, agreements, and applications between association and members;

(9) Documents relating to the criteria for membership;

(10) Documents relating to the eligibility for health benefit plan coverage; and

(11) Address where books and records of the association will be maintained at all times.

Section 3. If any of the information filed with the department pursuant to Section 2 of this administrative regulation changes or becomes incorrect, the association shall immediately notify the department in writing of the change and immediately give the department the correction.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 10, 1996

FILED WITH LRC: September 12, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, at 10 a.m. (ET) in the

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offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on October 21, 1996, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032, Ext. 239, Fax Number (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: The department does not have this information. Associations under KRS 304.18-020 have never filed anything with the department before this time.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time. associations may have a minimal increased cost of doing business, because they would need to prepare the information and send it to the department.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Associations would file the information necessary to implement KRS 304.17A-120(9), 304.18-020, and 304.18-050 by September 1, 1996. Associations would need to pay for copies of the information and the delivery of this information to the department.

2. Second and subsequent years: The only cost to an association would occur if an original filing changed or became incorrect. The association would have to notify the department of any change in the original information.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department does not anticipate any effect on costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will have to review all of the filings made by associations. The department will have to send notice of approval or disapproval to the associations.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received at this time.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is the best way for associations to demonstrate their eligibility under KRS 304.17A-120(9), 304.18-020 and 304.18-050. The department must have this information if an association is eligible to offer group health insurance.

(8) Assessment of expected benefits: The department will be able to make an informed decision when approving associations to offer group health insurance.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Members of eligible associations will be able to obtain group health insurance from the associations.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied because the administrative regulation will apply to all associations in existence prior to January 30, 1996, but not offering group health insurance at that time.

CABINET FOR HEALTH SERVICES Department for Public Health (New Administrative Regulation)

902 KAR 1:400. Administrative hearings.

RELATES TO: KRS Chapter 13B, 211.180, 211.190, 211.210, 211.357, 211.360, 211.760, 211.844, 211.870, 211.925, 211.964, 212.170, 212.210, 212.230, 212.620, 212.627, 216.920, 217.075, 217.126, 217.809, 217.950, 217C.040, 217C.050, 219.031, 219.370, 223.070, 7 CFR 246

STATUTORY AUTHORITY: KRS 13B.170, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health with the Cabinet for Health Services. KRS Chapter 13B establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. The function of this administrative regulation is to establish, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the Department for Public Health in hearing appeals of actions taken under the public health laws of the Commonwealth.

Section 1. Scheduling the Hearing. (1) The Department for Public Health shall provide the opportunity for a hearing to any regulated entity aggrieved by any action of the Department for Public Health by issuing a notice of proposed action.

(2) The notice of action by the department shall contain:

(a) A description of the proposed action or action taken;

(b) The reasons for the action;

(c) The statutory or regulatory authority by which action is taken; and

(d) An explanation of the right to a conference hearing if requested within ten (10) days of the date of mailing.

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Section 2. Conference Hearing. (1) The conference hearing shall be conducted by a representative of the agency taking the action.

(2) During the course of the conference hearing, the appellant may:

- (a) Be represented by counsel;
 - (b) Cross examine witnesses against him; and
 - (c) Present evidence in his favor.
- (3) The purpose of the conference hearing is to:
- (a) Clarify the position of the parties; and
 - (b) To resolve any dispute over the pending action.

Section 3. Conference Hearing Report. (1) Within five (5) days of the conclusion of the conference hearing, the agency representative shall issue a report to the administrative agency detailing any settlement of the action repealed.

(2) The report shall contain the appellant's further right to appeal and a copy of the report shall be mailed to the appellant's last known address.

Section 4. Appeals. (1) The appellant may file an appeal with the Cabinet for Health Services within ten (10) days of receipt of the conference hearing report by mailing a letter of appeal to the Commissioner for Public Health, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621.

(2) Upon receipt of an appeal, the commissioner shall set the date, time and place for the hearing requested.

(3) The notice of appeal hearing shall:

(a) Be issued no later than twenty (20) days prior to the date of the appeal hearing; and

(b) Conform to KRS 13B.050;

(4) The appeal hearing shall be conducted by a hearing officer appointed by the secretary and in accordance with KRS 13B.080 and 13B.090.

(5) An official record of the appeal hearing complying with KRS 13B.130 shall be retained by the Cabinet for Health Services.

(6) Within twenty (20) days of the conclusion of the appeal hearing, the hearing officer shall issue a recommended order containing:

(a) Findings of fact;

(b) Conclusions of law; and

(c) A recommendation to the agency head.

(7) A copy of the recommended order shall be sent to each party to the hearing or their counsel.

(8) Each party shall have fifteen (15) days from the date of mailing within which to file exceptions to the recommended order with the secretary.

(9) Within twenty (20) days of the last day on which to receive exceptions, the secretary shall issue a final order complying with the requirements of KRS 13B.120(3).

Section 5. Nothing in this administrative regulation shall be construed to prevent the Department for Public Health from taking emergency action to protect the public health and safety under the provisions of Senate Bill 292, Section 12.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 6, 1996

FILED WITH LRC: September 11, 1996 at 11 am.

PUBLIC HEARING: A public hearing on this regulation will be held October 21, 1996, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by October 14, 1996. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the

proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: William K. Moore, Jr., General Counsel, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dee Swain, Departmental Liaison

(1) Type and number of entities affected: This administrative regulation will affect all agencies and individuals who are regulated by the Department for Public Health.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No fiscal impact expected as hearings are conducted presently and only the procedures will change.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: See (a).

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional factors will be required as a result of this administrative regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Current budget amount for administrative hearings.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternatives are available. KRS Chapter 13B mandates the provisions of this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation establishes a uniform procedure to be followed by Department for Public Health administrative agencies in conducting agency hearings. In doing so, the department can assure the continued ability to administer programs designed to protect the public health while proving those subject to regulatory oversight the due process protections afforded by the provisions of KRS Chapter 13B.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: The detrimental effect would be that the department would be out of compliance with the requirements of KRS Chapter 13B and that there would be no uniform hearing procedures in place for regulated entities.

(9) Identify any statute, administrative regulation or governmental

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This administrative regulation will be used for all those regulated by the Department for Public Health.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(New Administrative Regulation)**

907 KAR 1:715. School-based health services.

RELATES TO: KRS 156.070, 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.560, 605.115, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the program of Medicaid. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medicaid services to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients.

Section 1. Definitions. (1) "Assistive technology device" means any item, piece of equipment, or product system that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is medically necessary to implement the individual education program.

(2) "Incidental interpreter services" means those interpreter services which are necessary in order to allow the child to benefit from other covered school-based health services.

(3) "Recipient" means a Medicaid eligible child under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(4) "School-based health services" (SBHS) means those services which are evaluative, diagnostic, preventive, rehabilitative, and treatment services provided to eligible recipients under age twenty-one (21) to provide the maximum reduction of physical or mental disability, to allow for functioning of the recipient to his best possible level, to prevent loss of current functional level, or to correct any defects or conditions. For purposes of coverage as provided for in 907 KAR 1:034 SBHS includes only those services identified as necessary within an individual education program for persons determined to be eligible under the provisions of the Individuals with Disabilities Education Act (IDEA), 20 USC Chapter 33, and 707 KAR Chapter 1.

Section 2. Participation Requirements. (1) School districts that request to participate as a school-based health care provider shall be required to comply with the following and submit to an annual review by the Department of Education for compliance with the standards for Medicaid certification as a participating Medicaid provider:

(a) Agree to provide school-based health services as required by IDEA, 20 USC 33, and as authorized in an approved individual education program by a multidisciplinary team of professionals acting within their scope of practice;

(b) Submit to or have completed an on-site survey by the

Department of Education within seven (7) years from the date of enrollment in the Medicaid Program; and

1. Have been found to be in compliance with the requirements for provision of services required by the IDEA; or

2. If found to be in noncompliance, is taking action considered appropriate by the Department of Education to correct deficiencies;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation for the provision of Medicaid covered services;

(d) Provide to the Department of Education a proposed quality assurance outline;

(e) Agree to develop and implement, within one (1) year from the date of the recommendation for certification to the Department for Medicaid Services by the Department of Education, a quality assurance program for the provision of Medicaid covered services which has been approved by the Department of Education;

(f) Agree to maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 USC 33; and

(g) Provide the Department of Education with a list of school-based health services that the school district requests to provide. The list shall include the names, credentials, salaries, fringe benefit percentages, and contract amounts of those employees and contractors.

(2) The Department for Medicaid Services may grant Medicaid certification to those providers who meet the criteria in subsection (1) of this section and are recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

Section 3. Services. (1) Except as otherwise limited in this section and Sections 4, 5, and 6 of this administrative regulation, the following services shall be covered if provided to address a medical or mental disability and assist the individual in benefiting from special education programming which is included, authorized, and provided in accordance with the Individual Education Program:

(a) Nursing services;

(b) Audiology services;

(c) Speech and language services;

(d) Occupational therapy services;

(e) Physical therapy services;

(f) Mental health services;

(g) Incidental interpreter services provided in conjunction with another covered service;

(h) Assistive technology devices and appropriate related evaluations;

(i) Transportation; and

(j) Orientation and mobility service.

(2) If appropriate, services listed in subsection (1) of this section:

(a) Shall not be limited by site of service;

(b) May be provided in a group or one-on-one situation; and

(c) May include assessment, evaluation, treatment, and collateral components.

(3) Assessments and evaluations conducted prior to the establishment of the individual education program shall be covered if an individual education program is subsequently authorized and implemented.

Section 4. Staffing Requirements. School-based health services shall be reimbursable only if provided by professionals acting within their scope of practice as defined by state law as follows:

(1) Nursing services may be provided by:

(a) An advanced registered nurse practitioner with current license from the Kentucky Board of Nursing;

(b) A registered nurse with current license from the Kentucky Board of Nursing;

(c) A licensed practical nurse with appropriate supervision and

delegated authority; and

(d) A health aide if he:

1. Is under the supervision of a specific registered nurse or advanced registered nurse practitioner;
2. Is trained by the supervising nurse for the specific nursing service for the specific recipient; and
3. Is approved in writing by the supervising registered nurse to possess adequate training and skills to perform the specific service in a safe, effective manner.

(2) Audiology services shall be provided by an audiologist with a current license from the Kentucky Board of Speech Language Pathology and Audiology.

(3) Speech and language services shall be provided by:

(a) A speech pathologist with:

1. A current license from the Kentucky Board of Speech Language Pathology and Audiology; or
2. A masters degree in the area of speech-language pathology or a substantive equivalent and currently certified by the Kentucky Education Professional Standards Board (KEPSB); and

(b) A speech-language pathology assistant with a current license from the Kentucky Board of Speech Language Pathology and Audiology and under the supervision of a licensed or certified masters-level speech language pathologist in accordance with KRS 334A.080.

(4) Occupational therapy services may be provided by:

(a) An occupational therapist with a current license from the Kentucky Occupational Therapy Board;

(b) An occupational therapy assistant licensed to assist under the supervision of an occupational therapist; and

(c) An unlicensed occupational therapy aide who assists in the practice of occupational therapy under the direct supervision of the licensed occupational therapist or occupational therapist assistant and has an understanding of occupational therapy in accordance with KRS 319A.010(5).

(5) Physical therapy services may be provided by:

(a) A physical therapist with a current license from the Kentucky Board of Physical Therapy;

(b) A physical therapist assistant with a current license, physical therapist with a temporary permit, and a student of physical therapy who are under the supervision of a licensed physical therapist; and

(c) A physical therapy aide under the direct on-site supervision of the licensed physical therapist or licensed physical therapist assistant in accordance with the provisions of 201 KAR 22:053, Section 5.

(6) Mental health services may be provided by:

(a) A licensed clinical psychologist;

(b) A licensed counseling psychologist;

(c) A licensed school psychologist;

(d) A school psychologist with a doctoral or master's degree and certified by the KEPSB;

(e) A certified psychologist with autonomous functioning;

(f) A certified psychologist or psychological associate with a master's degree under the supervision of the licensed psychologist in accordance with KRS Chapter 319;

(g) A social worker with a master's in social work and certified by KEPSB or a bachelor's degree in social work and two (2) years experience in individual counseling with adolescents in social service delivery;

(h) A licensed clinical social worker;

(i) A guidance counselor certified by the KEPSB; and

(j) A psychometrist certified by the KEPSB.

(7) Incidental interpreter services shall be provided in accordance with the following:

(a) Minimum qualifications during 1995 and 1996 shall be as follows:

1. Sign language interpreters shall be certified by the Registry of Interpreters for the Deaf or other national certifying body or shall hold the beginning level of the Kentucky Interpreting Skills Screening.

2. Cued speech interpreters shall demonstrate ability to perform at Level 1 of the National Cued Speech Association's certification examination.

3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.

(b) Minimum qualifications after 1996 shall be as follows:

1. Sign language interpreters shall be certified by the Registry of Interpreters for the Deaf or other national certifying body or shall hold the intermediate level of the Kentucky Interpreting Skills Screening.

2. Cued speech interpreters shall demonstrate ability to perform at Level 2 of the National Cued Speech Association's certification examination.

3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.

(8) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the Association of Education and Rehabilitation for the Blind and Visually Impaired (AER).

Section 5. Limitations on Transportation Services. (1) Transportation services include transporting the recipient to a site which is other than the school building in which he is enrolled for general education purposes or to the service site if the child is a home-bound student and receives general education services at home.

(2) Transportation to and from home to the school shall not be a covered service under school-based health services.

(3) Transportation services shall be covered if provided using the type of vehicle which meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702 KAR 5:130, and is appropriate for the disability.

(4) Transportation shall not be covered if provided by a member of the recipient's household if that person is not an employee of the school district.

Section 6. Special Requirements For Assistive Technology Devices. The item or device shall become the property of the recipient if purchased by the Medicaid Program.

Section 7. Implementation Date. In accordance with the provisions of KRS 605.115, this administrative regulation shall be applicable for services provided on and after January 1, 1995.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: September 12, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick (564-5020) or Karen Doyle

(1) Type and number of entities affected: Eligible Medicaid children under age 21 who have an individual education plan with the local school district and local school districts who wish to participate as school-based health services Medicaid providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: (cost) \$62,293,445 from August 1, 1995 to June 1, 1996; \$70,466,043 for FY 1997*.

2. Continuing costs or savings: (cost) \$80,916,953*.

3. Additional factors increasing or decreasing costs: The number of services provided to eligible Medicaid recipients will increase or decrease the 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 and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that access to medically necessary health care services is available to Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: *It should be noted that the state's share of the expenditures will be provided through certified expenditures at the local school districts using current appropriated funds.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative

regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES

Department for Mental Health

Mental Retardation Services

(New Administrative Regulation)

908 KAR 1:350. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs.

RELATES TO: KRS 222.231

STATUTORY AUTHORITY: KRS 194.050, 222.231, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050, 222.231, and Executive Order 96-862 authorize the cabinet to regulate alcohol and other drug abuse agencies and programs. Executive Order 96-862, effective 7/02/96, reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation provides licensure requirements and minimum standards for the operation of agencies providing alcohol and other drug abuse prevention.

Section 1. Definitions. (1) "Agency" means as defined in KRS 222.005(2).

(2) "Alcohol and other drug abuse" means as defined in KRS 222.005(12).

(3) "Cabinet" means as defined in KRS 222.005(3).

(4) "Certified chemical dependency prevention professional" means an individual who is recognized by the Kentucky Certification Board of Chemical Dependency Professionals, Inc.

(5) "Consumer" means the recipient of prevention services.

(6) "Legal entity" means a unit other than a natural person with a separate and distinct independent existence, having lawful standing in the Commonwealth of Kentucky to function legally, to sue or be sued and make decisions through agents, by means of a partnership agreement, articles of incorporation, legislative act, or executive order.

