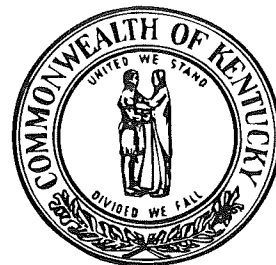


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 7  
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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA - January 6, 1997, 10 a.m.  
Room 131, Capitol Annex**

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

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**

**National Guard Tuition Assistance Program**

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

**DEPARTMENT OF LAW**

**Medical Examination of Sexual Abuse Victims**

40 KAR 3:020E. Protocol for operation of local multidisciplinary teams on child sexual abuse. (Deferred from December)

**DEPARTMENT FOR LOCAL GOVERNMENT**

**Bonds**

109 KAR 7:020. Energy conservation projects.

**GENERAL GOVERNMENT CABINET**

**Board of Hairdressers and Cosmetologists**

201 KAR 12:082 (&E). School's course of instruction.

201 KAR 12:200 (&E). Requirements for continuing education for renewal of license. (Not Amended After Hearing)

**Board of Nursing**

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

**TOURISM DEVELOPMENT CABINET**

**Department of Fish and Wildlife Resources**

**Game**

301 KAR 2:221E. Waterfowl seasons and limits. (Deferred from December)

301 KAR 2:222E. Waterfowl hunting requirements. (Deferred from December)

301 KAR 2:224E. Waterfowl hunting zones. (Deferred from December)

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

**DEPARTMENT OF AGRICULTURE**

**Linked Deposits**

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

**Livestock Sanitation**

302 KAR 20:110E. Treatment of imported mares.

302 KAR 20:120E. Treatment of imported stallions.

**ECONOMIC DEVELOPMENT CABINET**

**Linked Deposit Investment Program**

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

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**

**Department for Environmental Protection**

**Division of Water**

**Water Quality**

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5. (Amended After Hearing)

401 KAR 5:005. Permits to construct, modify, or operate a facility. (Amended After Hearing)

401 KAR 5:006. Wastewater planning requirements for regional areas. (Amended After Hearing)

**Public Water Supply**

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

401 KAR 8:030E. Water treatment plants; water distribution systems; certification of operators. (Deferred from December)

401 KAR 8:060. Variances and exemptions.

401 KAR 8:070. Public notification.

401 KAR 8:100. Design, construction and approval of facilities.

401 KAR 8:150. Disinfection and filtration.

401 KAR 8:200. Microbiological monitoring.

401 KAR 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.

401 KAR 8:300. Lead and copper.

401 KAR 8:350. Corrosivity monitoring.

401 KAR 8:400. Synthetic organic chemicals.

## ADMINISTRATIVE REGISTER - 2677

704 KAR 20:700. Standards for admission to teacher education. (Not Amended After Hearing)  
704 KAR 20:705. Admission, placement, and supervision in student teaching. (Not Amended After Hearing)

### WORKFORCE DEVELOPMENT CABINET Department for Employment Services

#### Unemployment Insurance

787 KAR 1:320E. Priority of deductions from benefits. (Deferred from December)

### LABOR CABINET

#### Department of Workers' Claims

803 KAR 25:015. Procedure in Workers' Compensation enforcement hearings. (Not Amended After Hearing) (Deferred from November)

803 KAR 25:034E. Repeal of 803 KAR 25:035.

803 KAR 25:036E. Computation of life expectancies for purposes including apportionment and attorney's fees. (Deferred from December)

803 KAR 25:091. Workers' compensation hospital fee schedule.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control

#### Licensing

804 KAR 4:330. Direct sales from out-of-state companies. (Deferred from December)

#### Malt Beverage Equipment, Supplies and Service

804 KAR 11:010. Equipment and supplies. (Not Amended After Hearing) (Deferred from November)

### Department of Insurance

#### Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060 & E. Registration of service contracts for consumer products. (Not Amended After Hearing)

#### Health Insurance Contracts

806 KAR 17:140E. Health insurance rate filing requirements. (Deferred from November)

#### Group and Blanket Health Insurance

806 KAR 18:080E. Association uniform data collection.

### Kentucky Racing Commission

#### Thoroughbred Racing

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

#### Harness Racing (Deferred from December)

811 KAR 1:020. Registration and identification of horses.

811 KAR 1:035. Claiming races.

811 KAR 1:120. Licensing of race meetings.

### Department of Housing, Buildings and Construction

#### Kentucky Building Code

815 KAR 7:101. Repeal of 815 KAR 7:100.

815 KAR 7:105. Kentucky Building Code/1997.

#### Plumbing

815 KAR 20:090. Soil, waste and vent systems.

815 KAR 20:130. House sewers and storm water piping; methods of installation.

### CABINET FOR HEALTH SERVICES

#### Long-term Care

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

#### Certificate of Need

900 KAR 6:010 & E. Certificate of need process. (Public Hearing in November)

### Department for Health Services

#### Communicable Diseases

902 KAR 2:060. Immunization schedules.

#### State Health Plan

902 KAR 17:030 & E. State Health Plan. (Public Hearing in November)

902 KAR 17:040 & E. Data reporting by health care providers. (Public Hearing in November)

#### Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services. (Public Hearing in November)

902 KAR 20:180. Psychiatric hospitals; operation and services. (Public Hearing in November)

902 KAR 20:275 & E. Mobile health services.

902 KAR 20:320 & E. Psychiatric residential treatment facility operation and services. (Public Hearing in November)

#### Hazardous Substances

902 KAR 47:080E. Training and certification requirements for individuals who perform lead-hazard detection or lead-hazard abatement. (Deferred from December)

902 KAR 47:090E. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement. (Deferred from December)

902 KAR 47:100E. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement. (Deferred from December)

## ADMINISTRATIVE REGISTER - 2679

- 401 KAR 32:010. General provisions for generators.
- 401 KAR 32:020. Manifest system.
- 401 KAR 32:030. Pretransport requirements.
- 401 KAR 32:040. Recordkeeping and reporting.
- 401 KAR 32:050. Special conditions.
- 401 KAR 32:100. Appendix on hazardous waste manifest and instructions.

### **Standards Applicable to Transporters of Hazardous Waste**

- 401 KAR 33:005. Definitions related to 401 KAR Chapter 33. (Amended After Hearing)
- 401 KAR 33:010. General provisions for transporters.