(7) "Outcome evaluation" means an assessment of ways in which individuals, systems, and communities participating in prevention programs have changed as a result of that program.

(8) "Prevention" means as defined in KRS 222.211(1).

(9) "Preventionist" means any individual or certified prevention professional who receives remuneration for alcohol and other drug

prevention programs.

(10) "Process evaluation" means describing and documenting what actually was done, how much, when, for whom and by whom during the course of the program.

(11) "Program" means as defined in KRS 222.005(10).

Section 2. Licensing Procedures. (1) No agency receiving remuneration for any program shall operate without first obtaining from the cabinet an alcohol and other drug abuse prevention license for each separate prevention facility operated by the agency, unless the agency is exempted under KRS 222.003(1) and (2).

(2) Any agency operating a program without first obtaining a license for each separate facility operated by the agency shall be subject to the penalties as stated in KRS 222.990(2).

(3) An application for licensure or renewal of licensure shall be obtained from and submitted to the Cabinet for Health Services, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, and shall include at a minimum the agency name, mailing address, and each separate facility address.

(4) An application for licensure shall be accompanied by a fee of \$155 for each separate facility operated by the agency. The license for each separate facility shall remain in effect for one (1) year from the date of issue and may be renewed. An application for renewal shall be accompanied by a fee of eighty (80) dollars for each separate facility operated by the agency.

(5) The license shall be conspicuously posted in a public area of each separate facility operated by the agency and shall indicate the year the license was issued or renewed.

(6) An application for licensure and renewal shall be processed as follows:

(a) The cabinet shall conduct an announced on-site inspection of each facility to determine compliance with licensure standards;

(b) The agency shall provide representatives of the cabinet access to the facility during normal hours of operation and provide access to any documents needed to complete the inspection;

(c) The physical plant shall meet building, fire, safety, and health standards specified by state and local government laws and regulations.

(d) The agency shall provide to the cabinet written documentation to show that it has professional liability insurance in the minimum amount of \$100,000 per occurrence;

(e) The cabinet shall within thirty (30) days from the date of an inspection notify the agency in writing of any violation of licensure standards identified during the inspection;

(f) The agency shall submit to the cabinet a written plan of correction within ten (10) days of receipt of the notice of violation. The plan of correction shall specify the corrective action to be taken and the date when each violation shall be corrected; and

(g) The cabinet, upon approval, shall issue a license to operate to the agency named in the application. The license shall be effective on the last day of the month in which approval was granted by the cabinet and shall not be transferable to any other entity.

(7) Changes in agency status.

(a) Name change.

1. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. The cabinet shall automatically issue a new license for the remainder of the licensure period.

3. The agency shall submit a processing fee of twenty-five (25) dollars to the cabinet.

(b) Change of location.

1. The agency shall not deliver services at a new location until an application for licensure accompanied by a fee of eighty (80) dollars is approved by the cabinet.

2. The cabinet shall approve the application and reissue the license for the remainder of the licensure period when the cabinet

receives a written report from the state fire marshal stating the new facility is in compliance with building, fire, safety, and health standards specified by state and local laws and regulations.

(c) Change of ownership.

1. The new owner of the agency shall submit to the cabinet an application for licensure accompanied by a fee of eighty (80) dollars for each facility within ten (10) calendar days of the effective date of change.

2. The cabinet shall process the application in accordance with Section 2 of this administrative regulation.

(d) Discontinuing a program.

1. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of discontinuance.

2. The agency shall transfer or refer all consumers to another licensed agency providing services appropriate to the needs of the consumer.

3. The agency shall submit to the cabinet the name and address of each agency receiving the referral and the number of clients referred to each agency.

(8) An agency may receive additional certificates of licensure upon payment to the cabinet for the cost of reproduction. The certificate of licensure shall be the property of the cabinet and shall be returned by the agency to the cabinet when any negative action is taken on the license.

(9) The cabinet shall publish annually and make available to the public a list of all licensed alcohol and other drug prevention agencies identifying each separate facility operated by the agency. The cabinet may issue revisions and corrections to this list as changes occur.

Section 3. Physical Plant. There shall be written housekeeping, sanitation and maintenance procedures which shall be followed at all times to ensure that the facility shall be clean and in good repair.

Section 4. Organization and Administration. (1) Governing body.

(a) An agency shall have a governing body with overall authority and responsibility for the agency's operation.

(b) Where programs are provided in the context of a general mental health, social services or health agency, it shall be documented that within the governing body there are members whose primary interest is the prevention of alcohol and other drug abuse.

(c) The governing body shall have written documentation to show the agency is a legal entity in the Commonwealth of Kentucky by means of a partnership agreement, articles of incorporation, legislative act or executive order.

(d) The responsibilities of the governing body shall be specified in writing and shall include:

1. Adopting a mission statement that outlines the agency's purpose;

2. Adopting a conflict of interest policy to govern participation by a governing body member in decisions which may be influenced by a member's business interest;

3. Appointing an executive director who shall be principally responsible for the day-to-day operation of the agency;

4. Adopting an administrative structure and establishing lines of authority for all programs operated by the agency;

5. Documenting administrative structure and lines of authority on an organizational chart, including names of current governing board members;

6. Adopting written policies and procedures to direct administrative and program functions of the agency to ensure that sufficient staff and resources are available for the successful delivery of programs;

7. Reviewing and revising written policies and procedures at least every two (2) years and incorporating relevant findings of the agency's quality assurance system;

8. Overseeing a system of financial management and accountability;

9. Obtaining agency professional liability insurance in the amount

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of \$100,000 per occurrence at a minimum;

10. Completing a minimum of two (2) hours of annual training on alcohol and other drug prevention; and

11. Meeting as a whole at least quarterly and keeping written records demonstrating the on-going discharge of its responsibilities.

(2) Staffing and staff qualifications.

(a) A preventionist who is actively involved in the development and implementation of prevention programs shall be certified by the Kentucky Chemical Dependency Professional Board as a prevention professional or become a Kentucky certified prevention professional within twenty-four (24) months of the effective date of this administrative regulation or within twenty-four (24) months of employment whichever is longer.

(b) The agency shall designate one (1) or more individuals as prevention supervisor.

(c) A prevention supervisor shall meet at least one (1) of the following sets of qualifications:

1. A bachelors degree plus five (5) years of work experience in prevention or the related fields of health, social science, marketing, communications or education. Two (2) years of the work experience shall be in administration; or

2. A masters degree, with two (2) years of work experience in prevention administration or the related fields of health, social sciences, marketing, communications or education.

(d) A prevention supervisor who is enrolled in the certification process of the Kentucky Chemical Dependency Professional Board, Inc., shall establish a formal written agreement for a consultative relationship with a prevention supervisor who is currently certified by the Kentucky board. The written agreement shall include:

1. A determination of the needs of the consultee;

2. The development of a consultation plan;

3. Provision for a minimum of four (4) hours of consultation per quarter;

4. Provision for documenting consultations in consultant and consultee records; and

5. An assurance that the consultant shall participate in the consultee's credentialing process to the degree required by that process.

(e) The agency shall designate a preventionist as a supervisor of instructors of educational curricula who shall:

1. Assure that preventionists are engaged in sound instructional practices and delivering the educational materials in accordance with the curriculum; and

2. Observe at least two (2) times a year the preventionists' delivery of the educational curriculum and document it in the preventionists' personnel record.

(f) Staff responsible for providing prevention services within the agency shall be clearly designated.

(g) The agency shall designate an individual as an ombudsman.

Section 5. Quality Assurance. (1) Staff and community volunteer development.

(a) The agency shall establish a system of ongoing staff development to include training and supervision of all staff and community volunteers which shall be outlined in the agency's policy and procedures manual and which shall support the attainment of the goals and objectives of the prevention program.

(b) The agency shall make training available for administrative staff, all preventionists, and volunteers. The training shall be in areas that enable volunteers and staff to carry out their expected job duties.

(c) Completion of training shall be documented in the volunteer and staff development files and shall identify the name of the training, clock hours earned and dates attended.

(2) Program quality assurance. The agency shall have written policy and procedures for assuring the quality of each program operated by the agency which shall include the following:

(a) Designation of an individual responsible for monitoring and

evaluating the quality assurance activities;

(b) Description of the range of activities and services provided in each program;

(c) A statement of intended program outcomes and indicators of effectiveness; and

(d) Establishment of a mechanism and a schedule for the collection, organization and analysis of data to be used for the process evaluation and outcome evaluation of programs to determine quality of services.

Section 6. Personnel and Employment Practices. (1) The agency shall have written policies and procedures governing employment practices for agency employees and subcontractors which shall include:

(a) Maintenance of sufficient qualified staff under supervision to achieve the objectives of the agency;

(b) Protections against discrimination of any employee or prospective employee on the basis of gender, age, race, ethnicity, sexual orientation, religious affiliation, and disability including prior history of alcohol or other drug abuse;

(c) Provisions for recruiting, selecting, promoting, disciplining and terminating staff;

(d) Procedures for conducting background checks from the Justice Cabinet for all agency staff and volunteers working with consumers to assure that there is no previous record of conviction related to abuse or molestation of children;

(e) Provision for the maintenance of personnel records for each staff member containing the following:

1. Application for employment;

2. Job specifications;

3. Written references;

4. Results of background checks;

5. Documentation of all education, work experience, training and status of professional licensure, certification and registration;

6. Salary information;

7. Job performance appraisals;

8. Disciplinary actions;

9. Commendations; and

10. Employee incident reports.

(f) Written job specifications for all positions identifying the qualifications, duties, reporting supervisor, positions supervised, work schedule and salary range;

(g) Explanation of employee benefits, training and staff development opportunities, safety and work related injury procedures, employee grievance procedures, rules of conduct and compensation plan;

(h) Information on equal employment opportunities and affirmative action policies;

(i) Requirements for length of sobriety for potential employees in recovery from alcohol or other drug abuse;

(j) Provisions for ensuring a drug free work place to include actions to be taken when an employee is involved in the unlawful manufacture, distribution, possession or use of any controlled substance at the agency;

(k) A provision for yearly job appraisal which includes an evaluation, based on objective criteria of each employee's performance in relation to their expected job duties;

(l) Ethical standards identifying acceptable employee conduct regarding consumer's rights;

(m) Conflict of interest policies governing dual relationships with other legal entities;

(n) Provisions to assure the confidentiality of personnel records;

(o) Procedures for providing an employee with access to their personnel record; and

(p) Procedures for the storage and retention of personnel records.

(2) A copy of the agency's policies and procedures shall be given to a staff member at the time of employment and periodically as

revisions are made.

Section 7. Program Operation and Services. (1) Each program operated under the authority of the alcohol and other drug prevention license shall have a program operations manual containing the following:

- (a) Philosophy;
- (b) Mission statement;
- (c) Methods for determining the needs of the populations to be served and programs provided in response to these identified needs;
- (d) Methods for tailoring programs to the characteristics of specific target audiences including age, gender, drug use patterns, racial, ethnic and cultural heritage;
- (e) Methods to be used to review all activity plans, information, materials and curricula prior to use for accuracy, potential effectiveness and appropriateness in influencing the alcohol and drug use behavior of the target audience;
- (f) Methods for soliciting input and involving the community or identified target audience in planning;
- (g) Methods for making or receiving consumer referrals within or outside the agency;
- (h) Methods for delivering services to consumers having special speech, language, visual or hearing needs;
- (i) Methods for determining an individual's or agency's suitability for participation in the prevention program; and
- (j) Policies and procedures for setting and collecting fees.

(2) The prevention agency shall maintain reports and records documenting the following:

- (a) Results of needs assessments;
- (b) Any collaboration with community or other agencies;
- (c) Material and curricula reviewed;
- (d) Program activities and services delivered;
- (e) Identification of which of the following prevention strategies was employed:

1. Alternatives which provide for the participation of target populations in activities that exclude alcohol and other drug use. Methods shall include involving agency and community members in the design and provision of constructive and healthy activities that offset the attraction to or otherwise meets the needs usually filled by alcohol and other drugs;

2. Community-based process which aims to enhance the ability of community members to identify problems and resources and to appropriately select the prevention strategies that will more effectively impact behaviors relating to alcohol and other drug use. Methods shall include involving communities in planning, organizing, and implementing prevention programs through interagency collaboration, coalition building, and networking;

3. Consultation which involves an interaction and contractual relationship between two (2) or more people wherein one (1) who has special skills or expertise in accomplishing a specific goal provides one (1) who does not have the same skills or expertise, guidance in the mutual accomplishment of that goal;

4. Education which involves two (2) way communication and interaction between the educator or facilitator and the participants. Methods shall include direct training, training of trainers and training of impactors. This strategy consists of a well-defined, structured learning process which involves both knowledge and skill development. Educational programs seek to accomplish the following:

- (a) Motivate individuals to make healthy choices about alcohol and other drug use;
- (b) Help them develop the competencies needed to make those choices;
- (c) Prepare them to develop and implement prevention programs in particular settings.

5. Public and social policy change which establishes or changes written or unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of alcohol and other

drug use problems in the general population and creating an environment more conducive to prevention. Methods shall include changing laws to restrict availability and access, price increases and community wide actions;

6. Information dissemination which is characterized by one-way communication of information from the source to the audience, with limited contact between the two (2). Methods shall include identification, collection and dissemination of resource materials, media communication, public speaking and networking activities Information dissemination programs provide the following:

- (a) Awareness and knowledge of the nature and extent of alcohol and other drug use, abuse and addiction;
 - (b) The effect of alcohol or other drugs on individuals, families and communities;
 - (c) Information to increase perceptions of risk; and
 - (d) Identification of available prevention programs and services.
7. Problem identification and referral which is designed to identify persons who are beginning to experience alcohol and other drug problems or those for whom the risk of developing problems is particularly high. Methods shall include screening, intensive preventive education, or referral for a clinical assessment;
- (f) Documentation of consumer referrals made and sources used within or outside the agency;
 - (g) Process and outcome evaluation results;
 - (h) Follow-up plans; and
 - (i) Fees assessment and collection.

Section 8. Consumer Rights. An agency licensed to provide alcohol and other drug prevention programs shall have written policies and procedures for ensuring the rights of the consumer which shall include:

- (1) Assurances that there shall be no unlawful discrimination in determining eligibility for admission to a prevention program;
- (2) A statement of consumer rights posted in the facility with the name, address and telephone number of the agency's ombudsperson;
- (3) Assurances of the confidentiality of consumer's alcohol, tobacco, and other drug issues; and
- (4) Grievance procedures posted in the facility which shall include at a minimum:
 - (a) Time frames for reviewing and responding to consumer complaints;
 - (b) Requirements for the documentation of grievances in each consumer record and in a central agency incident file; and
 - (c) Requirements for referring to the appropriate authority any allegations of abuse or neglect in accordance with:
 - 1. KRS 209.030 regarding the abuse or neglect of adults; and
 - 2. KRS 620.030 regarding the abuse or neglect of minors.

Section 9. Complaints. (1) A suspected violation of a licensure standard shall be reported to the cabinet.

(2) The complainant and information related to a suspected violation shall be kept confidential and shall not be disclosed publicly during an investigation. Once the investigation is complete, disclosure of the information shall be subject to the provision in KRS 61.870 - 61.884.

(3) A complaint received by the cabinet shall be processed according to the following procedures:

- (a) The cabinet shall conduct an unannounced on-site inspection in accordance with Section 2(6)(b), (e) and (f) of this administrative regulation to determine if a violation of a licensure standard has occurred; and
- (b) The cabinet may conduct an audit of the agency's financial records in accordance with generally accepted government auditing standards.