### **Standards for Owners and Operators of Hazardous Waste Storage; Treatment and Disposal Facilities**

- 401 KAR 34:005. Definitions related to 401 KAR Chapter 34. (Amended After Hearing)
- 401 KAR 34:010. General provisions for facilities.
- 401 KAR 34:020. General facility standards.
- 401 KAR 34:050. Manifest system, recordkeeping and reporting.
- 401 KAR 34:060. Groundwater protection. (Amended After Hearing)
- 401 KAR 34:070. Closure and postclosure.
- 401 KAR 34:080. General financial requirements.
- 401 KAR 34:090. Closure financial requirements.
- 401 KAR 34:100. Postclosure financial requirements.
- 401 KAR 34:120. Liability requirements. (Amended After Hearing)
- 401 KAR 34:180. Use and management on containers.
- 401 KAR 34:190. Tanks.
- 401 KAR 34:200. Surface impoundments.
- 401 KAR 34:210. Waste piles.
- 401 KAR 34:230. Landfills.
- 401 KAR 34:240. Incinerators.
- 401 KAR 34:245. Containment buildings.
- 401 KAR 34:250. Miscellaneous units.
- 401 KAR 34:275. Air emission standards for process vents.
- 401 KAR 34:280. Air emission standards for equipment leaks.
- 401 KAR 34:281. Air emission standards for tanks, surface impoundments, and containers. (Amended After Hearing)
- 401 KAR 34:287. Corrective action for waste management units.
- 401 KAR 34:290. Appendix on recordkeeping instructions.
- 401 KAR 34:360. Appendix on the list of hazardous constituents for groundwater monitoring.

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- 401 KAR 35:020. General facilities standards (IS).
- 401 KAR 35:050. Manifest system, recordkeeping and reporting (IS). (Amended After Hearing)
- 401 KAR 35:060. Groundwater monitoring (IS).
- 401 KAR 35:070. Closure and postclosure (IS).
- 401 KAR 35:080. General financial requirements (IS).
- 401 KAR 35:090. Closure financial requirements (IS).
- 401 KAR 35:100. Postclosure financial requirements (IS).
- 401 KAR 35:120. Liability requirements (IS). (Amended After Hearing)
- 401 KAR 35:180. Use and management of containers (IS).
- 401 KAR 35:190. Tanks (IS).
- 401 KAR 35:200. Surface impoundments (IS).
- 401 KAR 35:210. Waste piles (IS).
- 401 KAR 35:230. Landfill (IS).
- 401 KAR 35:245. Containment buildings (IS). (Amended After Hearing)
- 401 KAR 35:250. Thermal treatment (IS).
- 401 KAR 35:275. Air emission standards for process vents (IS).
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- 401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (IS).
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### **Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities**

- 401 KAR 36:005. Definitions related to 401 KAR Chapter 36. (Amended After Hearing)
- 401 KAR 36:020. Hazardous waste burned in boilers and industrial furnaces.
- 401 KAR 36:025. Tables and procedures associated with the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.
- 401 KAR 36:030. Recyclable materials used in a manner constituting disposal.
- 401 KAR 36:070. Spent lead-acid batteries being reclaimed.

### **Waste Management - Land Disposal Restrictions**

- 401 KAR 37:005. Definitions related to 401 KAR Chapter 37. (Amended After Hearing)
- 401 KAR 37:010. General provisions for land disposal restrictions. (Amended After Hearing)
- 401 KAR 37:030. Prohibitions on land disposal.



## ADMINISTRATIVE REGISTER - 2681

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

#### Notice of Intent

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

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

#### Filing and Publication

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

#### Public Hearing

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

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

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

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

#### Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. If the administrative regulation has been approved, it 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. If the administrative regulation has been found deficient, it shall be considered as adopted and in effect upon receipt by the Regulations Compiler of the Governor's determination that the administrative regulation should not be withdrawn but should become effective.

## ADMINISTRATIVE REGISTER - 2683

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to probationary periods is KRS Chapter 13A and 18A.0751.

(b) The administrative regulation that the Kentucky Personnel Board intends to promulgate will amend 101 KAR 1:325, Probationary periods. Section 1(2) will be amended to change the initial probationary period for the classifications of Facility Security Officer, Class Code 2311; Facility Security Officer II, Class Code 2322; Facility Security Sergeant, Class Code 2308; Facility Security Lieutenant, Class Code 2309; and Public Accounts Auditor Trainee, Class Code 9175, from six (6) to twelve (12) months.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is needed to amend Section 1(2) to provide a twelve (12) month probationary period for the classifications of Facility Security Officer, Facility Security Officer II, Facility Security Sergeant, Facility Security Lieutenant, and Public Accounts Auditor Trainee.

(d) The benefits expected from the proposed administrative regulation are: The Auditor of Public Accounts is in the process of filling numerous trainee positions that have become vacant. During the first year of employment, trainees spend more than fifty (50) percent of their time in agency sponsored training activities, thus providing an inadequate period of time to properly evaluate the knowledge, skills and abilities of the employees. By establishing a twelve (12) month probationary period for the classification of Public Accounts Auditor Trainee, the Auditor of Public Accounts would be able to accommodate the extensive training program that has been developed and is required by the profession and would be able to properly evaluate employees. The employees in the classifications of Facility Security Officer, Facility Security Officer II, Facility Security Sergeant, and Facility Security Lieutenant are responsible for the protection of persons and property on state-owned or leased property in Frankfort. Due to the number of state employees, buildings, and the nature of the work, there is an enormous amount of responsibility associated with these positions and the persons in these positions must meet high standards. By establishing a twelve (12) month probationary period for these classifications, it would allow the Kentucky State Police an adequate amount of time to properly observe and evaluate the performance of employees in determining whether permanent status should be granted.

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

## STATE BOARD OF EXAMINERS AND REGISTRATION OF ARCHITECTS

December 4, 1996

General Government Cabinet

State Board of Examiners and Registration of Architects

(1) Regulation Number and Title: **201 KAR 19:025**. Application for examination.

(2) General Government Cabinet, State Board of Examiners and Registration of Architects 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 January 21, 1997 at 841 Corporate Drive Suite 200B, Lexington, Kentucky 40503.

(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 calendar days prior to January 21, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: General Government Cabinet, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the State Board of Examiners and Registration of Architects 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 examination and registration of architects is KRS Chapter 323.

(b) The administrative regulation that the cabinet intends to promulgate will amend 201 KAR 19:025, as follows: Section 1 is amended for current board office address; Section 2 amended to simplify application submission provisions and define periods of eligibility; Section 3 deleted as new examinations do not have a scheduled time or place.

(c) The necessity and function of the proposed administrative regulation is: The application process for admission to examination need to be updated.

(d) The benefits expected from administrative regulation are: Need to be current.