Section 10. Revocation and Suspension. Conditions which may result in the suspension or revocation of a license in addition to

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violations of licensure standards shall include the following:

- (1) Any violation creating an immediate danger to the consumer;
- (2) Fraud in obtaining a license or in connection with services provided;
- (3) Gross negligence, misconduct or violation of the ethics code of the Kentucky chemical dependency certification board which results in revocation of the professional credential;
- (4) Any conviction of an agency preventionist, employee or volunteer of a crime related to the following:
 - (a) The unlawful manufacture, distribution, possession or use of any controlled substance; or
 - (b) The abuse, neglect or exploitation of a child or an adult.

Section 11. Penalties. (1) Denial or suspension of a license.

(a) Plan of correction. When an agency fails to submit an acceptable plan of correction within ten (10) calendar days from the date of a notice of violation, the cabinet shall notify the agency, in accordance with Section 12 of this administrative regulation, that the license shall be denied or suspended thirty (30) calendar days after the date of the notice of denial or suspension unless:

1. The agency submits an acceptable plan of correction to the cabinet;
2. The agency requests a hearing in accordance with Section 12 of this administrative regulation; or
3. The agency notifies the cabinet in writing that the application for licensure is withdrawn.

(b) Denial of an application for licensure. When an application for licensure is denied, the legal entity named in the application may reapply for a license in accordance with Section 2 of this administrative regulation after a period of:

1. One (1) year from the date of denial; or
2. Thirty (30) days from the date of application for licensure was withdrawn by the agency.

(c) Suspension of a license. When a license is suspended, the cabinet shall notify the agency of the following:

1. The period of suspension, which shall not exceed six (6) months;
2. The agency shall be closed and all consumers shall be referred to another agency in accordance with Section 2(7)(d)2-3 of this administrative regulation; and
3. The license shall be reinstated, at anytime during the period of suspension, when the agency submits to the cabinet an acceptable plan of correction.

(2) Revocation of a license.

(a) If an agency fails to submit to the cabinet an acceptable plan of correction before the end of a period of suspension the cabinet shall notify the agency, in accordance with Section 12 of this administrative regulation, that the license is revoked; and

(b) The legal entity named in the application may reapply for a license in accordance with Section 2 of this administrative regulation after a period of one (1) year from the date of revocation.

Section 12. Appeals. (1) If the cabinet takes action to deny, suspend, or revoke an agency license, the cabinet shall notify the agency in writing stating the reasons for the adverse actions and the agency's right to appeal in accordance with KRS 222.231(6).

(2) If the agency believes an action by the cabinet is unfair, without reason, or unwarranted, the agency may appeal the action in writing to the Secretary, Cabinet for Health Services, Fourth (4th) Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) calendar days after receipt of the notice of action from the cabinet.

(3) Upon receipt of the appeal, the secretary, or his designee, shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(4) The hearing officer shall have authority to issue subpoenas to

compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(5) Based upon the record of the hearing and upon the information obtained at the hearing, the hearing officer shall issue a recommended decision. The recommendation of the hearing officer shall be forwarded to the secretary. All parties to the proceeding shall be given ten (10) days to file exception to the recommended decision to the secretary. The agency shall be notified in writing by the secretary of the final decision.

(6) If an agency, whose license has been suspended pursuant to Section 10(1)(a) of this administrative regulation, requests a hearing, the cabinet shall conduct the hearing within ten (10) working days of receipt of the request from the agency.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension create an immediate danger to the consumer population or the community as a whole.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, the agency shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the hearing that one (1) or more of the grounds for suspension create an immediate danger to the consumer population or the community as a whole, the license of the agency shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

(7) If suspension of the license is upheld, the secretary, or his designee, shall notify the agency in writing and specify the date by which the agency shall close.

(8) An agency that continues to operate after the closing date established by the secretary, or his designee, shall be subject to legal action by the cabinet as provided by law.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 4, 1996

FILED WITH LRC: September 11, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for Thursday, October 21, 1996 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be canceled unless interested persons notify the following office in writing by Wednesday, October 14, 1996 of the desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Health Services, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: All programs who offer an approved controlled substance as a narcotic treatment modality.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comments have been received. It was stated that it may be difficult to hire and retain licensed and certified staff.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented to the extent from the public comments received: Public comments have been received. Hiring licensed and certified staff may precipitate an increase in 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: Compliance with DEA and

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FDA Standards, quarterly reporting and standard record keeping will be required.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body: Reviewing for compliance and record keeping for all narcotic treatment programs.

(a) Direct and indirect cost or savings:

1. First year: no additional direct or indirect costs or savings.

2. Continuing cost or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reviewing for compliance and record keeping for all NTPs.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds shall be used to implement the 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) Geographic area in which administrative regulation will be implemented: A public hearing was held on March 28, 1996 and no comments were made about this issue.

(b) Kentucky: A public hearing was held on March 28, 1996 and no comments were made about this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered, because they are not available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: The benefits to this administrative regulation include the reduction of AIDs and HIV among the intravenous drug using population in Kentucky, as well as establishing greater consistency in program operation policies across narcotic treatment programs, with reduction in diversion of program sponsored approved controlled substances which has been seen to increase law enforcement demands and the deaths of clients and nonclients in other states.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, the spread of AIDs and other infectious diseases among the intravenous drug using population may increase across Kentucky, as well as the breakdown in consistency of program operations of narcotic treatment programs, and the increase in the need for law enforcement oversight.

(c) If detrimental effect would result, explain detrimental effect: Maintenance and detoxification treatment would not be adequately regulated in the Commonwealth.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicating:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used since the regulation will be applied in a like manner for all individuals or entities affected by it.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Although the entities affected by this regulation receive federal monies from the Substance Abuse Prevention and Treatment Block Grant, there is no federal regulatory mandate to license prevention programs which this regulation governs.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of September 9, 1996

The September meeting of the Administrative Regulation Review Subcommittee was held on Monday, September 9, 1996, at 10 a.m. in Room 149 of the Capitol Annex. Representative Jesse Crenshaw, Chairman, called the meeting to order, and the roll call was taken. The minutes of the August 5, 1996 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman, Senators Nick Kafoglis, Joey Pendleton, Richard L. Roeding; Representatives Jimmy Lee, Woody Allen.

LRC Staff: Greg Karambellas, Donna Little, Steve Lynn, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Norman Lawson, Bynn Costner, Doug Teague.

Guests: John Scott, Revenue Cabinet; Susan Stopher, Board of Accountancy; Gary Munsie, Mark Brengelman, Garth Bobrowski, Kentucky Board of Dentistry; Dave Nicholas, Division of Occupations and Professions; John Wilson, Department of Fish and Wildlife; Jack Damron, Department of Corrections; Barbara W. Jones, Randy Baird, Herb Bowling, John Bizzack, Department of Criminal Justice Training; Sandra Pullen Davis, Transportation Cabinet; Sue Mahoney, OEA; Ronda Tamme, OTEC; Juanita Back, Beverly Haverstock, Workforce Development Cabinet; Eugene D. Attkisson, Department of Mines and Minerals; David Wicker, Office of the Petroleum Storage Tank Fund; Danna Droz, Gary W. Beville, Ed Crews, D. W. Swain, John Walker, Neville Wise, Larry McCarthy, Adele Dickerson, Graham Duvall, Steven Pace, Mike Townsend, Karen Doyle, Cabinet for Health Services; Mark Cornett, Cabinet for Families and Children; Ruby Jo Cummins, Kentucky Association of Health Care Facilities, Clay Lorenzen, The Standard; Lyle D. Cobb, Municipal Electric Power Association of Kentucky; Tod Griffin, Kentucky Retail Federation; John F. Nichols, Jr., Associated Industries of Kentucky; Jerry Metz; Bill Doll; Todd Strecker; Harry L. Beck.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

COMPILER'S NOTE: During the 1996 Regular Session, KRS 13A.220(3)(f) was amended to change the "NECESSITY AND FUNCTION" paragraph to the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph. Pursuant to KRS 13A.040, the Regulations Compiler has amended "NECESSITY AND FUNCTION" to "NECESSITY, FUNCTION, AND CONFORMITY" in the administrative regulations that were amended at this meeting of the Administrative Regulation Review Subcommittee and in this report to LRC.

Revenue Cabinet: Income Tax; Withholding

103 KAR 18:050. Withholding statements; form K-2. John Scott represented the Revenue Cabinet. Mr. Scott stated that: (1) Kentucky's regulations did not correspond with federal requirements for filing W-2 forms; (2) this placed a burden on Kentucky employers because while they file magnetically for federal purposes, they must file paper copies for Kentucky tax filings; and (3) this administrative regulation would allow magnetic filing for Kentucky tax filings.

In response to questions by Representative Lee, Mr. Scott stated that this administrative regulation would: (1) bring Kentucky into compliance with federal tax requirements; and (2) make the filing of state tax forms quicker and easier for taxpayers.

In response to a question by Senator Roeding, Mr. Scott stated that: (1) this administrative regulation did not impose a mandate on Kentucky taxpayers; (2) although it was a new state requirement, the requirement for magnetic filing for state tax filings that was imposed by this administrative regulation on employers with 250 employees is identical to the requirement imposed on such employers for federal

tax filings; and (3) this requirement would: (a) reduce the: 1. burden on employers; and 2. amount of paperwork; and (b) establish uniform filing procedures for state and federal tax.

This administrative regulation was amended as follows: (1) Pursuant to KRS 13A.220(3)(f), the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to state the necessity for this administrative regulation by inserting a citation to and explanation of KRS 1141.335(2), requiring the establishment of the withholding statement forms; and (2) Sections 1, 2(1), (2), and 3 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Board of Accountancy

201 KAR 1:045 & E. Examination subjects; grading and reexamination. Susan Stopher, Executive Director, Board of Accountancy, represented the Board. Ms. Stopher stated that the amendments to this administrative regulation and to 201 KAR 1:130 reflected changes in the National Uniform CPA Examination.

This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to comply with the drafting requirements of KRS 13A.220(4); and (2) Sections 1(1) and 2(4) were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

201 KAR 1:130 & E. Examination application procedure. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to comply with the drafting requirements of KRS 13A.220(4); (2) Sections 1(1), 2 through 6, and 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); (3) Section 10 was amended to correct the formatting of the incorporation by reference section, as required by KRS 13A.2251; and (4) the incorporated materials were amended to: (a) comply with the provisions of this administrative regulation; and (b) delete provisions that conflicted with the statutory authority of the board and its administrative regulations.

Kentucky Board of Dentistry

201 KAR 8:430 (&E). Unprofessional conduct. Gary Munsie, Director, Board of Dentistry; Mark Brengelman, Assistant Attorney General, and General Counsel to the Board; and Garth Bobrowski, Member of the Board, represented the Board.

Subcommittee staff stated that at the August, 1996 Subcommittee meeting: (1) questions had been raised concerning the vagueness of the terms used to specify prohibited conduct specified in Section 10, such as conduct that: (a) created a danger to the public; (b) demonstrated a lack of moral qualifications; and (c) brought the profession under disrepute; (2) Chairman Crenshaw: (1) stated that language in Section 10 relating to prohibited conduct, especially the reference to conduct that demonstrated a lack of moral qualifications, appeared to be: (a) overly broad; and (b) in violation of the constitutional prohibition against moral tests; and (2) requested Board personnel to defer this administrative regulation in order to work with Subcommittee staff to draft language that: 1. was not so vague; and 2. would meet constitutional requirements; and (3) Subcommittee staff had assisted Board personnel in amendments to this administrative regulation, that would: (a) ensure compliance with the: 1. format requirements of KRS 13A.220(4); and 2. format requirements of KRS 13A.222(4); (b) require that, an act which created a danger to the public be an act that related to the practice of dentistry; (c) delete the references to: 1. moral qualifications; and 2. actions that brought the profession into disrepute.

Representative Lee stated that: (1) at its August, 1996 meeting, the Subcommittee considered some of the provisions too broad; and (2) the amendment narrowed and defined those provisions.

In response to a question by Representative Allen, Mr. Munsie stated that this administrative regulation: (1) resulted from a court decision that found the term "unprofessional conduct" too vague; and (2) attempted to define "unprofessional conduct" so that the type of actions that were prohibited was clear.

This administrative regulation was amended as follows: (1) Sections 1(1) and (2) were amended to comply with the statutory authority of the Board; (2) Section 1(10) through (16) were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (3) Section 1(17) was amended to: (a) clarify that unprofessional conduct referred to an act relating to the practice of dentistry that created a danger to the public, patients, or employees of the licensee, whether or not the act constituted a crime; (b) delete provisions relating to: 1. a lack of moral qualifications to practice; and 2. conduct that brought the profession into disrepute; and (c) include language in Section 1 establishing the commission of a dishonest act in the provision of dental services as unprofessional conduct.

Kentucky Board of Registration for Professional Geologists

201 KAR 31:060. Code of professional conduct. Dave Nicholas, Director, Division of Occupations and Professions, represented the Board. Mr. Nicholas stated that: (1) the Division provided administrative services to fifteen state licensure boards, including the Board of Registration for Professional Geologists; (2) this administrative regulation established a code of professional conduct; and (3) the Board did not object to the amendment prepared by Subcommittee staff to comply with the drafting and format requirements of KRS Chapter 13A.

In response to a question by Senator Kafoglis, Subcommittee staff stated that the amendment addressed the issues regarding statutory authority raised in the initial staff review.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct the citation of statutes; (2) the NECESSITY AND FUNCTION paragraph was amended to comply with the drafting requirements of KRS 13A.220(4); and (3) Sections 2 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

Kentucky Board of Certification of Marriage and Family Therapists

201 KAR 32:060. Continuing education requirements. Dave Nicholas, Director, Division of Occupations and Professions, represented the Board. Mr. Nicholas stated that this administrative regulation: (1) was promulgated by the Board of Certification and Marriage and Family Therapists; (2) established continuing education requirements that are mandated by law; and (3) included an amendment prepared by Subcommittee staff to comply with the drafting and formatting requirements of KRS Chapter 13A.

This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1, and 3 through 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); (3) Section 7 was amended to clarify that a certificate holder had the right to request reconsideration when the Board denied approval of continuing education hours, rather than a formal appeal; and (4) Section 8 was amended to clarify that a certificate holder was required to reapply for a waiver or extension, rather than the actual certificate, upon expiration of a current waiver or extension.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Jack T. Damron, Staff Attorney, represented the Department of Corrections. Mr. Damron stated that this administrative regulation: (1) amended the penalties and offenses policy to discipline an inmate who was

deemed by a judge to have filed a frivolous or harassing lawsuit; and (2) imposed a penalty of the loss of up to one hundred and eighty (180) days non-restorable good time.

The following policies incorporated by reference in this administrative regulation were amended as follows: (1) CPP 15.2: the References section was amended to correct statutory citations; (2) CPP 15.2: Section IV: (a) the definition of "stalking" was deleted; and (b) the statutory definition of "stalking" established by KRS 508.130 was inserted in lieu thereof; (3) CPP 15.2: Section VI, "Procedures", C. "Categories of Offenses and Penalty", Category VIII (Major Violation), the ranking and penalty for the violation of filing of a lawsuit that is dismissed as frivolous or otherwise without merit: (a) was deleted; (b) the filing of a lawsuit determined by a court to be frivolous was: 1. established as a separate offense in new paragraph D.; and 2. punishable by forfeiture of 180 days of non-restorable good time; and (4) CPP 15.2 and CPP 25.6 were amended to comply with the drafting requirements of KRS 13A.222(4)(a).

501 KAR 6:170. Green River Correctional Complex. Mr. Damron: (1) stated that GRCC 06-03-01, sex offender register, incorporated by reference in Section 1(2), should be deleted because it would be governed by another administrative regulation; and (2) requested the Subcommittee approve an amendment to this administrative regulation to delete GRCC 06-03-01, sex offender register, incorporated by reference in Section 1(2).