(e) The administrative regulation will be implemented as follows: Public and profession notified to advise future candidates.

## ADMINISTRATIVE REGISTER - 2685

December 4, 1996

General Government Cabinet

State Board of Examiners and Registration of Architects

(1) Regulation Number and Title: **201 KAR 19:040**. Examinations required; general provisions.

(2) General Government Cabinet, State Board of Examiners and Registration of Architects 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 January 21, 1997 at 841 Corporate Drive Suite 200B, Lexington, Kentucky 40503.

(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 calendar days prior to January 21, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: General Government Cabinet, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the State Board of Examiners and Registration of Architects 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 examination and registration of architects is KRS Chapter 323.

(b) The administrative regulation that the cabinet intends to promulgate will amend 201 KAR 19:040, as follows: Sections 1, 2, and 3 amend the examination administration to computer testing service consultants.

(c) The necessity and function of the proposed administrative regulation is: The new developed examination process needed to update to use of computer service centers.

(d) The benefits expected from administrative regulation are: Need to be current.

(e) The administrative regulation will be implemented as follows: Public and profession notified to advise future candidates.

December 4, 1996

General Government Cabinet

State Board of Examiners and Registration of Architects

(1) Regulation Number and Title: **201 KAR 19:050**. Reexamination; reconsideration.

(2) General Government Cabinet, State Board of Examiners and Registration of Architects 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 January 21, 1997 at 841 Corporate Drive Suite 200B, Lexington, Kentucky 40503.

(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 calendar days prior to January 21, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: General Government Cabinet, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the State Board of Examiners and Registration of Architects 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 examination and registration of architects is KRS Chapter 323.

(b) The administrative regulation that the cabinet intends to promulgate will amend 201 KAR 19:050, as follows: Section 1 updated to redefine the period of eligibility and payments for taking the divisions of the examination.

(c) The necessity and function of the proposed administrative regulation is: The need to periodically update.

(d) The benefits expected from administrative regulation are: Need to be current.

(e) The administrative regulation will be implemented as follows: Public and profession notified to advise future candidates.

## ADMINISTRATIVE REGISTER - 2687

3. Add a February open season for coyotes.
4. Add a February beaver trapping season.
5. Allow center fire rifles for hunting groundhogs and coyotes, and repeal the requirement that hunters remove groundhog carcasses.
6. Allow field trials to begin July 1 instead of September 1.

(c) The necessity and function of the proposed administrative regulation is to bring hunting requirements at Land Between the Lakes more in line with statewide requirements.

(d) The benefits expected from the administrative regulation are improved management of game species at Land Between the Lakes and less complicated hunting regulations.

(e) This administrative regulation will be implemented by publicizing its provisions in guides, digests and other public information, with enforcement by the department's Division of Law Enforcement.

December 6, 1996

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 3:030**, Year-round season for some birds and animals.

(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 January 22, 1997 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 January 22, 1997, 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 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(1) and 150.370(1).

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:030 as follows: It will classify the copperbelly water snake as a protected species.

(c) The necessity and function of the proposed administrative regulation is to afford legal protection to a rare species as part of an interstate conservation management plan.

(d) The benefits expected from the administrative regulation are to protect the copperbelly water snake and help preclude its being listed as a federally threatened or endangered species.

(e) This administrative regulation will be implemented by publicizing its provisions in guides, digests and other public information, with enforcement by the department's Division of Law Enforcement.

December 6, 1996

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 5:040**, Selling and purchasing migratory bird and waterfowl permits.

(2) The Department of Fish and Wildlife Resources 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 January 22, 1997 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 is not received from the required number of people at least ten days prior to January 22, 1997, 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) On the request for a public hearing, a person shall state:

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing purchasing and selling licenses or permits is KRS 150.195(1) and (4).

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

## ADMINISTRATIVE REGISTER - 2689

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 by January 20, 1997, ten (10) days prior to the scheduled date of the public hearing, the public hearing will be cancelled.
  - (c) Written comments may be submitted to the address listed in item (5)(a) below, until 4:30 p.m. EST on January 30, 1997, regardless of whether a public hearing is requested or held.
- (5)(a) Persons wishing to request a public hearing, or to submit written comments, should mail their written request or written comments to the following address: Jim Villines, Technical Services Branch, Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601-4321. (Telephone (502) 564-2377 ext. 436)
- (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 for notices pertaining to administrative regulations of the Department for Surface Mining Reclamation and Enforcement may obtain a request form by contacting the department at the address listed in item (2) above.
- (7) Information relating to 405 KAR 8:001. Definitions for 405 KAR Chapter 8.
- (a) The statutory authority for 405 KAR 8:001 is: KRS 350.028, 350.465; 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.
- (b) This administrative regulation defines certain essential terms used in 405 KAR Chapter 8.
- (c) Amendments to this administrative regulation will include, but not necessarily be limited to, definitions for the terms "angle of draw," "community or institutional building," "material damage," "noncommercial building," and "occupied residential dwelling and structures related thereto." A draft of these amendments is available.
- (d) The expected benefits of these amendments are clarity, conformity to corresponding federal definitions, and more effective regulation of mining operations regarding water replacement and subsidence. A definition of "angle of draw" is not included in the federal regulations, but the term and its use are discussed at length in the preamble to the federal regulations (60 FR 16737-16741, 3/31/95).
- (e) These amendments will modify existing requirements of the cabinet's regulatory program for coal mining operations. After adoption, these modifications will be implemented through the existing regulatory program.
- (8) Information relating to 405 KAR 8:030. Surface coal mining permits.
- (a) The statutory authority for 405 KAR 8:030 is: KRS 350.020, 350.028, 350.060, 350.465; 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434; 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267.
- (b) For surface mining activities, this administrative regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and its mining and reclamation plan. This administrative regulation further specifies certain showings to be made by the applicant to obtain a permit.
- (c) A draft of the following amendments to this administrative regulation is available.
  1. Section 16 will be amended so that its requirement for information on alternative sources of water supply will be triggered by the determination of probable hydrologic consequences under amended Section 32.
  2. Section 32 will be amended to require that the applicant's determination of probable hydrologic consequences include a finding on whether the proposed mining activities may cause contamination, diminution or interruption of underground or surface sources of water supply.
- (d) The expected benefits of these amendments are clarity and conformity to corresponding federal requirements at 30 CFR 780.21(e) and 780.21(f)(3)(iii).
- (e) These amendments will modify existing requirements and procedures of the cabinet's regulatory program for coal mining operations. After adoption, these modifications will be implemented through the existing regulatory program.
- (9) Information relating to 405 KAR 8:040. Underground coal mining permits.
- (a) The statutory authority for 405 KAR 8:040 is: KRS 350.020, 350.028, 350.060, 350.151, 350.465; 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 CFR Parts 136, 434; 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267.
- (b) For underground mining activities, this administrative regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and its mining and reclamation plan. This administrative regulation further specifies certain showings to be made by the applicant to obtain a permit.
- (c) A draft of the following amendments to this administrative regulation is available.
  1. Section 16 will be amended so that a requirement for information on alternative sources of water supply (this presently is optional information for underground mines) will be triggered by the determination of probable hydrologic consequences under amended Section 32. There is no federal counterpart to this requirement for alternative water supply information for underground mines. This requirement is proposed in order to make underground mines and surface mines subject to the same requirements regarding water supply replacement, consistent with KRS 350.421 as amended by 1994 HB 338.
  2. Section 26, relating to subsidence control, will be extensively amended in response to the federal regulations at 30 CFR 784.20. Some revisions amount to restructuring or rewording of current requirements to match federal language, being little changed in substance from current requirements. A presubsidence survey is required, consisting of a map to identify structures, renewable resource lands and water supplies, a narrative to describe the possible effects of subsidence thereon, and a survey of the condition of structures and water supplies that may be damaged by subsidence. Procedural requirements for presubsidence surveys will be similar to those for preblasting surveys required under 405 KAR 16:120. The applicant must notify the property owner of the applicant's intent to conduct the survey, and advise the owner of the effect of denying the applicant access to conduct the survey. A property owner who denies the applicant access to make the survey will not be entitled to the rebuttable presumption in 405 KAR 18:210 Section 3(4) that subsidence damage, if it occurs, was caused by the permittee. If the presubsidence survey shows that structures, renewable resource lands or water supplies exist, and that subsidence, if it occurred, could

## ADMINISTRATIVE REGISTER - 2691

(12) Information relating to 405 KAR 18:060. General hydrologic requirements. (underground mines)

(a) The statutory authority for 405 KAR 18:060 is: KRS 350.028, 350.100, 350.151, 350.420, 350.465; 30 CFR Parts 701.5, 730-733, 735, 817.41, 817.45, 817.47, 817.56-.57, 917; 30 USC 1253, 1255, 1266, 1309a.

(b) This regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, prevention and control of drainage from underground workings, control of erosion and sediment, protection of streams, and control of discharges into underground workings.

(c) This administrative regulation will be amended by creating a new Section 12 regarding replacement of water supplies affected by mining. This section corresponds to the federal regulations at 30 CFR 817.41(j) and the federal definition of "replacement of water supply" at 30 CFR 701.5. A draft of the following amendments to this administrative regulation is available.

1. New subsection (1) requires the permittee or operator to promptly replace the water supply of an owner of interest in real property whose supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, if the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the underground mining activities conducted after July 16, 1994. That date is the effective date of 1994 HB 338, which amended KRS 350.421(2) to place upon underground mines the same water replacement requirements that previously had applied only to surface mines. KRS 350.421(2) is broader than the corresponding federal law at 30 USC 1309a for underground mines, which protects only drinking, domestic, or residential water supplies from a well or spring in existence prior to the application for a permit. The 1994 amendment to KRS 350.421(2) was approved by the U.S. Office of Surface Mining except to the extent that it does not provide for the "prompt" replacement of water supplies, and the decision (60 FR 33112, 6/27/95) further required the cabinet to amend its regulatory program to provide for prompt replacement.

2. New subsections (2) and (3) establish requirements for water replacement that correspond to the federal definition of "replacement of water supply" at 30 CFR 701.5. The federal definition mixes an actual definition with requirements to implement that definition. For consistency with KRS Chapter 13A and for clarity, these provisions have been structured as requirements only. Subsection (2) includes provisions that address the issue of prompt replacement. For domestic water supplies, it sets specific time frames for replacement on an emergency, temporary, and permanent basis. Corresponding specific time frames are not contained in the federal regulation itself, but are contained in the preamble discussion of the intent of the federal regulations (60 FR 16727, 3/31/95) to implement the federal Energy Policy Act of 1992. For water supplies other than domestic supplies, the cabinet will establish a schedule for replacement on a case by case basis. Subsection (2) also requires that the quantity and quality of the replacement supply be equivalent to that of the premining supply, and that an equivalent delivery system be provided. Subsection (2) further requires that the permittee pay operation and maintenance costs in excess of the customary and reasonable delivery costs for the premining supply for a period of twenty (20) years, but allows a different period of repayment if agreed to by the permittee and the owner. It allows this repayment obligation to be met by a one time payment that covers the present worth of the twenty (20) years of future payments, if agreed to by the permittee and owner, and further allows them to agree upon a time period other than twenty (20) years as the basis for the one time payment. It also allows the permittee's repayment obligation to be satisfied by other reasonable compensation arrangements that are agreed to by the permittee and owner and fairly compensate the owner for the value of the excess operation and maintenance costs. The twenty (20) year periods and certain of the payment options are not contained in the federal regulations (although 20 years is discussed in the preamble) but are being proposed in order to establish reasonable criteria that provide certainty regarding the obligations of permittees and the rights of owners, while providing them with the optional flexibility to negotiate other acceptable arrangements. Subsection (3) provides that if an affected water supply was not needed for the land use existing at the time it was affected, the permittee may satisfy replacement obligations by demonstrating that a suitable alternative water source is available and could feasibly be developed, if the owner has given written concurrence to this approach.

(d) The expected benefits of these amendments are clarification, conformity to corresponding federal requirements, and equalizing the water replacement requirements on surface mines and underground mines, consistent with KRS 350.421(2).

(e) These amendments will modify existing requirements and procedures of the cabinet's regulatory program for coal mining operations. After adoption, these modifications will be implemented through the existing regulatory program.

(13) Information relating to 405 KAR 18:210. Subsidence control.

(a) The statutory authority for 405 KAR 18:210 is: KRS 350.028, 350.151, 350.465; 30 CFR Parts 730-733, 735, 817.121-.122, 917; 30 USC 1253, 1255, 1266, 1309a.

(b) This administrative regulation sets forth requirements for prevention or control of the effects of subsidence on surface areas which overlie underground workings, including planning and conduct of specific underground mining measures to control subsidence, underground mining buffer zones for protection of important aquifers, public buildings, communities, industrial and commercial facilities, perennial streams and major impoundments, requirements for notification of surface property owners and compensation for damages to surface properties, and restoration of surface lands affected by subsidence.