The Subcommittee approved a motion by Representative Lee, seconded by Representative Allen, to amend Section 1(2) to delete the incorporation by reference of GRCC 06-03-01.

This NECESSITY, FUNCTION AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.120(2)(i).

Department of Training: Concealed Deadly Weapons

Herb Bowling and Randy Baird, Department of Criminal Justice Training, John Wilson, Department of Fish and Wildlife, and Mr. Todd Strecker, appeared before the Subcommittee on the following administrative regulations.

Subcommittee staff stated that: (1) the Departments of Criminal Justice Training, State Police, and Fish and Wildlife: (a) felt that the Department of Criminal Justice Training could establish standards and procedures for the certification of firearms instructors; and (b) could not train House Bill 40 firearms instructors; (2) the Departments had been informed that: (a) Section 1(2)(f)4. of House Bill 40 required them and other agencies that were authorized to certify firearms instructors to promulgate uniform administrative regulations; (b) Department of Criminal Justice Training administrative regulations would have to be amended to make it clear that they established the Department's certification standards only; (3) House Bill 40 would have to be amended by the General Assembly before the Department could establish standards for certification for all firearms instructor training under House Bill 40; (4) until House Bill 40 was amended, other agencies would have to promulgate administrative regulations for the certification of firearms instructors, and (5) the Subcommittee may want to consider whether to ask LRC to refer the issue of the amendment of House Bill 40 with regard to training and other issues raised by these administrative regulations to the appropriate legislative subcommittee.

503 KAR 4:010. Definitions for 503 KAR Chapter 4. Subcommittee staff stated that this administrative regulation established: (1) definitions for administrative regulations governing licensure to carry concealed deadly weapons; (2) two classes of firearms instructors: (a) instructor trainers, who would train firearms instructors; and (b) firearms instructors, who would train applicants for licensure to carry a concealed deadly weapon; and (3) while the classes of instructors were not established or required by House Bill 40: (a) House Bill 40 did not prohibit the establishment of the two classes of instructors; and (b) the Department had the authority to establish the two classes.

Mr. Bowling stated that the Department: (1) would have to train approximately 100,000 people within a very short time; (2) did not

have enough staff to complete the training; (3) had decided to: (a) utilize a corps of 200 to 300 instructors throughout the state who would be trained as instructor trainers; and (b) have instructor trainers train applicants for licensure to carry a concealed deadly weapon; (4) believed that if it trained 150 instructor trainers, the instructor trainers could provide training for 1,500 to 2,00 instructor trainers who could, in turn, train applicants.

Representative Allen stated that: (1) he was aware the Department was complying with the requirements of House Bill 40; (2) when House Bill 40 was before both chambers of the General Assembly, many agencies were concerned and gave bleak testimony to the effect that allowing people to carry concealed deadly weapons would result in shootouts; (3) Indiana: (a) has permitted the carrying of concealed deadly weapons since 1938; (b) requires a permit but does not impose types requirements for instruction, training, and certification imposed by House Bill 40; and (c) does not have worse crime statistics than Kentucky; (4) most people in Kentucky who will apply for permits under House Bill 40: (a) already carry concealed deadly weapons; (b) are business people and others who: (a) are trying to protect their lives; and (b) want to comply with the laws; (5) he: (a) carried a gun; (b) grew up with a gun; and (c) would not apply for a permit because, rather than conceal a gun, he would keep it in his glove compartment or the seat of his car, as he was legally entitled to do; (6) House Bill 40 did not have meaning or effect for him or a lot of people; (7) he believed that state agencies were over reacting; (8) some agencies saw this as an opportunity to make money; (9) some agencies would compete for the money they felt was to be made under House Bill 40; and (10) many of the administrative regulations relating to concealed weapons and on the agenda of the Subcommittee did not conform to legislative intent.

In response to questions by Senator Roeding, Mr. Bowling stated that: (1) instructor trainers would be trained by Department instructors in Richmond; and (2) fees relating to instructor training were not established by this administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to add the specific section of House Bill 40 that: (a) related to the subject matter of this administrative regulation; and (b) granted regulatory authority to the Department; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to: (a) clearly state the necessity for and the function to be served by the administrative regulation; (b) make it clear that this administrative regulation was: (i) promulgated by the Department; and (ii) would not fulfill the obligation imposed by House Bill 40 on the Departments of Fish and Wildlife, and State Police, and other agencies with authority to certify firearms instructors to promulgate uniform administrative regulations; and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Pursuant to Representative Lee's recommendation, the Subcommittee approved a motion by Representative Allen, seconded by Senator Kafoglis, to request LRC to refer the issues relating to the: (1) amendment of House Bill 40 to delete the requirement for the promulgation of uniform administrative regulations governing certification of firearms instructors, pursuant to House Bill 40, by the Departments of Fish and Wildlife and State Police, and other agencies with authority to certify firearms instructors; and (2) authorization of the Department of Criminal Justice Training to establish standards for the certification of firearms instructors pursuant to House Bill 40.

503 KAR 4:020. Teaching and advertising courses. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to add the specific section of House Bill 40 that: (a) related to the subject matter of this administrative regulation; and (b) granted regulatory authority to the Department; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and the function to be served by the administrative regulation; and (3)

Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

503 KAR 4:030. Instructor qualifications. Subcommittee staff stated that: (1) this administrative regulation required a high school diploma or GED only for firearms instructor trainers; and (2) an objection to the higher educational qualifications for firearms instructors had been made on the grounds that they: (a) did not relate to the job; (b) did not appear to be necessary qualifications for the job; and (c) would prevent qualified people without a diploma or GED, such as those who served in the military as trainers, from being licensed as an instructor trainer.

Mr. Bowling stated that a diploma or GED was required of instructor trainers because they: (1) were required to train other instructors; and (2) instructor training required and involved more training and was a more complex subject or job.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to add the specific section of House Bill 40 that: (a) related to the subject matter of this administrative regulation; and (b) granted regulatory authority to the Department; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and the function to be served by the administrative regulation; and (3) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

503 KAR 4:040. Required instructor training. Subcommittee staff stated that: (1) in this, and other administrative regulations in which it was a requirement, the position from which firing would be required had been amended from a standing to a safe position; (2) the amendment was required in order not to illegally preclude licensure of those with disabilities who could demonstrate competence with a firearm; (3) questions had been raised about the authority of the Department to impose fees, such as the fees for instructor trainer and refresher courses established by Section 5 of this administrative regulation; (4) House Bill 40 did not authorize the Department to assess fees; and (5) Department personnel stated that the Department needed to assess fees because the appropriation made to the Department in the Biennial Budget was insufficient for House Bill 40 related expenditures.

Mr. Bowling stated that: (1) the Department budget could not bear the costs of implementing House Bill 40; (2) additional required appropriations had not been made; (3) unless the Department imposed fees, it could not implement House Bill 40; (4) the Department made a realistic and fair assessment of the fees that would be required to fund the program and recover costs; (5) the Department: (a) believed it was granted authority to impose training fees; (b) charged a \$30 a day training fee for other training it conducted; (c) needed to charge fees for such duties imposed by statute, such as the: 1. required records and retention of records for the life-time of a person licensed pursuant to House Bill 40; 2. uniform materials and distribution of materials, such as instructor kits; 3. computer equipment needed to process applications; 4. postage; 5. compilation and storage of documents; and 6. two program monitors to insure that the required training has been completed and the quality of the training; and (6) the Department believed that it had the authority to establish maximum costs for training required by House Bill 40 to: (a) prevent gouging of the public; and (b) ensure that the legislative intent to permit the licensure of citizens who sought permits would be accomplished.

In response to a question by Representative Lee, Mr. Bowling stated that from the time a citizen applied for a permit to licensure, the cost would be approximately \$135. Representative Lee stated that: (1) in voting for House Bill 40, it was not his legislative intent that it cost any citizen \$135 for a permit to carry a concealed firearm; (2) in reading House Bill 40, it was his opinion that, while the intent of House Bill 40 was to provide every citizen who felt he needed to carry

a concealed weapon the opportunity to do so, the \$135 fee had eliminated a considerable number of citizens who would not be able to afford the cost established by these administrative regulations; (2) many who illegally carry concealed weapons will be forced to continue to do so by the high cost imposed for the required training; (3) it appeared that two criteria for the issuance of permits had been established: (a) one for those who can afford the expense; and (b) another for those who cannot; (4) his constituents have stated that they did not believe the intent of the members of the General Assembly was to impose such high fees; (5) he believed this administrative regulation did not conform to the intent of the General Assembly in enacting House Bill 40; and (6) he could not find specific authority in House Bill 40 for the assessment of fees by the Department.

Mr. Strecker stated that: (1) he had been a firearms instructor for many years; (2) currently operated a handgun safety and orientation program primarily for inexperienced or beginning shooters; (3) while he understood the Subcommittee's concern over the cost to citizens, he objected to the maximum fee for instructors established by the Department because it did not appear to consider the cost of a program for beginning shooters; (4) the Department should not regulate fees; (5) fees should be governed by the free market, which would result in people dealing with those who charged what they believed were reasonable fees; (6) while some have stated that they would teach without charging, and have the right to do so, the private instructor knows the actual costs involved in conducting required training; (7) many of the students were women who felt they needed to carry weapons and would like to carry them legally; (8) he was not concerned with the recovery of costs by the Department; (9) he felt the \$25 to be remitted by instructors to the Department: (a) was too high; and (b) needed to be justified by the Department; (9) he was concerned over the costs faced by quality instructors in: (a) the rental of and access to space needed to teach; (b) the VCR to play the video required by Department administrative regulation; (c) time; and (d) mileage; (9) he knew the amount it cost to run his program; (10) his costs exceeded the \$75 maximum imposed by the Department; and (11) the cost to instructors and the limitation of the amount they could charge would: (a) prevent highly qualified people from providing instruction; and (b) raise issues of liability by disqualifying highly qualified people from providing instruction.

In response to a question by Representative Lee, Mr. Strecker stated that: (1) his program costs \$135; (2) \$40 of the cost is for 4 hours of commercial range time; (3) while indoor ranges are utilized to avoid problems and delays caused by the weather, the range is not controlled by instructors who pay the fee negotiated with the range owner; (4) the ratio of instructor to student is kept low; (5) in order to make women students more comfortable and more likely to ask questions required for training, women instructors always are present if there are women students; (6) instructors: (a) are professionals; (b) are full-time instructors; and (c) should be adequately compensated; (7) including the required \$60 license fee, the cost to a citizen would be \$200; and (8) the \$60 license fee was too high.

Representative Lee stated that: (1) since the \$60 license fee was established by House Bill 40, the Subcommittee did not have authority over the fee; (2) the duty imposed on the Subcommittee by KRS Chapter 13A was to review an administrative regulation for conformity with legislative intent; and (3) the cost to a citizen taking Mr. Strecker's course would exceed \$200. Mr. Strecker stated that would be the cost if the \$60 license fee was included.

Senator Roeding stated that while an equal amount of instruction, such as that provided by gun clubs, would be free, Department administrative regulations would mandate costs be imposed on citizens. Mr. Strecker stated that his objections related to the cap established for fees charged by instructors to applicants.

In response to questions by Representative Allen, Mr. Strecker: (1) stated that his instruction: (a) was provided in conjunction with a gun shop and commercial range; (b) consisted of two parts: 1. half for

the beginner; 2. four hours with text and rubber bullets; and 3. after successful completion, the other half consisted of supervised training with live ammunition; and (c) applications for training would be available at gun shops; (2) agreed that training was not required for the purchase of a gun; and (3) stated that while there probably were other instructors, competitors had not affected his business.

Representative Allen moved to find this administrative regulation deficient for failure to comply with legislative intent. Senator Roeding stated that the administrative regulations promulgated by the Department were required to: (1) implement House Bill 40; and (2) permit citizens who wished to carry concealed weapons legally. In response to a question by Senator Roeding, Subcommittee staff stated that: (1) a finding of deficiency would require: (a) notification of the Governor by the Subcommittee of its finding of deficiency; and (b) review by the Governor of the finding of deficiency: (2) one of the decisions the Governor could make would be to have an administrative regulation found deficient by the Subcommittee withdrawn; (3) withdrawal would mean that administrative regulations implementing House Bill 40 would not exist; (4) if the Governor did not decide that an administrative regulation found deficient by the Subcommittee should be withdrawn, it would remain in effect until sine die adjournment of the next Regular Session of the General Assembly, April 1998; (5) the effective date of an administrative regulation found deficient by the Subcommittee: (a) would be delayed until the Governor made a decision; and (b) could not be guaranteed to occur before the effective date of House Bill 40, October 1, 1996.

Representative Lee stated: (1) the Subcommittee should not take action that would delay the implementation of House Bill 40 any longer than the delay imposed by the legislative subcommittee review procedure required by KRS Chapter 13A; (2) it would be more appropriate for the Subcommittee to request LRC to refer issues raised by this administrative regulation to the appropriate legislative subcommittee; and (3) while the initial draft of House Bill 40 clearly expressed legislative intent, the amendments added during the Session made House Bill 40 and the expression of legislative intent less clear. Subcommittee staff stated that it appeared that the Subcommittee could: (1) reconsider this administrative regulation after it had become effective as an existing administrative regulation; (2) find it deficient if the Subcommittee so determined; and (3) permit licensure of citizens to carry a concealed deadly weapon until the General Assembly addressed the objections raised by the Subcommittee.

Representative Lee stated that a finding of deficiency at this meeting would result in: (1) a delay in the implementation of House Bill 40; (2) a disservice to citizens who: (a) want permits; and (b) would be unable legally to carry concealed weapons; and (3) recommended that: (a) the motion to find this administrative regulation deficient be withdrawn; and (b) the Subcommittee approve a motion to request LRC to refer the issues raised by administrative regulations implementing House Bill to the appropriate legislative subcommittee.

The Subcommittee approved a motion by Representative Allen to: (1) withdrew his motion to find this administrative regulation deficient; and (2) request LRC to refer the issues raised by administrative regulations implementing House Bill to the appropriate legislative subcommittee.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to add the specific section of House Bill 40 that: (a) related to the subject matter of this administrative regulation; and (b) granted regulatory authority to the Department; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and the function to be served by the administrative regulation; and (3) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

503 KAR 4:050. Required content and conduct of the applicant training course. Subcommittee staff stated that questions raised and

testimony given during the Subcommittee's consideration of 503 KAR 4:040, concerning the authority of the Department to establish fees and regulate fees charged by instructors, also related to this administrative regulation.

Representative Lee stated that he: (1) objected to this administrative regulation because it did not comply with statutory authority and legislative intent for the reasons stated in the discussion relating to 503 KAR 4:040; and (2) felt that, in order to permit this administrative regulation to become effective so that citizens who want legally to carry concealed firearms can be licensed, the Subcommittee should not approve a motion finding this administrative regulation deficient.

Senator Roeding: (1) stated that he agreed with Representative Lee; and (2) asked whether the fees established by this administrative regulation were mandatory. Representative Lee and Subcommittee staff stated that the fees were: (1) mandatory because they were imposed by this administrative regulation; and (2) were not established by House Bill 40. Representative Lee stated that he did not believe House Bill 40 authorized the fees established by administrative regulation.

Senator Roeding stated that he: (1) agreed; and (2) was concerned that the administrative regulations that established fees would require a fee even for firearms training courses that sponsors intended to offer without cost to the public.

Representative Lee stated that the issue of compliance with statutory authority and legislative intent: (1) also related to the authority of the Department to regulate private industry by regulating the fees charged by firearms instructors; and (2) was also raised by Mr. Strecker.