(c) The amendments to this administrative regulation will address the following issues, but will not be limited to these issues. A draft of these amendments is available.

1. For noncommercial buildings and occupied residential dwellings and structures related thereto, a permittee whose operations cause subsidence damage will incur an obligation to repair or compensate for that damage, irrespective of prior waivers or contractual arrangements regarding subsidence. For other structures, a permittee whose operations cause subsidence damage will incur an obligation to repair or compensate for that damage, but the obligation will be subject to applicable provisions of Kentucky law, including the common law regarding subsidence and the law regarding contracts and waivers.

2. Where the permittee uses planned-subsidence mining methods such as longwall mining he must, in addition to his obligation to repair or compensate for subsidence damage, take measures to minimize material damage to noncommercial buildings and occupied residential dwellings and structures related thereto unless he has obtained a written waiver from the structure owner, made after the effective date of this amendment, that minimization measures need not be taken, or has demonstrated that the costs of minimization measures would exceed the costs of repair and the anticipated damage would not threaten health or safety.

3. If damage to a noncommercial building or occupied residential dwelling or structure related thereto occurs due to earth movement within an area determined by projecting the angle of draw outward from the permittee's underground workings, a rebuttable presumption is created that the permittee caused the damage. The presumption will not exist if the permittee is denied access to the land or property and is thereby prevented from conducting the presubsidence survey required under proposed 405 KAR 8:040, Section 26(1)(c). The amendment sets forth certain conditions under which the presumption will be rebutted. The presumption will normally apply to an angle of draw of thirty (30)

## ADMINISTRATIVE REGISTER - 2693

2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 22, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601.
- (b) On the request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing;" or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request 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 administrative regulations governing the Sex Offender Registration System is KRS 15A.760 and 17.510. KRS 17.510 mandates the Justice Cabinet develop and implement a Sex Offender Registration System.
- (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the procedure to develop and implement a Sex Offender Registration System. 502 KAR 31:010 contains a definition section, establishes the characteristics and elements of the form and procedures for completion of a registration form and for processing incomplete or inaccurate Sex Offender Registration information, time frames for entry of complete registration forms, and validation procedures for residence addresses maintained in the Sex Offender Registration System.
- (c) The necessity and function of the proposed administrative regulation is to develop and implement a Sex Offender Registration System as required by statute.
- (d) The benefits expected from the administrative regulation are the establishment of a uniform procedure of a Sex Offender Registration System.
- (e) The administrative regulation will be implemented as follows with an ordinary administrative regulation.

## TRANSPORTATION CABINET

January 1, 1997

### Transportation Cabinet

- (1) **600 KAR 2:010** relating to the assessment of tolls on Kentucky's remaining toll roads.
- (2) The Kentucky Transportation Cabinet intends to promulgate an amendment to administrative regulation 600 KAR 2:010 which will incorporate by reference a new fee schedule for Kentucky's remaining four toll roads. The new fee schedule will not change the amount of any tolls. The only change will be to remove from the material reference to the Green River Parkway and replace it with reference to the William Natcher Parkway.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1997 at 2:30 p.m. local prevailing time, Room 1003, State Office Building, 501 High Street, 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 January 23, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing.;" or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the assessment of fees on toll roads is KRS 175.470.
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 600 KAR 2:010. It will amend the fee schedule which is incorporated by reference by changing the name of the Green River Parkway to the William Natcher Parkway. It will further include reference to KRS 175.525 which was enacted by the 1996 General Assembly.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 175.450 authorizes the Turnpike Authority to fix, revise, charge, and collect tolls for transit over each turnpike project except to the extent this authority is surrendered to the Department of Highways pursuant to a lease. This authority has been surrendered to the Department of Highways. This administrative regulation is necessary to establish the tolls to be collected at each toll collection station for each vehicle classification. This amendment is being promulgated to change the Green River Parkway to the William Natcher Parkway in the material incorporated by reference. Further, the changes in KRS Chapter 175 as a result of the 1996 passage of House Bill 304 requires some change to the references.
- (d) The benefit expected from the change to this administrative regulation is to address, for the record, the new name of the William Natcher Parkway and the revision of KRS Chapter 175 to remove from KRS 175.520 the type of vehicles exempt from paying a toll and placing that information in KRS 175.525.
- (e) The administrative regulation will be implemented as follows: New toll schedules will be printed and distributed.
- (8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to

## ADMINISTRATIVE REGISTER - 2695

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the airport development loan program is KRS 183.213.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 602 KAR 15:010. It will address the interest rate charged for loans and whether the rate should be lowered.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 183.213 provides that the Transportation Cabinet shall promulgate administrative regulations governing airport loans made pursuant to KRS 183.200 to 183.213. This administrative regulation sets forth the application procedures, interest rate, and repayment provisions for such loans.

(d) The benefits expected from the administrative regulation are increased use of the airport development loan fund which was established to provide a ready source for local funding of airport development projects.

(e) The administrative regulation will be implemented as follows: Each eligible airport board will be allowed to submit an application for a loan from the Transportation Cabinet's Airport Development Loan Fund.

(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 November 15, 1996.

## KENTUCKY BOARD OF EDUCATION

December 6, 1996

Kentucky Board of Education

(1) **704 KAR 3:305**, Minimum unit requirements for high school graduation.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1997, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of this administrative regulation is KRS 156.070 and 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 3:305.

(c) The necessity, function and conformity of the proposed administrative regulation is to adopt minimum requirements for high school graduation. This proposed amendment relates to the establishment of minimum requirements necessary for entitlement to a high school diploma, beginning with the graduating class of 2001, and thereafter.

(d) The benefits expected from this administrative regulation are high school graduate course-taking patterns will be more in line with the expectations of employers and postsecondary institutions.

(e) The administrative regulation will be implemented as follows: Once it is promulgated, the amended regulation's requirements will be disseminated to all local school districts for use in planning and for issuance of high school diplomas beginning with the graduating class of 2001.

## EDUCATION PROFESSIONAL STANDARDS BOARD

November 25, 1996

Education Professional Standards Board

(1) **704 KAR 20:470**, Principal Intern Program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1997, at 10 a.m. in the 1st floor conference room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 21, 1997, the public hearing will be cancelled.