In response to a question by Senator Roeding, Representative Lee stated that: (1) a finding of deficiency would have an adverse effect on citizens who wished to be licensed to carry concealed weapons; and (2) his intent was to have this administrative regulation: (a) reconsidered as an existing administrative regulation after it had become effective; and (b) found deficient as an existing administrative regulation, which would result in: 1. its expiration on adjournment sine die of the next Regular Session of the General Assembly; and 2. permit the General Assembly to address the issues raised by House Bill 40 and its implementation. Senator Roeding stated that he: (1) wanted to ensure that Subcommittee action would result in the appropriate legislative action to correct the issues raised by the Department's administrative regulations; (2) felt that the Subcommittee should request LRC to refer the issues raised by this administrative regulation to the appropriate legislative subcommittee; and (3) moved that the Subcommittee make this request to LRC.

The Subcommittee approved Senator Roeding's motion to request LRC to refer the issues raised by this administrative regulation to the appropriate legislative subcommittee.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to add the specific section of House Bill 40 that: (a) related to the subject matter of this administrative regulation; and (b) granted regulatory authority to the Department; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and the function to be served by the administrative regulation; (3) Sections 1 through 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) a new section, Section 12, was inserted to incorporate the form for application for firearms training.

503 KAR 4:060. Reporting test scores and issuing certificates of completion. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to add the specific section of House Bill 40 that: (a) related to the subject matter of this administrative regulation; and (b) granted regulatory authority to the Department; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and the function to be served by the adminis-

trative regulation; and (3) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

503 KAR 4:070. Revocation of instructor certification and appeal process. Subcommittee staff stated that this administrative regulation: (1) related to appeals; (2) pursuant to Subcommittee policy relating to administrative regulations implementing KRS Chapter 13B governing administrative hearings, was subject to further review; and (3) the Department: (a) had been informed of this; (b) would be: 1. informed of issues raised; and 2. assisted in the drafting of amendments required to resolve issues raised.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:025. Transporting hazardous materials by air or highway. Sandra Pullen-Davis, Staff Assistant, Office of the Secretary, represented the Department. Ms. Pullen-Davis stated that this administrative regulation was amended to comply with the latest changes in the federal regulations regarding the transportation of hazardous materials.

In response to a question by Senator Roeding, Ms. Pullen-Davis stated that this administrative regulation did not exceed requirements established by applicable federal regulations.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct the citation of statutes; (2) Section 1 was amended to correct: (a) punctuation errors, as required by KRS 13A.222(4); and (b) edition dates of the incorporated material; and (3) Section 2 was amended, as required by KRS 13A.2251, to include citation of the Federal Register that: (a) amended applicable federal requirements; and (b) was inadvertently omitted from the incorporation by reference section.

601 KAR 1:101. Proof of liability and cargo insurance. Ms. Pullen-Davis stated that: (1) the Department amended this administrative regulation to comply with changes in the federal requirements for motor carrier insurance; and (2) under the new federal requirements, a state was permitted to regulate only a motor carrier that: (a) was based in the state; or (b) restricted its operations to intrastate commerce in the state in which it was based.

In response to questions by Senator Roeding, Ms. Pullen-Davis stated that: (1) Kentucky was required to depend on the insurance requirements of other states for motor carriers that came into Kentucky; (2) the federal government had determined that: (a) each state must take care of the carriers in its state; and (b) the states were to trust each other; and (3) Kentucky: (a) did not have that many motor carriers registered in Kentucky; and (b) 1. no longer had control over whether motor carriers from other states had liability insurance, 2. was prohibited from requiring liability insurance previously been required in Kentucky; and 3. the ability to cancel a motor carrier's authority to operate in Kentucky if a carrier canceled its liability insurance.

Senator Roeding stated that Kentucky needed an incentive to get motor carriers to register the trucks in Kentucky, so that Kentucky could require them to have liability insurance.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct the citation of statutes; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 4 were amended to: (a) correct citation of statutes; and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4)(b); and (4) Section 5 was amended to correct the format of the incorporation by reference section to comply with KRS 13A.2251.

Driver Improvement

601 KAR 13:090 & E. Medical Review Board; basis for examination, evaluation, tests. Subcommittee staff stated that: (1) the

amendment prepared by Subcommittee staff would make this administrative regulation comply with the drafting and format requirements of KRS Chapter 13A; (2) an administrative regulation similar to this administrative regulation was found deficient by the Subcommittee in 1994 because it did not establish standards for the Medical Review Board; (3) the standards were included in 601 KAR 13:100; (4) in 1994, the General Assembly enacted two bills that: (a) required the Cabinet to establish the Medical Review Board; and (b) established conflicting provisions relating to the establishment of the Medical Review Board; and (5) this administrative regulation made it clear which provisions of the legislation was followed by the Cabinet in its establishment of the Medical Review Board.

In response to a question by Senator Kafoglis, Ms. Pullen-Davis stated that: (1) in addition to the conflict between the two statutes regarding the per diem payment for members, the statutes were inconsistent with regard to Board membership; (2) while KRS 186.444 restricted Board membership to physicians, KRS 186.570 required the Board to consist of licensed physicians and rehabilitation specialists; (3) in agreement with the recommendation of the Kentucky ADA Task Force, this administrative regulation complies with KRS 186.570 and provides that the Board will consist of physicians and rehabilitation specialists; (4) the statutes also established different amounts for per diem payments to members; (5) this administrative regulation established a per diem of \$200 per day, rather than \$100, for physician members and \$100 for non-physician members; (6) the initial staff review incorrectly stated that the bill that passed last prevailed; (7) John Spangler, Reviser of Statutes, had informed the Cabinet that the: (a) statutes governing conflicts, KRS Chapter 446, applied only if both bills amended the same statute; (b) KRS Chapter 446 did not authorize the Reviser of Statutes to resolve the conflict because the bills amended one statute and created a new statute; (c) both statutes governed the subject matter; and (d) until the General Assembly amended one of the conflicting statutes, the Cabinet was required to address the issue by administrative regulation.

In response to questions by Senator Roeding, Ms. Pullen-Davis stated that: (1) this administrative regulation provided that all non-state government members of the Board, including the physician members, would be paid \$200 per day; and (2) because the rehabilitation specialist currently serving on the Medical Review Board is a state government employee, only the physician members will be paid the \$200 per diem.

In response to a question by Senator Roeding, Representative Lee stated that: (1) the members of some boards and commissions are paid more than \$200 per day because while they are paid on a monthly basis, they usually hold one meeting a month; and (2) requested Subcommittee staff to research this issue.

This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Section 1 was amended to correct citation of statutes; and (3) Sections 3 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

The Subcommittee approved a motion by Representative Lee, seconded by Senator Kafoglis, that the Subcommittee to request LRC to refer the issues raised by the conflicting provisions of KRS 186.444 and 186.570 to the appropriate legislative subcommittee for resolution of the conflicts during the 1998 Regular Session.

601 KAR 13:100 & E. Medical standards for operators of motor vehicles. Subcommittee staff stated that: (1) this administrative regulation: (a) was the companion administrative regulation to 601 KAR 13:090; and (b) established the standards that were not included with a similar administrative regulation that had been found deficient in 1994; and (2) the amendment prepared by Subcommittee staff was to comply with the drafting and formatting requirements of KRS Chapter 13A.

In response to a question by Senator Roeding, Ms. Pullen-Davis

stated that: (1) seizures were addressed by KRS 186.111, which required a person to be seizure-free to be eligible for an operator's license; and (2) this administrative regulation required a person having seizures to be referred to the Medical Review Board for continued evaluation.

This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); (3) Section 3(1) was amended to comply with the requirement in KRS Chapter 13B as amended by Senate Bill 292 relating to the availability of administrative hearings for appeals from decisions of the Medical Review Board; and (4) Section 5 was amended to correct a date.

Department of Highways: Preconstruction

603 KAR 2:015. Prequalification for construction, certification of eligibility, and contract claims dispute. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct the citation of statutes; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to correct citation of statutes; and (3) Sections 1 through 4, 6(2), 7, 8(2), 9(1), 10, and 11(1) were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

Department of Mines and Minerals: Division of Mining

805 KAR 5:010. Fees for licenses to mine. Eugene D. Attkisson, General Counsel for the Department of Mines and Minerals, represented the Department. Mr. Attkisson stated that this administrative regulation amended the manner in which mine license fees were charged by: (1) imposing a \$300 fee on: (a) new mines; and (b) mines that produced 100,000 tons or less; and (2) imposing an additional fee of \$100 for each additional 100,000 tons or part thereof.

In response to a question from Representative Allen, Mr. Attkisson stated that the Department felt that the current license fees were inequitable because: fees were imposed on: (1)(a) surface mines, based upon tonnage produced; and (b) underground mines, based upon the number of working sections; and (2) if the underground mine had more working sections than a surface mine, this formula could require it to pay a fee greater than the fee charged surface mines, even if it produced less tonnage than a surface mine.

In response to questions by Representative Allen and Chairman Crenshaw, Mr. Attkisson stated that the Department did not expect to collect more money in license fees because while some mines would pay more in fees, others would pay less.

In response to questions by Senator Roeding, Mr. Attkisson stated that: (1) there were approximately 1,100 mines in Kentucky; (2) a mine license was good for a calendar year only; (3) the fee is the same for a new mine, whether the application is filed in January or December; and (4) approximately 75% of the mines in Kentucky produced over 100,000 tons.

In response to a question from Representative Crenshaw, Mr. Attkisson stated that the new mining board: (1) was composed of management and labor; and (2) had approved the administrative regulation prior to its promulgation; and (3) the Department had not received comments.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to delete language repeating or summarizing statutes, pursuant to KRS 13A.120(2)(e); (3) Section 1(1) was amended to comply with the drafting requirements of KRS 13A.122(4)(a) and (j); and (4) Section 1(2) was amended to comply with the: (a) format requirements of

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KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(g) and (j).

Cabinet for Families and Children: Department for Social Insurance: Food Stamp Program

904 KAR 3:042 & E. Food Stamp Employment and Training Program. Anne Hager, Department for Social Insurance, represented the Department. Ms. Hager stated that: (1) this administrative regulation: (a) related to the Food Stamp Employment and Training Program, which was a program in which the Department referred food stamp recipients into education, training, and jobs to get them self-sufficient and off of food stamps; (b) replaced 904 KAR 3:041 that had expired; (2) an emergency administrative regulation was filed in April, 1996 to correct the language that: (a) limited the referrals to food stamp recipients under age thirty; and (b) resulted in a finding by the Interim Joint Committee on Health and Welfare that 904 KAR 3:041 was deficient; (3) in its finding of deficiency, the Health and Welfare Committee determined that: (a) limiting the referrals was discriminatory; and (b) referrals should be made for recipients of all ages, as appropriate; and (5) this administrative regulation was substantially different from 904 KAR 3:041 because it included referrals for people of all ages.

In response to a question by Senator Roeding, Ms. Hager stated that while the Department was working to implement electronic debit cards for food stamps with the Southern Alliance of States, a definite implementation date had not been established.

This administrative regulation was amended to correct a cross-reference in Section 9(3).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Education Professional Standards Board

704 KAR 20:052. Repeal of 704 KAR 20:050. Ronda Tamme, Director of Teacher Certification, Office of Teacher Education and Certification, represented the Board. Ms. Tamme stated that this administrative regulation repealed 704 KAR 20:050, Time Limits for Applying for Certification, because it conflicted with 704 KAR 20:670, Kentucky Teacher Certificates.

In response to a question by Representative Allen, Ms. Tamme stated that the repealed administrative regulation did not involve fees.

704 KAR 20:670. Kentucky teaching certificates. Ms. Tamme stated this administrative regulation was concerned with the downsizing of Kentucky teaching certificates issued in Kentucky.

Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance

787 KAR 1:210 (&E). Employer contribution rates. Beverly Haverstock, General Counsel, and Juanita Back, Division for Unemployment Insurance, represented the Department. Ms. Haverstock stated that: (1) the emergency administrative regulation that was previously approved by the Subcommittee established the employer contribution rates for unemployment insurance; (2) the amounts were the least amount possible, which had been a concern raised by the Subcommittee when it considered the emergency administrative regulation; (3) there had not been a change in the ordinary administrative regulation following the approval of the emergency administrative regulation; and (4) the rates were: (a) calculated based on the formula included in the statute; and (b) revised by the Department on an annual basis.

In response to questions by Representative Allen, Ms. Back stated that: (1) this administrative regulation did not raise fees; (2) the tax rate was established by KRS 341.270; (3) the actual rates were recomputed annually; (4) for 1996, the Department was using the lowest table for the rates; and (5) the Department has in excess of \$350 million in the trust fund, which is the level it is required to meet before it could raise the rates.

Cabinet for Health Services: Department for Public Health: Emergency Medical Services and Ambulance Service Providers

902 KAR 14:010. Emergency medical services (EMS) personnel funding assistance. Gary Bevill, EMS Staff, represented the Department. Mr. Bevill stated that this administrative regulation was promulgated to comply with House Bill 693.

902 KAR 14:082. Class II ground ambulance providers. Mr. Bevill stated that these administrative regulations (14:082 and 14:090) were promulgated to comply with House Bill 492.

902 KAR 14:090. Air ambulance service providers.

Disability Determination's Unit

902 KAR 16:011E. Repeal of 902 KAR 16:010. Graham Duvall, Division of Disability Determination, represented the Department. In response to a question by Senator Roeding, Mr. Duvall stated that the Division of Disability Determinations had been moved from the Department for Health Services to the Cabinet for Families and Children, Department for Social Insurance.

Controlled Substances

902 KAR 55:100. Laetrile manufacturing standards. Danna Droz, Drug Control Branch, Department for Public Health, and Ed Crews, Drug Control Branch, represented the Department. Ms. Droz stated that: (1) this administrative regulation resulted from legislation enacted during the 1980 Regular Session of the General Assembly to permit the manufacture, sale, and possession of laetrile within Kentucky; (2) because the federal government determined that laetrile was an unapproved drug, it is illegal to: (a) import it into the United States; or (b) to transport it across state lines; (3) the 1980 legislation: (a) provided a mechanism for a person to manufacture laetrile within Kentucky and to distribute it in Kentucky; and (b) required the Cabinet for Health Services to promulgate administrative regulations relating to the manufacture and licensing of the manufacturers; (4) because this administrative regulation was originally promulgated in 1981 in Title 900 KAR, it was necessary to transfer it to Title 902, Chapter 55, with the other administrative regulations relating to controlled substances; and (5) the only other amendment to this administrative regulation was required by KRS Chapter 13B.

In response to questions by Chairman Crenshaw, Ms. Droz stated that: (1) a federal statute prohibited the laetrile from being manufactured, distributed, or transported across state lines; (2) while in 1980 there was still controversy regarding the effects and use of laetrile, the controversy had subsided because laetrile had been shown not to be effective for any use; (3) the 1980 legislation allowed the manufacture, distribution, and prescription of laetrile if all activities were completed intra-state; and (4) while federal law prohibited laetrile from being imported into the United States and transported across state lines, it did not prohibit intra-state activities regarding laetrile.

Mr. Crews stated that although the federal government considered laetrile a drug, Kentucky did not.

In response to a question by Senator Kafoglis, Ms. Droz stated that: (1) there was no interest in laetrile in Kentucky because: (a) laetrile was not being manufactured in Kentucky; (b) no one had ever applied to manufacture it in Kentucky; and (c) the Medical Licensure Board had not requested permission to prescribe it; (2) the Department promulgated this administrative regulation because the statute required promulgation; (3) although the Department would have preferred to repeal this administrative regulation, legislation proposed during the 1992 Regular Session of the legislation introduced to permit the Department to repeal this administrative regulation was not enacted, which they wanted to do, but the bill did not pass; and (4) the Department wanted to see legislation before the 1998 Regular Session to repeal the statute.

Senator Roeding stated that: (1) he was very familiar with laetrile; (2) laetrile was not effective; and (3) the statute should be repealed because it conflicted with the federal law.