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



## ADMINISTRATIVE REGISTER - 2697

- (2) The Education Professional Standards Board 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 January 21, 1997, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be 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 January 21, 1997, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Betty Lindsey, Executive Secretary, Education Professional Standards Board, 1024 Capital Center Dr., Frankfort, Kentucky, 40601, 502-573-4606, fax 502-573-1610.
- (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 Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to the requirements for the issuance of the Professional Certificate for College Faculty: Secondary Education is KRS 161.028, 161.030 and 161.048.
- (b) The administrative regulation that the Education Professional Standards Board will promulgate is 704 KAR 20:555, Professional Certificate for College Faculty: Secondary Education.
- (c) The necessity and function of the proposed administrative regulation is as follows: The proposed regulation establishes the eligibility and renewal requirements for candidates seeking to participate in an alternative teacher preparation program for college faculty.
- (d) The benefits expected from the administrative regulation are: An increased number of eligible teachers for secondary education.
- (e) The administrative regulation will be implemented as follows: The regulation will be communicated by the Education Professional Standards Board to colleges, universities and local school districts.

## PUBLIC PROTECTION AND REGULATION CABINET

### Department of Insurance

December 13, 1996  
Department of Insurance

- (1) Regulation number and title: **806 KAR 3:190**, Risk-based capital for insurers.
- (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 January 21, 1997 at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
  2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to January 21, 1997, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn: Carla H. Montgomery, P.O. Box 517, Frankfort, Kentucky 40602, (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 KRS 304.2-110 and 304.3-125.
- (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will set forth requirements concerning risk-based capital.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will assist the department in determining financial strength of an insurer. It gives further protection for policyholders. The goal of the risk-based capital standards is to develop more realistic capital requirements related to the risks inherent in the insurer's operations and investments. The administrative regulation is also required for accreditation by the NAIC.
- (d) The benefits expected from the administrative regulation are: The department can better evaluate the solvency of an insurer. It establishes several levels of oversight of an insurer's financial condition for the department. It standardizes action levels so both insurers and the department know what actions will be taken. It also provides consistency among Kentucky and other states.

## ADMINISTRATIVE REGISTER - 2699

at least 10 days prior to January 30, 1997, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to nonemergency medical transportation waiver services and payments are KRS 194:050, 205.520, 42 USC 1396(b), (d), 42 CFR 440.170, EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide Medicaid recipients access to medically necessary nonemergency medical transportation services through a sole source, capitated rate process.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the coverage and payment requirements for medically necessary nonemergency medical transportation services provided pursuant to a waiver of usual Medicaid requirements.

(d) The benefits expected from administrative regulation are: Improved access to medically necessary nonemergency medical transportation services through a sole source, capitated rate system. The sole source provider system will allow local management of this service.

### Department for Mental Health/Mental Retardation Services

December 15, 1996

Cabinet for Health Services

Department for Mental Health/Mental Retardation Services

(1) **908 KAR 2:190**, Supported living.

(2) The Department for Mental Health/Mental Retardation Services 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 January 30, 1997, at 9 a.m. in the Department for Public Health 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 five 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 January 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Ellen Heslen, 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/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 American With Disabilities Act. Persons requesting assistance with Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to supported living services KRS 210.770-210.795.

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will carry out the purposes and intent of KRS 210.770 to 210.795 regarding the State Supported Living Council, Regional Supported Living Councils, and supported living applicants and recipients.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To promulgate administrative regulations governing the operations of the State and Regional Supported Living Councils and the provision of services to supported living applicants and recipients necessary for carrying out the purposes of KRS 210.770 to 210.795.

(d) The benefits expected from this administrative regulation are: To promote consistency and clarity of operating procedures and practices for the State Supported Living Council, the Regional Supported Living Councils, and supported living applicants and recipients.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by the State Supported Living Council, the Regional Supported Living Councils, and the Department for Mental Health and Mental Retardation Services.

## ADMINISTRATIVE REGISTER - 2701

alien or his spouse receives any federal means-tested public benefit.

(e) Paragraph (b) of this subsection shall not apply to a qualified alien who is lawfully residing in Kentucky and is:

1. A veteran, as defined pursuant to 38 USC 101, with an honorable discharge and not on account of alienage;

2. On active duty, other than active duty for training, in the Armed Forces of the United States; or

3. The spouse or unmarried dependent child of an individual described in subparagraph 1 or 2 of this paragraph.

(f) Pursuant to PL 104-208, §510, an alien who was participating in the Food Stamp Program on August 22, 1996, shall not be determined ineligible based solely on the alien eligibility criteria of PL 104-193, §402(a)(1), as described in paragraphs (b) through (e) of this subsection, until April 1, 1997.

(g) An individual ~~[(b) individuals]~~ whose status is questionable shall be ineligible to participate until such status has been verified;

(h) ~~[(e)]~~ A single household member shall attest in writing to the citizenship or alien status of each household member by signing the Food Stamp Application Form, which is incorporated by reference at 904 KAR 3:030.

(4) Household size. Size of household shall be verified through readily available documentary evidence or through a collateral contact;

(5) Students. Any person who meets the definition of ~~[a]~~ student status as specified in Section 1~~(4)~~ of this administrative regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or

(b) Shall participate in a state or federally financed work study program during the regular school year; or

(c) Shall be responsible for the care of a dependent household member under the age of six (6); or

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection; or

(e) Shall receive benefits from the Kentucky Transitional Assistance Program (K-TAP) ~~[Aid to Families with Dependent Children Program (AFDC)]~~;

(f) Shall be assigned to or placed in an institution of higher learning through a program pursuant to ~~[under]~~:

1. 29 USC 1501;

2. 7 USC 2015; or

3. 19 USC 2296;

(g) Shall be enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to ~~[under]~~ 42 USC 681; or

(h) Is a single parent with responsibility for the care of a dependent household member under age twelve (12).

(6) Social Security number (SSN).

(a) Households applying for or participating in the Food Stamp Program shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(7) Work registration. All household members shall be required to comply with the work registration requirements, unless exempt, pursuant to ~~[as described in]~~ 904 KAR 3:042 ~~[3:044]~~, Food Stamp Employment and Training Program.

(8) Work requirement.