In response to a question by Representative Allen, Ms. Droz stated that: (1) laetrile was a substance that was: (a) derived from apricot pits; and (b) contained a cyanide derivative; (2) laetrile did not

treat cancer or other diseases; and (3) people had developed cyanide poisoning from taking laetrile.

Representative Allen stated that: (1) he voted for this legislation after hearing the floor arguments in support of the bill; (2) while he does not know what has been determined since the bill was enacted, at the time, there were unknown factors about the drug; (3) while the medical board was against laetrile, he decided to vote with the sponsor because a person with terminal cancer would want to take any possible actions to save his life; and (4) testimony was given regarding people who went to Mexico to purchase the drug and thought their health was improving.

In response to a question by Representative Allen, Mr. Crews stated that: (1) he had not heard of anyone going to Mexico to get laetrile; and (2) when the bill was enacted, some people went to Tennessee to get it because laetrile was readily available.

The Subcommittee approved a motion by Senator Roeding, seconded by Representative Lee, that the Subcommittee request LRC to refer the issue of the repeal of legislation authorizing the manufacture and distribution of laetrile to the appropriate standing committee for action during the 1998 Regular Session.

Department for Medicaid Services: Payments and Services

907 KAR 3:005 & E. Physicians' services. Karen Doyle, Department for Medicaid Services, and Larry McCarthy, Department for Medicaid Services, represented the Department. Mr. McCarthy stated that: (1) the prior administrative regulation that this administrative regulation replaced: (a) had been found deficient by the Subcommittee; and (b) expired at the end of the 1996 Regular Session; (2) 907 KAR 3:005 and 907 KAR 3:010 were companion administrative regulations that replaced the deficient administrative regulations; (3) the previous administrative regulation was found deficient because of concerns whether the reimbursements to physicians were fair and adequate to provide reasonable access to Kentucky Medicaid beneficiaries; (4) the Department was engaged in a lawsuit on the adequacy of physician reimbursements; (5) these two administrative regulations: (a) increased physician reimbursements by a total of \$26 million into the aggregate payments made to physicians; and (b) was consistent with the compromise discussed in the lawsuit between the Department for Medicaid Services and the Kentucky Medical Association; (6) 907 KAR 3:005 concerned what physicians' services were covered by the Medicaid programs; and (7) 907 KAR 3:010 established the reimbursements for those services.

In response to questions by Senator Kafoglis, Mr. McCarthy stated that: (1) it was his understanding that the lawsuit was remanded by the trial judge to the parties to agree on a settlement; (2) the settlement will be issued by the judge as a final decree; (3) the parties were at the end of the settlement process; and (3) the amendments to this administrative regulation reflected the agreement of the parties.

In response to questions by Senator Roeding, Mr. McCarthy stated that: (1) because this administrative regulation modified the payment system, the "Resource Based Relative Value" scale, by changing the conversion factor, physician payments should increase by \$26 million; (2) part of the settlement involved a distribution of approximately \$50 million to physicians retroactively for a prior period of time; and (3) while the \$26 million is an on-going payment to the physicians, the \$50 million was a one-time only reimbursement that would be paid when the court settlement was finalized.

907 KAR 3:010 & E. Reimbursement for physicians' services.

Department for Mental Health and Mental Retardation Services: Substance Abuse

908 KAR 1:300. Chemical dependency program evaluation. Mike Townsend, Director, Division of Substance Abuse; and Steve Pace, Division of Substance Abuse, represented the Department. Mr. Townsend stated that: (1) the existing administrative regulation required programs for persons with chemical dependency problems that were funded by the Cabinet for Human Resources with federal and state funds to conduct an evaluation one-year after the patient

was discharged from the treatment program; (2) legislation required the programs to: (a) conduct a self-evaluation; and (b) submit the data to the Cabinet; (3) during the 1996 Regular Session, the law was amended to require the Department to contract with an independent provider to: (a) conduct the outcome evaluation independently and objectively; and (b) report the findings to the Cabinet; (4) this administrative regulation outlined the procedures for the independent provider, the University of Kentucky Center for Drug and Alcohol Research, to follow when it collected this information from the community-based programs that provided substance abuse treatment; and (5) the procedure required: (a) the treatment programs to: 1. collect baseline information; and 2. report this information to the University of Kentucky; and (b) the University of Kentucky to conduct a follow-up evaluation by: 1. contacting the individuals on a random sample one-year after treatment to determine their outcome; and 2. determining outcome by consideration of: (i) drug and alcohol use patterns; (ii) criminal justice involvement; (iii) health status; (iv) vocational and educational status; and (v) whether the treatment had a positive impact on persons who were treated for chemical dependency.

In response to questions by Senator Kafoglis, Mr. Townsend stated that: (1) there was no follow-up beyond one year; (2) the requirement was for a follow-up evaluation one-year after discharge from treatment; (3) because substance abuse involved a lifetime of recovery, relapses did occur; and (4) the one year follow-up was established because: (a) it was efficient; and (b) the General Assembly wanted to be assured that there was at least a one year follow-up.

In response to questions by Senator Roeding, Mr. Townsend stated that: (1) the baseline information was collected from the patient when the patient entered the treatment program; (2) the follow-up contact was conducted primarily by a telephone call, with some verification through face-to-face interviews; (3) the independent provider, rather than the treatment provider, conducted the one-year follow up evaluation; (4) the client was not required to: (a) participate in the follow-up evaluation; or (b) sign a consent form for the follow-up evaluation prior to receiving the substance abuse treatment; (5) most of the clients had cooperated in the follow-up evaluation; (6) a client had a legal and ethical right to refuse to be contacted after treatment; and (7) the Department was prohibited from denying treatment to a person who did not want to be involved in a research study.

Mr. Pace stated that involuntary responses to the outcome study would not be as reliable as the voluntary responses received for the study.

In response to a question by Senator Kafoglis, Mr. Townsend stated that: (1) the studies the Department relied on indicated that telephone interviews were very accurate; (2) the studies were conducted by: (a) telephone interviews with a number of individuals; and (b) a follow-up, either face-to-face or with a significant other, to determine the truthfulness of the responses; and (3) while some people were not truthful, most people responded truthfully.

Representative Allen stated that he was concerned that people would not be as truthful over the telephone as they were in person.

Senator Kafoglis stated that: (1) he would prefer to see a test, such as a blood or urine test, to determine whether an individual was drug-free, rather than the telephone interview; and (2) while he was surprised to hear that telephone interviews were reliable, he knew that Mr. Townsend had more experience in this area.

Mr. Townsend stated that there had been research studies that concluded that telephone interviews were a reliable way of getting information.

Senator Roeding: (1) stated that he could not support an administrative regulation that required: (a) an agency to do something; (b) the legislature to spend money and (c) did not requiring anything of the patient; and (2) made a motion, seconded by Representative Allen, to find the administrative regulation deficient because there was not a level playing field between the treatment

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agencies and the patients.

Chairman Crenshaw stated that: (1) while he agreed with Senator Roeding's argument and reasoning, he was not sure if a proper basis for a finding of deficiency had been stated; (2) the problem was determining which presented the best benefit: (a) helping people stop using drugs, even if the agency did not get the information it wanted in the outcome study; or (b) helping only those people who participated in the study; (3) while logic would state that if the state paid the bills for the treatment, the clients should be required to comply with the state's study, it made more sense to treat the clients and reduce their dependency on drugs even if they were not as cooperative as the state desired.

Senator Roeding stated that the legislative intent of the study was defeated if clients were not required to respond.

Mr. Pace stated that: (1) the Subcommittee needed to check KRS 222.460 to 222.475 because the language gave the client the right to decline to participate; and (2) if the General Assembly did not require participation in the statute, the Department could not require it by administrative regulation.

Subcommittee staff stated: (1) KRS 222.465(3) provided that clients shall be noted in the follow-up report if: (a) they refused to participate in the follow-up report; or (b) could not reasonably be located; (2) this provision might indicate that the General Assembly assumed that a client may refuse; and (3) the statute did not explicitly: (a) permit clients to refuse; or (b) require participation by clients.

In response to a question by Chairman Crenshaw, Subcommittee staff stated that: (1) staff could only state that the subsection provided that a client who did not respond shall be noted in the follow-up report; and (2) while it could be argued that the Cabinet's position that the statute did not establish a mandatory requirement for the response could be derived from the language of the statute: (a) Subcommittee staff could not speak to what the legislative intent of the legislators or those who worked on the legislation was; and (b) only the members of the Subcommittee could determine legislative intent.

Mr. Townsend stated that: (1) beyond the legislative intent, it was believed by the Cabinet and the researchers they consulted that it was not wise to pursue clients who did not choose to participate; and (2) the investigative review boards of both the University of Kentucky and the Cabinet were concerned about making clients participate in a study.

Senator Kafoglis stated that: (1) because the provision required the study to note nonparticipation, statistically those people who did not respond were counted as failures; and (2) for instance, if the University received seventy responses that indicated that clients were cured and thirty people refused to participate, the cure rate would: (a) not be one hundred percent; and (b) be a thirty percent failure.

Mr. Townsend stated that: (1) he would: (a) not consider the number of refusals a thirty percent failure; and (b) view it as a refusal by thirty clients to participate; (2) if ninety out of one hundred clients refused to participate, nine indicated they were drug-free, and one indicated he was not drug-free: (a) the success rate would not be ninety percent; and (b) the study would note that ninety people refused to participate.

In response to questions by Representative Lee, Mr. Townsend stated that: (1) before a client began treatment in a program, the client signed a document stating that the client would participate in the follow-up test study; (2) when the refusal to participate occurred, it was a year after the treatment was completed and the money had already been spent; (3) if a client who wanted treatment but did not want to participate in the study was required to answer the questions before beginning treatment, the accuracy of the answers would be suspect; (4) the request for follow-up permission was given at the time a client entered a program; (5) if a client who had given permission for follow-up later refused to participate, the Department could not take action against that person; (6) while some people were

required by the courts to seek treatment, many people went to treatment because they wanted help for their substance abuse program; and (7) if a client who was required by the court to seek treatment refused to participate in a mandatory study, the Department would be required to inform the court that the client would not be receiving treatment because of the refusal to participate.

In response to a question by Representative Lee, Mr. Pace stated that in the pilot study conducted by the University of Kentucky on the instrument used in the follow-up evaluation, there were almost no denials of consent to participate.

The Subcommittee did not approve a motion by Senator Roeding to find this administrative regulation.

Senator Roeding stated that he wished the record to reflect his objection to this administrative regulation.

Kentucky Health Policy Board: Administration

909 KAR 1:005E. Repeal of 909 KAR Chapter 1. John Walker, Assistant Counsel, Cabinet for Health Services and Cabinet for Families and Children, represented the Cabinets. Subcommittee staff stated that this emergency administrative regulation: (1) would not be replaced by an ordinary administrative regulation; and (2) repealed all of the existing administrative regulations promulgated by the Health Policy Board which had been abolished.

The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:

Chairman Crenshaw stated that administrative regulations had been deferred for the following reasons: (1) the Natural Resources' administrative regulations in Title 401 were deferred pursuant to KRS Chapter 13A because the agency held public hearings on the administrative regulations; (2) agencies were requested to defer emergency administrative regulations that would not expire during the period because: (a) they could not be amended; (b) the issues raised by emergency administrative regulations, and any necessary amendments, would be considered when the ordinary administrative regulations were reviewed by the Subcommittee; and (c) the Subcommittee and Subcommittee staff had to concentrate on the issues raised by a number of administrative regulations; and (3) other administrative regulations were deferred to permit agencies sufficient time to consider Subcommittee staff reviews and suggested amendments.

Treasury: State Treasury

20 KAR 1:081E. Repeal of 20 KAR 1:080.

State Board of Elections: Forms and Procedures

31 KAR 4:040E. Absentee ballots cast in county clerk's office.

Voting

31 KAR 5:010E. Absentee voting.

Department of Law: Attorney General

40 KAR 1:040. Parties who may request an opinion.

40 KAR 1:050. Subjects on which opinions may be issued.

40 KAR 1:060. Subjects on which an opinion shall not be issued.

40 KAR 1:070. Procedures for requesting and issuing an opinion.

Personnel: Department of Personnel; Classified

101 KAR 2:100E. Leave administrative regulations.

Department of Personnel; Unclassified

101 KAR 3:010E. Leave administrative regulations for unclassified service.

Finance and Administration Cabinet: Purchasing

200 KAR 5:011E. State vehicles.

200 KAR 5:302E. Delegation of authority.

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Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010. Formula for allocation of private bonds.

Board of Hairdressers and Cosmetologists

201 KAR 12:082E. Schools' course of instruction.

201 KAR 12:200E. Requirements for continuing education for renewal of license.

Department of Fish and Wildlife Resources: Fish

301 KAR 1:201. Fishing limits.

Hunting and Fishing

301 KAR 3:028. Applying for disability hunting and fishing licenses.

Wildlife

301 KAR 4:200. Cyprus AMAX Robinson Forest Wildlife Management Areas use requirements and restrictions.

Department of Agriculture: Linked Deposits

302 KAR 3:010E. Linked Deposit Investment Program for agribusiness.

Economic Development Cabinet: Linked Deposit Investment Program

307 KAR 5:010E. Linked Deposit Investment Program.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 50:035E. Permits.

Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:050E. Definitions.

415 KAR 1:060E. Financial responsibility account.

415 KAR 1:070E. Petroleum storage tank account.

415 KAR 1:080E. Claims procedures.

415 KAR 1:090E. Ranking system.

415 KAR 1:100E. Third party claims.

415 KAR 1:110E. Contractor costs.

415 KAR 1:114E. Contractor certification.

415 KAR 1:120E. Hearings.

415 KAR 1:125E. Discovery procedure.

Justice Cabinet: Division of Charitable Gaming: Charitable Gaming

500 KAR 11:001 & E. Definitions.

500 KAR 11:030. Charity game ticket standards.

500 KAR 11:110 & E. Keno.

500 KAR 11:120. Other allowable expenses.

Department of Corrections: Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:330E. Annual overweight permits for nondivisible loads.

Kentucky Board of Education: Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:285E. School district Medicaid providers.

Education Professional Standards Board

704 KAR 20:305E. Written examination prerequisites for teacher certification.

704 KAR 20:475E. Probationary certificate for teachers of technology education.

Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:089E. Workers' compensation medical fee schedule for physicians.

Department of Alcoholic Beverage Control: Tobacco Enforcement

804 KAR 13:010E. Tobacco enforcement and administration.

Department of Mines and Minerals: Miner Training, Education and Certification

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

Department of Insurance: Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060E. Registration of service contracts for consumer products.

Health Insurance Contracts

806 KAR 17:100E. Certificate of filing for provider-sponsored networks.

806 KAR 17:120E. Accountable health plan certification.

806 KAR 17:130E. Twenty-four (24) Hour Pilot Insurance Program.

Group and Blanket Health Insurance

806 KAR 18:060E. Filing requirements for associations.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:026. Racing associations.

Cabinet for Health Services: Certificate of Need

900 KAR 6:010E. Certificate of need process.

900 KAR 6:020E. Certificate of need application fee schedule.

900 KAR 6:030E. Certificate of need expenditure minimums.

900 KAR 6:040E. Licensure hearings.

Department for Public Health: Emergency Medical Services and Ambulance Service Providers

902 KAR 14:070 (& E). License procedures and fee schedule for ambulance providers.

902 KAR 14:080. Class I ground ambulance providers.

State Health Plan

902 KAR 17:030E. State Health Plan.

902 KAR 17:040E. Data reporting by health care providers.

Health Services and Facilities

902 KAR 20:320E. Psychiatric treatment facility operation and services.

Radiation Operators Certification

902 KAR 105:070E. Violations and enforcement.

Water Fluoridation

902 KAR 115:020E. Enforcement of water fluoridation program.

Cabinet for Families and Children: Department for Social Insurance: Public Assistance

904 KAR 2:470E. Disability Determinations Program.

Department for Social Services: Child Welfare

905 KAR 1:320E. Fair hearing.

905 KAR 1:360E. Private child care levels of care.

Day Care

905 KAR 2:100E. Certification of family child care homes.

Cabinet for Health Services: Department of Medicaid Services: Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:034E. Early and periodic screening, diagnosis, and treatment services.