(a) No individual shall be eligible to participate in the Food Stamp Program as a member of any household if, during the preceding thirty-six (36) month period, excluding any period prior to December 1, 1996, the individual received food stamp benefits in any state or territory of the United States, for not less than three (3) months, consecutive or otherwise, during which the individual did not:

1. Work twenty (20) hours or more per week, averaged monthly;

2. Participate in and comply with the requirements of the Employment and Training Program component pursuant to 7 USC 2015 (d) for twenty (20) hours or more per week, other than:

a. A job search component; or

b. A job search training component;

3. For twenty (20) hours or more per week, participate in and comply with the requirements of a program pursuant to:

a. 29 USC 1510 et seq.; or

b. 19 USC 2296; or

4. Receive food stamp benefits under paragraphs (b), (c) or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Under eighteen (18) or over fifty (50) years of age;

2. Medically certified as physically or mentally unfit for employment;

3. A parent or other member of a household with responsibility for a dependent child under the age of eighteen (18);

4. Exempt from work registration pursuant to 904 KAR 3:042, Section 2; or

5. Pregnant.

(c) Paragraph (a) of this subsection shall not apply if, under an approved waiver by the Food and Consumer Service, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or

2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility under paragraph (a) of this subsection shall regain eligibility to participate in the Food Stamp Program if, during a thirty (30) day period, the individual meets the conditions of paragraph (a)1, 2, or 3 of this subsection.

2. An individual who regains eligibility under subparagraph 1 of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1 of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility under paragraph (d)1 of this subsection and who no longer meets the requirements of paragraph (a)1, 2, or 3 of this subsection, through no fault of their own, shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a)1, 2, or 3 of this subsection.

2. An individual shall not receive any benefits under subparagraph 1 of this paragraph for more than a single three (3) month period in any thirty-six (36) month period.

(f) Nothing in this section shall make an individual eligible for food stamp benefits if the individual does not meet all other technical and financial eligibility criteria pursuant to 7 USC 2011 et seq.

(g) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: November 27, 1996

FILED WITH LRC: November 27, 1996 at 2 p.m.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

UNIVERSITY OF KENTUCKY  
Agricultural Experiment Station  
Division of Regulatory Services  
(As Amended)

12 KAR 2:006. Definitions.

RELATES TO: KRS 250.491 to 250.631  
STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1)(a) requires the Director of the Agricultural Experiment Station to promulgate an administrative regulation adopting the official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials. KRS 250.501(4) defines "commercial feed" and authorizes the director to promulgate an administrative regulation exempting commodities meeting established criteria. This administrative regulation incorporates by reference the definitions adopted by the Association of American Feed Control Officials and exempts certain commodities from the definition of commercial feed. [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 exempted by an administrative regulation promulgated by 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 exempted by an administrative regulation promulgated by the director [~~designates otherwise in specific cases~~] [areas].

Section 3. Pursuant to KRS 250.501(4), the following commodities shall be [~~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 if the ingredient is not:

- (a) [~~and when not~~] Mixed or intermixed with other materials; or
- (b) [~~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 count.

Section 5. Incorporation by Reference. (1) "Official Publication", 1996 Edition, Association of American Feed Control Officials is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

C. ORAN LITTLE, Dean and Director  
APPROVED BY AGENCY: September 12, 1996  
FILED WITH LRC: September 12, 1996 at 3 p.m.

UNIVERSITY OF KENTUCKY  
Agricultural Experiment Station  
Division of Regulatory Services  
(As Amended)

12 KAR 2:011. Label format.

RELATES TO: KRS 250.491 to 250.631  
STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulations establishes [~~To establish~~] a uniform format for presentation of labeling to the purchaser of animal feeds.

Section 1. A commercial feed, 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, in conformance with [~~as stipulated in~~] 12 KAR 2:016;

- (2) If a drug is used [~~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 required by [~~stipulated in~~] 12 KAR 2:017;

- (4) If a drug is used:

- (a) [~~(b)~~] The purpose of medication (claim statement); and
- (e) 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 by [~~under the provisions of~~] KRS 250.521(1)(b) [~~(e)~~] and [~~stipulated in~~] 12 KAR 2:018; include the following items, unless exempted in paragraph (h) of this 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

## ADMINISTRATIVE REGISTER - 2705

Section 4. The word "protein" shall not be used in the product name of a feed that contains added nonprotein nitrogen.

Section 5. (1) If the name carries a percentage value, the percentage value shall signify the protein or equivalent protein content, and the name may explicitly modify the percentage with the word "protein".

(2) If another percentage value is used, the value shall be followed by the proper description without false or misleading labeling.

(3) If [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.

(4) A digital number shall not be used in [such] a manner that is [as to be] misleading or confusing to the purchaser.

Section 6. A single ingredient feed shall have a product name that conforms to the definitions of feed ingredients in 12 KAR 2:006. [~~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 may ~~[can]~~ be used ~~[only]~~ in the name of a feed which is:

(1) Represented to be a vitamin supplement; and

(2) [which is] Labeled with the minimum content of each vitamin declared, as specified in 12 KAR 2:021, Section 3.

Section 8. (1) The term "mineralized" shall not be used in the name of a feed, except for "trace mineralized salt."

(2) A product including "trace mineralized salt" in its name shall [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" or ~~[and]~~ "meat by-products" shall ~~[be qualified to]~~ designate the animal from which the meat or ~~[and]~~ meat by-products is derived unless the meat or ~~[and]~~ meat by-products are from cattle, swine, sheep, and goats.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: September 12, 1996

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UNIVERSITY OF KENTUCKY  
Agricultural Experiment Station  
Division of Regulatory Services  
(As Amended)

12 KAR 2:017. Product purpose statement.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial

feeds. This administrative regulation establishes uniformity in the product purpose statement that is a required part of the label for commercial feed. [~~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 may describe ~~[shall have flexibility in describing]~~ in more specific and common language the defined animal class, species and purpose if the description is [while being] consistent with the category of animal class established in [defined in] 12 KAR 2:018, including the [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) may be omitted ~~[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:

(1) The nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds; and

(2) 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, including ~~[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.

shall include the:

- (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, if the ~~[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); and
- (j) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

Section 5. Required Guarantees for Dairy Formula Feeds. (1) The animal classes for dairy cattle shall be:

- (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; and
  - 2. Grower 2 - more than twelve (12) months of age;
- (e) Lactating dairy cattle; and
- (f) Nonlactating dairy cattle.

(2) The guaranteed analysis for veal and herd milk replacer shall include the:

- (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; and
- (f) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(3) The guaranteed analysis for dairy cattle complete feeds and supplements shall include the:

- (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); and
- (i) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(4) The guaranteed analysis for dairy mixing and pasture mineral (if added) shall include the:

- (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, if the ~~[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); and
- (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) The equine animal classes shall be:

- (a) Foal;

- (b) Mare;
- (c) Breeding; and
- (d) Maintenance.

(2) The guaranteed analysis for equine complete feeds and supplements (all animal classes) shall include the:

- (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); and
- (i) Minimum vitamin A, other than the precursors of vitamin A, in international units per pound (if added).