907 KAR 1:035E. Payments for early and periodic screening,

diagnosis, and treatment services.

907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities.

907 KAR 1:715E. School-based health services.

Payments and Services

907 KAR 3:020E. Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency.

OTHER BUSINESS

In response to a question by Representative Allen, Chairman Crenshaw stated that Representative Jim Bruce's absence from the meeting was unavoidable, but it was different without him at the meeting.

Subcommittee staff stated that: (1) the large package of Waste Management administrative regulations that were included in the mailing received by members would: (a) not be on the agenda for the October, 1996 meeting because the Division of Waste Management had requested an extension of time to file its Statements of Consideration until October 10, 1996; and (b) be on the agenda of the November, 1996 meeting; and (2) Subcommittee staff would send members another box of the administrative regulations prior to the November, 1996 meeting.

The Subcommittee adjourned at 12:30 p.m. until October 7, 1996 at 10 a.m. in Room 149 of the State Capitol Annex.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of September 5, 1996 Meeting

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of September 5, 1996, having been referred to the Committee on August 9, 1996, pursuant to KRS 13A.290(6):

1 KAR 5:130
11 KAR 8:030
11 KAR 12:050
13 KAR 2:060
701 KAR 5:020E
701 KAR 5:055E
701 KAR 5:086E
701 KAR 5:090E
702 KAR 1:080E
702 KAR 3:130
702 KAR 7:065E
703 KAR 3:205E
704 KAR 3:390
707 KAR 1:180E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 5, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS

Meeting of September 13, 1996

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of September 13, 1996, having been referred to the Committee on September 12, 1996, pursuant to KRS 13A.290(6): 201 KAR 31:060, 201 KAR 1:130 & E and 201 KAR 1:045 & E.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached

to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 13, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON JUDICIARY Meeting of September 17, 1996

The following administrative regulations were available for consideration by the Interim Joint Committee on Judiciary during its meeting of September 17, 1996, having been referred to the Committee on September 12, 1996, pursuant to KRS 13A.290(6):

501 KAR 6:020
501 KAR 6:170
503 KAR 4:010
503 KAR 4:020
503 KAR 4:030
503 KAR 4:040
503 KAR 4:050
503 KAR 4:060
503 KAR 4:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 17, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates D2

The Locator Index lists all administrative regulations published in VOLUME 23 of the Administrative Register from July, 1996 through June, 1997. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

KRS Index D9

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 23 of the Administrative Register.

Subject Index D20

The Subject Index is a general index of administrative regulations published in VOLUME 23 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - D2

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
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VOLUME 22

The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

907 KAR 1:140E	1981	4-4-96
907 KAR 1:715E	2283	5-13-96
907 KAR 3:005E	1984	4-15-96
907 KAR 3:010E	1986	4-15-96
908 KAR 1:340E	1582	1-30-96

200 KAR 5:302E	2249	5-15-96
201 KAR 8:430E	2252	5-15-96
500 KAR 11:001E	2253	5-15-96
500 KAR 11:110E	2255	5-15-96
601 KAR 13:090E	1971	4-15-96
601 KAR 13:100E	1973	4-15-96
702 KAR 3:285E	2257	5-15-96
787 KAR 1:210E	1976	4-8-96
902 KAR 1:400E	2267	5-13-96
902 KAR 14:070E	2269	5-15-96
902 KAR 17:021E	2272	4-30-96
Expires		11-17-96
904 KAR 3:042E	1977	4-15-96
907 KAR 1:013E	2273	5-13-96
907 KAR 1:034E	2278	5-13-96
907 KAR 1:035E	2282	5-13-96
907 KAR 1:060E	1576	1-18-96
907 KAR 1:061E	1578	1-18-96

ORDINARY ADMINISTRATIVE REGULATIONS:

201 KAR 8:015		
Amended	2311	(See Volume 23)
601 KAR 1:200	2504	(See Volume 23)
815 KAR 8:010		
Amended	2335	(See Volume 23)
815 KAR 8:020		
Amended	2337	(See Volume 23)
902 KAR 8:090		
Amended	2359	(See Volume 23)
907 KAR 1:060		
Amended	2497	8-21-96
907 KAR 1:061		
Amended	2499	8-21-96
908 KAR 1:340	2512	(See Volume 23)

*Statement of Consideration Not Filed by Deadline

VOLUME 23

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

2 KAR 2:010E	1349	7-18-96
11 KAR 13:010E	1537	9-13-96
20 KAR 1:081E	320	7-15-96
31 KAR 4:040E	44	6-13-96
31 KAR 5:010E	45	6-13-96
101 KAR 2:100E	46	5-23-96
101 KAR 3:010E	52	5-23-96
106 KAR 3:010E	1539	8-28-96
200 KAR 5:011E	320	7-12-96
200 KAR 22:130E		
Replaced	210	9-11-96
201 KAR 1:040E		
Replaced	1393	9-11-96
201 KAR 10:050E		
Replaced	170	9-11-96
201 KAR 1:045E	58	5-22-96
201 KAR 1:130E	59	5-22-96
201 KAR 12:082E	321	7-1-96
201 KAR 12:200E	324	7-1-96
201 KAR 20:390E	1541	8-16-96

301 KAR 2:225E	1544	8-16-96
302 KAR 3:010E	325	7-15-96
302 KAR 78:020E	61	6-5-96
307 KAR 5:010E	327	7-15-96
401 KAR 50:035E	62	6-14-96
415 KAR 1:050E	328	7-3-96
415 KAR 1:060E	330	7-3-96
415 KAR 1:070E	333	7-3-96
415 KAR 1:080E	336	7-3-96
415 KAR 1:090E	340	7-3-96
415 KAR 1:100E	343	7-3-96
415 KAR 1:110E	344	7-3-96
415 KAR 1:114E	348	7-3-96
415 KAR 1:120E	352	7-3-96
415 KAR 1:125E	359	7-3-96
502 KAR 45:005E	1350	8-14-96
502 KAR 45:035E	1351	8-14-96
502 KAR 45:045E	1351	8-14-96
502 KAR 45:075E	1352	8-14-96
502 KAR 45:150E	1353	8-14-96
502 KAR 60:010E	1354	8-14-96
Withdrawn		9-11-96
503 KAR 6:010E	1355	8-14-96
503 KAR 6:020E	1357	8-14-96
503 KAR 6:030E	1358	8-14-96
503 KAR 6:040E	1359	8-14-96

LOCATOR INDEX - EFFECTIVE DATES

[illegible]

ADMINISTRATIVE REGISTER - D4

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
40 KAR 1:060	208		401 KAR 5:006	1814	
40 KAR 1:070	209		401 KAR 30:005	1052	
103 KAR 18:050			401 KAR 30:010		
Amended	461		Amended	475	
As Amended	1578		401 KAR 30:031		
104 KAR 1:020			Amended	487	
Amended	166		401 KAR 30:040		
As Amended	1391	9-11-96	Amended	490	
200 KAR 5:021			401 KAR 30:080		
Amended	1403		Amended	492	
200 KAR 5:025	1467		401 KAR 31:005	1054	
200 KAR 5:302	1468		401 KAR 31:010		
200 KAR 5:304			Amended	494	
Amended	1401		401 KAR 31:030		
200 KAR 5:306			Amended	509	
Amended	1405		401 KAR 31:040		
200 KAR 5:325	1470		Amended	511	
200 KAR 15:010			401 KAR 31:050		
Amended	462		Amended	528	
200 KAR 22:130	210	9-11-96	401 KAR 31:060		
201 KAR 1:040			Amended	530	
Amended	169		401 KAR 31:070		
As Amended	1393	9-11-96	Amended	533	
201 KAR 1:045			401 KAR 31:110		
Amended	464		Amended	536	
As Amended	1578	9-13-96	401 KAR 31:120		
201 KAR 1:130			Amended	538	
Amended	465		401 KAR 31:160		
As Amended	1579	9-13-96	Amended	546	
201 KAR 8:015			401 KAR 31:170		
As Amended	1394	8-21-96	Amended	550	
201 KAR 8:430	211		401 KAR 32:005	1067	
As Amended	1395		401 KAR 32:010		
As Amended	1581		Amended	559	
201 KAR 10:050			401 KAR 32:020		
Amended	170	9-11-96	Amended	562	
201 KAR 22:031			401 KAR 32:030		
Amended	171	8-21-96	Amended	564	
201 KAR 22:106			401 KAR 32:040		
Amended	173	8-21-96	Amended	567	
201 KAR 22:135			401 KAR 32:050		
Amended	175	8-21-96	Amended	569	
201 KAR 31:060	213		401 KAR 32:100		
As Amended	1583	9-13-96	Amended	573	
201 KAR 32:060	215		401 KAR 33:005	1080	
As Amended	1584		401 KAR 33:010		
300 KAR 2:010	1810		Amended	577	
301 KAR 1:201			401 KAR 34:005	1093	
Amended	468		401 KAR 34:010		
301 KAR 2:176	217	9-11-96	Amended	579	
301 KAR 2:211			401 KAR 34:020		
Repealed	217	9-11-96	Amended	581	
301 KAR 3:022			401 KAR 34:050		
Amended	1619		Amended	586	
301 KAR 3:028			401 KAR 34:060		
Amended	471		Amended	589	
301 KAR 4:200			401 KAR 34:070		
Amended	472		Amended	597	
302 KAR 78:020	1471		401 KAR 34:080		
307 KAR 2:020	1812		Amended	603	
401 KAR 5:001			401 KAR 34:090		
Amended	1621		Amended	606	
401 KAR 5:005			401 KAR 34:100		
Amended	1633		Amended	613	

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
401 KAR 34:120			401 KAR 35:290		
Amended	621		Amended	757	
401 KAR 34:180			401 KAR 36:005	1154	
Amended	626		401 KAR 36:020		
401 KAR 34:190			Amended	760	
Amended	629		401 KAR 36:025		
401 KAR 34:200			Amended	783	
Amended	635		401 KAR 36:030		
401 KAR 34:210			Amended	795	
Amended	640		401 KAR 36:070		
401 KAR 34:230			Amended	797	
Amended	644		401 KAR 37:005	1166	
401 KAR 34:240			401 KAR 37:010		
Amended	649		Amended	799	
401 KAR 34:245	1105		401 KAR 37:030		
401 KAR 34:250			Amended	809	
Amended	653		401 KAR 37:040		
401 KAR 34:275			Amended	816	
Amended	655		401 KAR 37:050		
401 KAR 34:280			Amended	925	
Amended	663		401 KAR 38:005	1179	
401 KAR 34:281	1109		401 KAR 38:010		
401 KAR 34:287	1118		Amended	928	
401 KAR 34:290			401 KAR 38:020		
Amended	669		Amended	931	
401 KAR 34:360			401 KAR 38:030		
Amended	672		Amended	934	
401 KAR 35:005	1121		401 KAR 38:040		
401 KAR 35:010			Amended	938	
Amended	680		401 KAR 38:050		
401 KAR 35:020			Amended	943	
Amended	683		401 KAR 38:060		
401 KAR 35:050			Amended	949	
Amended	687		401 KAR 38:070		
401 KAR 35:060			Amended	956	
Amended	690		401 KAR 38:080		
401 KAR 35:070			Amended	959	
Amended	694		401 KAR 38:090		
401 KAR 35:080			Amended	961	
Amended	701		401 KAR 38:100		
401 KAR 35:090			Amended	965	
Amended	703		401 KAR 38:150		
401 KAR 35:100			Amended	968	
Amended	710		401 KAR 38:160		
401 KAR 35:120			Amended	970	
Amended	717		401 KAR 38:170		
401 KAR 35:180			Amended	972	
Amended	722		401 KAR 38:190		
401 KAR 35:190			Amended	974	
Amended	724		401 KAR 38:250		
401 KAR 35:200			Amended	976	
Amended	731		401 KAR 38:500		
401 KAR 35:210			Amended	978	
Amended	735		401 KAR 39:005	1192	
401 KAR 35:230			401 KAR 39:080		
Amended	738		Amended	980	
401 KAR 35:245	1133		401 KAR 39:110		
401 KAR 35:250			Amended	982	
Amended	742		401 KAR 39:120		
401 KAR 35:275			Amended	983	
Amended	744		401 KAR 40:001	1205	
401 KAR 35:280			401 KAR 42:005		
Amended	751		Amended	986	
401 KAR 35:281	1137		401 KAR 43:005	1207	

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401 KAR 43:010	1219		503 KAR 4:050	1288	
401 KAR 43:020	1222		As Amended	1589	
401 KAR 43:030	1226		503 KAR 4:060	1290	
401 KAR 43:040	1231		As Amended	1590	
401 KAR 43:050	1233		503 KAR 4:070	1291	
401 KAR 43:060	1235		As Amended	1590	
401 KAR 43:070	1237		601 KAR 1:025		
401 KAR 44:005	1240		Amended	1010	
401 KAR 44:010	1242		As Amended	1591	
401 KAR 44:020	1245		601 KAR 1:101		
401 KAR 44:030	1248		Amended	1012	
401 KAR 44:040	1249		As Amended	1592	
401 KAR 44:050	1253		601 KAR 1:160		
401 KAR 44:060	1258		Repealed	441	9-3-96
401 KAR 44:070	1261		601 KAR 1:200		
401 KAR 44:080	1264		Amended	441	9-3-96
401 KAR 47:005	1265		601 KAR 9:074		
401 KAR 48:005			Repealed	441	9-3-96
Amended	990		601 KAR 13:090	219	
401 KAR 49:005	1272		As Amended	1593	
401 KAR 50:035			601 KAR 13:100	221	
Amended	1646		Amended	1399	
500 KAR 11:001			As Amended	1594	
Amended	1000		603 KAR 2:015		
500 KAR 11:010			Amended	1014	
Amended	1408		As Amended	1596	
500 KAR 11:015			603 KAR 4:040		
Amended	1409		Amended	178	9-3-96
500 KAR 11:025			603 KAR 5:066		
Amended	1410		Amended	183	9-3-96
500 KAR 11:030			603 KAR 5:230		
Amended	1001		Amended	1419	
500 KAR 11:060			603 KAR 5:330	1818	
Amended	1412		701 KAR 5:020		
500 KAR 11:070			Amended	1422	
Amended	1413		701 KAR 5:051	1472	
500 KAR 11:080			701 KAR 5:055		
Amended	1414		Amended	1423	
500 KAR 11:090			701 KAR 5:086	1473	
Amended	1415		701 KAR 5:090		
500 KAR 11:110	1279		Amended	1425	
500 KAR 11:120	1282		702 KAR 1:080		
501 KAR 6:020			Amended	1426	
Amended	175	9-11-96	702 KAR 3:100		
Amended	1005		Amended	1428	
Amended	1416		702 KAR 3:130		
501 KAR 6:050			Amended	185	9-5-96
Amended	1677		702 KAR 3:270		
501 KAR 6:130			Amended	1429	
Amended	1007		702 KAR 3:285	1474	
Amended	1678		702 KAR 5:130		
501 KAR 6:170			Amended	1431	
Amended	1008		702 KAR 7:010		
As Amended	1586		Repealed	1368	8-12-96
501 KAR 13:010			702 KAR 7:020		
Amended	1418		Repealed	1368	8-12-96
503 KAR 4:010	1283		702 KAR 7:050		
As Amended	1587		Repealed	1368	8-12-96
503 KAR 4:020	1284		702 KAR 7:065		
As Amended	1587		Amended	1433	
503 KAR 4:030	1285		703 KAR 3:205		
As Amended	1587		Amended	1434	
503 KAR 4:040	1286		704 KAR 3:390		
As Amended	1588		Amended	186	9-5-96

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704 KAR 20:052	1292		803 KAR 2:408		
704 KAR 20:670			Amended	1740	
Amended	1017		803 KAR 2:410		
707 KAR 1:180			Amended	1741	
Amended	1436		803 KAR 2:422		
735 KAR 1:010			Amended	1743	
Amended	1443		803 KAR 2:425		
735 KAR 1:020			Amended	1744	
Amended	1447		803 KAR 2:500		
785 KAR 1:010			Amended	1746	
Amended	1679		803 KAR 2:600		
787 KAR 1:200			Amended	1748	
Amended	1681		803 KAR 25:012		
787 KAR 1:210			Amended	1450	
Amended	189		803 KAR 25:015		
803 KAR 2:019			803 KAR 25:035		
Amended	1682		Amended	1453	
803 KAR 2:200			803 KAR 25:089		
Amended	1684		Amended	1750	
803 KAR 2:300			803 KAR 25:096		
Amended	1687		Amended	1455	
803 KAR 2:301			803 KAR 25:190		
Amended	1689		Amended	1459	
803 KAR 2:302			803 KAR 50:010		
Amended	1690		Amended	191	9-11-96
803 KAR 2:303			804 KAR 11:010		
Amended	1692		Amended	1463	
803 KAR 2:304			804 KAR 13:010		
Amended	1694		805 KAR 4:085		
803 KAR 2:305			Amended	1751	
Amended	1696		805 KAR 4:093		
803 KAR 2:306			805 KAR 4:140		
Amended	1698		Amended	1752	
803 KAR 2:307			805 KAR 5:010		
Amended	1702		Amended	1019	
803 KAR 2:308			As Amended	1599	
Amended	1705		805 KAR 5:070		
803 KAR 2:309			805 KAR 7:080		
Amended	1708		806 KAR 17:100		
803 KAR 2:311			806 KAR 17:120		
Amended	1711		806 KAR 17:130		
803 KAR 2:312			806 KAR 18:060		
Amended	1713		806 KAR 46:030		
803 KAR 2:313			810 KAR 1:026		
Amended	1714		Amended	1021	
803 KAR 2:314			815 KAR 8:010		
Amended	1716		As Amended	436	9-11-96
803 KAR 2:315			815 KAR 8:020		
Amended	1719		As Amended	438	
803 KAR 2:316			As Amended	1396	9-11-96
Amended	1720		815 KAR 20:020		
803 KAR 2:317			Amended	1754	
Amended	1722		815 KAR 20:120		
803 KAR 2:319			Amended	1757	
Amended	1724		815 KAR 20:191		
803 KAR 2:320			Amended	1764	
Amended	1726		815 KAR 25:010		
803 KAR 2:402			Amended	1769	
Amended	1732		815 KAR 30:060		
803 KAR 2:403			Amended	1780	
Amended	1734		902 KAR 1:400		
803 KAR 2:404			902 KAR 2:060		
Amended	1735		Amended	1024	
			Expired		9-5-96

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902 KAR 2:090					
Amended	1463				
902 KAR 8:090					
As Amended	1397	8-21-96			
902 KAR 14:010					
Amended	1027				
902 KAR 14:070					
Amended	1029				
902 KAR 14:080					
Amended	1032				
902 KAR 14:082	1295				
902 KAR 14:090					
Amended	1040				
902 KAR 20:018					
Amended	199	8-21-96			
902 KAR 55:100	1300				
902 KAR 105:070					
Amended	1783				
902 KAR 115:020					
Amended	1785				
904 KAR 3:042	1304				
As Amended	1600				
905 KAR 1:320					
Amended	1786				
905 KAR 1:360	1484				
907 KAR 1:013					
Amended	1790				
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Amended	1796				
907 KAR 1:035					
Amended	1799				
907 KAR 1:140					
Amended	1801				
907 KAR 1:450					
Amended	202				
907 KAR 1:715	1831				
907 KAR 3:005	1308				
907 KAR 3:010	1309				
908 KAR 1:300					
Amended	1045				
908 KAR 1:340					
Amended	449	8-21-96			
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908 KAR 1:360	1487				

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6.821	2 KAR 2:010	150.290	301 KAR 3:022
6.824	2 KAR 2:010	150.300	301 KAR 2:225E
6.827	2 KAR 2:010	150.320	301 KAR 2:225E
11A.233	307 KAR 2:020	150.330	301 KAR 2:225E
12.290	735 KAR 1:010	150.340	301 KAR 2:176
	735 KAR 1:020		301 KAR 2:225E
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13B.010	104 KAR 1:020	150.390	301 KAR 2:176
15.025	40 KAR 1:040	150.395	301 KAR 2:176
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	40 KAR 1:060	150.485	301 KAR 3:022
	40 KAR 1:070	150.525	301 KAR 3:022
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	502 KAR 45:035E		301 KAR 3:022
	502 KAR 45:150E	150.620	301 KAR 3:022
16.050	502 KAR 45:005E		301 KAR 4:200
	502 KAR 45:035E	150.660	301 KAR 3:022
	502 KAR 45:045E	150.990	301 KAR 1:201
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18A.030	101 KAR 2:100E		301 KAR 4:200
18A.110	101 KAR 2:100E	151B.023	785 KAR 1:010
18A.155	101 KAR 3:010E	151B.110	785 KAR 1:010
18A.195	101 KAR 2:100E	151B.125	785 KAR 1:010
18A.430	200 KAR 22:130	151B.190	781 KAR 1:030E
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	307 KAR 5:010E	156.035	702 KAR 3:270
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	200 KAR 5:025		702 KAR 3:285
	200 KAR 5:302		702 KAR 7:065
	200 KAR 5:304		907 KAR 1:715
	200 KAR 5:325	156.132	701 KAR 5:051
45A.080	200 KAR 5:306		701 KAR 5:055
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	101 KAR 3:010E		702 KAR 5:130
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Chapter 117	31 KAR 5:010E	156.210	701 KAR 5:051
117.086	31 KAR 4:040E	157.200	707 KAR 1:180
141.330	103 KAR 18:050	157.320	702 KAR 3:100
141.335	103 KAR 18:050		702 KAR 7:055E
150.010	301 KAR 1:201		702 KAR 7:125E
	301 KAR 2:176	157.350	702 KAR 7:055E
150.015	301 KAR 2:225E		702 KAR 7:125E
150.025	301 KAR 2:225E	157.360	702 KAR 3:270
150.105	301 KAR 2:176		702 KAR 7:055E
150.170	301 KAR 1:201		702 KAR 7:125E
	301 KAR 2:176		707 KAR 1:180
	301 KAR 2:225E	157.390	702 KAR 3:100
	301 KAR 3:028	157.410	702 KAR 3:270
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150.175	301 KAR 2:176	157.440	702 KAR 3:270
	301 KAR 3:022	157.620	702 KAR 3:270
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150.195	301 KAR 3:022		707 KAR 1:180
150.225	301 KAR 3:022	158.035	902 KAR 2:060
150.235	301 KAR 3:022	158.037	902 KAR 2:090
150.240	301 KAR 3:022	158.060	702 KAR 7:055E

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158.070	702 KAR 7:125E	177.9771	603 KAR 5:230
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158.100	704 KAR 3:390	186.440	601 KAR 13:100
	702 KAR 7:055E	186.444	601 KAR 13:090
	702 KAR 7:125E		601 KAR 13:100
158.240	707 KAR 1:180	186.570	601 KAR 13:090
	702 KAR 7:055E		601 KAR 13:100
	702 KAR 7:125E	189.222	603 KAR 5:066
158.645	703 KAR 3:060E		603 KAR 5:330
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	703 KAR 4:090E	189.2717	603 KAR 5:330
158.6451	703 KAR 3:060E	189.337	603 KAR 4:040
	703 KAR 4:010E	189.540	702 KAR 5:130
	703 KAR 4:090E	194.030	902 KAR 16:011E
158.6453	703 KAR 3:060E		904 KAR 2:470E
	703 KAR 4:010E	194.050	904 KAR 3:042
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158.6455	703 KAR 3:060E	Chapter 196	501 KAR 6:020
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158.780	703 KAR 3:205		501 KAR 6:170
158.785	703 KAR 3:205	Chapter 197	501 KAR 6:020
159.035	702 KAR 7:055E		501 KAR 6:050
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159.170	702 KAR 7:055E		501 KAR 6:170
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160.045	702 KAR 1:080	199.640-199.670	905 KAR 1:360
160.345	701 KAR 5:086	199.898	905 KAR 2:100E
160.476	702 KAR 3:270	199.8982	905 KAR 2:100E
160.477	702 KAR 3:270	200.080-200.120	905 KAR 1:180E
161.020	704 KAR 20:052	200.650-200.676	908 KAR 2:170E
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	704 KAR 20:670		904 KAR 2:470E
161.028	704 KAR 20:052	205.201-205.204	905 KAR 1:180E
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	704 KAR 20:475E		904 KAR 2:470E
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161.030	704 KAR 20:052	205.520	907 KAR 1:013
	704 KAR 20:305E		907 KAR 1:022E
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161.200	702 KAR 7:055E		907 KAR 1:035
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161.770	701 KAR 5:090		907 KAR 1:450
161.790	701 KAR 5:090		907 KAR 1:715
163.510	735 KAR 1:010		907 KAR 3:005
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164.020	13 KAR 2:060	205.560	907 KAR 3:020E
	13 KAR 2:070	205.575	907 KAR 1:013
164.744	11 KAR 8:030	Chapter 208	905 KAR 1:180E
164.753	11 KAR 8:030	Chapter 209	905 KAR 1:180E
164.7535	11 KAR 5:130	211.180	902 KAR 1:400
164.769	11 KAR 8:030		902 KAR 2:060
164.780	11 KAR 5:130		902 KAR 2:090
164.785	11 KAR 5:130		902 KAR 115:020
164A.310	11 KAR 12:070	211.190	902 KAR 1:400
164A.325	11 KAR 12:050	211.210	902 KAR 1:400
164A.330	11 KAR 12:050	211.357	902 KAR 1:400
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164A.335	11 KAR 12:070	211.760	902 KAR 1:400
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167.150	707 KAR 1:180	211.870	902 KAR 1:400
174.400-174.425	601 KAR 1:025		902 KAR 105:070
176.130-176.220	603 KAR 2:015	211.890	902 KAR 105:070
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	902 KAR 14:082	401 KAR	31:160
	902 KAR 14:090	401 KAR	31:170
211.964	902 KAR 1:400	401 KAR	32:005
211.993	902 KAR 105:070	401 KAR	32:010
212.170	902 KAR 1:400	401 KAR	32:020
212.210	902 KAR 1:400	401 KAR	32:030
212.230	902 KAR 1:400	401 KAR	32:040
212.620	902 KAR 1:400	401 KAR	32:050
212.627	902 KAR 1:400	401 KAR	33:005
214.032	902 KAR 2:060	401 KAR	33:010
214.034	902 KAR 2:060	401 KAR	34:005
	902 KAR 2:090	401 KAR	34:010
214.036	902 KAR 2:060	401 KAR	34:020
216.2920-216.2929	902 KAR 17:040E	401 KAR	34:050
216.2960	806 KAR 17:130	401 KAR	34:060
216.920	902 KAR 1:400	401 KAR	34:070
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	902 KAR 14:082	401 KAR	34:275
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216B.010-216B.131	900 KAR 6:020E	401 KAR	35:020
	902 KAR 20:275E	401 KAR	35:050
216B.105	900 KAR 6:040E	401 KAR	35:070
216B.450-216B.459	902 KAR 20:320E	401 KAR	35:190
216B.455	900 KAR 6:010E	401 KAR	35:245
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216B.990	900 KAR 6:010E	401 KAR	36:005
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	900 KAR 6:030E	401 KAR	37:005
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	902 KAR 14:082	401 KAR	37:040
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217.075	902 KAR 1:400	401 KAR	38:040
217.126	902 KAR 1:400	401 KAR	38:050
217.809	902 KAR 1:400	401 KAR	38:060
217.950	902 KAR 1:400	401 KAR	38:070
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217.952	902 KAR 55:100	401 KAR	40:001
217C.040	902 KAR 1:400	401 KAR	42:005
217C.050	902 KAR 1:400	401 KAR	43:005
219.031	902 KAR 1:400	401 KAR	48:005
219.370	902 KAR 1:400	401 KAR	5:001
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223.070	902 KAR 1:400		30:031
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	401 KAR 33:005		401 KAR 38:090
	401 KAR 33:010		401 KAR 38:100
	401 KAR 34:005		401 KAR 38:150
	401 KAR 34:010		401 KAR 38:160
	401 KAR 34:020		401 KAR 38:170
	401 KAR 34:050		401 KAR 38:190
	401 KAR 34:060		401 KAR 38:250
	401 KAR 34:070		401 KAR 38:500
	401 KAR 34:080		401 KAR 39:005
	401 KAR 34:090		401 KAR 39:080
	401 KAR 34:100		401 KAR 39:110
	401 KAR 34:120		401 KAR 39:120
	401 KAR 34:180		401 KAR 40:001
	401 KAR 34:190		401 KAR 42:005
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	401 KAR 34:210		401 KAR 43:010
	401 KAR 34:230		401 KAR 43:020
	401 KAR 34:240		401 KAR 43:030
	401 KAR 34:245		401 KAR 43:040
	401 KAR 34:250		401 KAR 43:050
	401 KAR 34:275		401 KAR 43:060
	401 KAR 34:280		401 KAR 43:070
	401 KAR 34:281		401 KAR 44:005
	401 KAR 34:287		401 KAR 44:010
	401 KAR 34:290		401 KAR 44:020
	401 KAR 34:360		401 KAR 44:030
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	401 KAR 35:010		401 KAR 44:050
	401 KAR 35:020		401 KAR 44:060
	401 KAR 35:050		401 KAR 44:070
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	401 KAR 35:190	224.10-110	401 KAR 5:001
	401 KAR 35:200	224.16-050	401 KAR 5:001
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	401 KAR 35:290		401 KAR 30:010
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	401 KAR 36:030		401 KAR 31:030
	401 KAR 36:070		401 KAR 31:040
	401 KAR 37:005		401 KAR 31:060
	401 KAR 37:010		401 KAR 31:070
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	401 KAR 44:040		401 KAR 34:060
	401 KAR 44:050		401 KAR 34:070
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	401 KAR 30:010		401 KAR 34:230
	401 KAR 30:031		401 KAR 34:240
	401 KAR 31:050		401 KAR 34:250
	401 KAR 31:060		401 KAR 34:275
	401 KAR 34:060		401 KAR 34:280
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	401 KAR 44:040		401 KAR 30:031
	401 KAR 44:050		401 KAR 30:080
	401 KAR 44:060		401 KAR 31:010
	401 KAR 44:070		401 KAR 31:040
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224.60-110	815 KAR 30:060		401 KAR 31:170
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	415 KAR 1:125E		401 KAR 34:230
224.60-135	815 KAR 30:060		401 KAR 34:240
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	415 KAR 1:080E		401 KAR 34:360
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	401 KAR 35:200	238.535	500 KAR 11:070
	401 KAR 35:210	238.540	500 KAR 11:060
	401 KAR 35:230	238.545	500 KAR 11:030
	401 KAR 35:250	238.550	500 KAR 11:025
	401 KAR 35:275		500 KAR 11:120
	401 KAR 35:280	238.570	500 KAR 11:025
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	401 KAR 38:010		12 KAR 2:046
	401 KAR 38:020		12 KAR 2:051
	401 KAR 38:030		12 KAR 2:061
	401 KAR 38:040		12 KAR 2:066
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	401 KAR 38:060		12 KAR 3:017
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