(3) The guaranteed analysis for equine mineral feed shall include the:

- (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, if the ~~[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); and
- (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) The animal classes for goats and sheep shall be:

- (a) Starter;
- (b) Grower;
- (c) Finisher;
- (d) Breeder; and
- (e) Lactating.

(2) The guaranteed analysis for goat and sheep complete feeds and supplements (all animal classes) shall include the:

- (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, if the ~~[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); and
- (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) The duck animal classes shall be:

- (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;

and

- (e) Breeder - twenty-two (22) weeks to end of lay.

(2) The geese animal classes shall be:

- (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;

UNIVERSITY OF KENTUCKY  
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Division of Regulatory Services  
(As Amended)

12 KAR 2:021. Guarantees.

RELATES TO: KRS 250.491 to 250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.521(1)(b) requires that a commercial feed label contain a guaranteed analysis stated in terms the director by administrative regulation determines are required to advise the user of the composition of the feed or to support claims made in the labeling. This administrative regulation establishes a uniform format for the expression of nutritional guarantees required as a part of the commercial feed label. [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.] If [When] the calcium, [and/or] salt, and sodium guarantees are given in the guaranteed analysis, the guarantee [such] shall be stated and conform to the following:~~

~~(a) If [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) [(4)] If [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)] If [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) If [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) if [when] the concentration is less than 10,000 ppm and in percentage if [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) shall [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 D<sub>3</sub> 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 shall be stated in milligrams or micrograms per pound.~~

~~(6) All other vitamin guarantees shall express the vitamin activity in milligrams per pound for [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 pound 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 if [in these 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 shall [may] be guaranteed as follows: Equivalent Crude Protein from Nonprotein Nitrogen, minimum \_\_\_\_\_%.

(c) Ingredient sources of nonprotein nitrogen including [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 crude protein from all forms of nonprotein nitrogen from ammonium



Section 10. ~~If [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.

**Section 11. Incorporation by Reference.** (1) "Official Publication", 1996 Edition, Association of American Feed Control Officials, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

C. ORAN LITTLE, Dean and Director  
APPROVED BY AGENCY: September 12, 1996  
FILED WITH LRC: September 12, 1996 at 3 p.m.

UNIVERSITY OF KENTUCKY  
Agricultural Experiment Station  
Division of Regulatory Services  
(As Amended)

**12 KAR 2:036. Nonprotein nitrogen.**

RELATES TO: KRS 250.491 to 250.631  
STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes requirements for the safe use of nonprotein nitrogen in ruminant ration. [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 shall be [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. ~~[(+)]~~ A label shall bear adequate directions for the safe use of a feed and the precautionary statement "Caution: Use as Directed", if:

(1) The commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of nonprotein nitrogen; or

(2) The equivalent crude protein from all forms of nonprotein nitrogen exceeds one-third (1/3) of the total crude protein. [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, if [when] so indicated, shall be [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 1.25 percent of the total daily ration.

Section 4. [(2)] The directions for use and the caution statement shall be typed and placed on the label in a manner that can [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 ~~that [such as those for medicated feeds which]~~ bear adequate feeding directions ~~[and]~~ for warning statements, the presence of added nonprotein nitrogen shall not require a duplication of the feeding directions or the precautionary statements if the [as long as these] 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.

**PERSONNEL BOARD  
(As Amended)**

**101 KAR 1:365. Appeal and hearing procedures.**

RELATES TO: KRS Chapter 13B, 18A.075, 18A.0751, 18A.095  
STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 provides that [requires] the Personnel Board shall [te] promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 provides [specifies] that the Personnel Board shall promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation establishes Personnel Board hearing procedures.

Section 1. Filing. [General Provisions.] (1) ~~[(a)]~~ Appeals and documents related thereto shall be filed with the Personnel Board through the office of the executive director.

(2)(a) [(b)] Appeals, motions, requests, objections, exceptions, responses, witness lists, or other documents may be filed by a party with the board by means of facsimile transmission.

(b) If a party transmits a document to the board by facsimile transmission, he [An attempt] shall attempt [be made by the party] to transmit the document [such documents] to all parties by facsimile transmission [in like manner].

(3) [(e)] To be timely filed, a document transmitted by facsimile shall [must] be received by the board within the statutory or regulatory times specified for filing and [must] be received by the board no later than midnight on the last day for filing.

(4) [(d)] The original of all facsimile transmissions shall be received by the Personnel Board no later than three (3) business days after transmission or the document transmitted shall [may] be voided unless good cause is shown.

(5) The date of filing of a document filed by facsimile transmission shall be the date the original of the document was received by the board, if the board fails to receive the facsimile transmission.

~~[(e) Failure of the board's facsimile equipment to receive a document shall be at the risk of the sender, in which case receipt of the original by the board shall prevail.]~~

(6) A state employee shall not use [(f) Nothing in this section shall be construed to permit the use of] state time, equipment, materials, or personnel ~~[by state employees]~~ in pursuing an appeal.

(7) All appeals shall be heard in Frankfort, Kentucky.

~~[(2)] [(a) All appeals shall be heard in Frankfort, Kentucky.]~~

~~(b) An appeal shall be filed on "Kentucky Personnel Board Appeal Form".~~

~~(3) If the appeal form has been signed by an attorney indicating that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices,~~



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the board through the office of the executive director within twenty (20) days of entry of the recommended order, and served on all parties.

(5)(a) If the recommended order entered by the hearing officer recommends immediate reinstatement and the appointing authority objects to this recommendation, it shall file a written request that reinstatement be stayed until appeals are exhausted.

(b) The objection and request shall:

1. Completely state the grounds relied upon by the appointing authority; and

2. Be filed with the board and served upon the appellant or his counsel within fifteen (15) days of date the recommended order is entered.]

Section 6. ~~[6-]~~ [6-] Board Review and Action. A final ~~[Following consideration by the full board, a final order shall be entered disposing of the appeal. The]~~ order shall be prepared, executed and entered at the direction of the board by the secretary to the board. ~~[Copies of the order shall be transmitted to all parties by the executive director.]~~

Section 7. ~~[6-]~~ [7-] Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Kentucky Personnel Board Appeal Form (3-25-91)"; and

(b) "Kentucky Personnel Board Subpoena Form (2-90)" ~~[are incorporated by reference].~~

(2) These forms may be inspected, copied or obtained at the office of the Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[Monday through Friday.]~~

PETE B. OWENS, Chairman

APPROVED BY AGENCY: September 13, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

### TOURISM CABINET Department of Fish and Wildlife Resources (As Amended)

**301 KAR 1:016. Use of public lands and waters at department-owned lakes.**

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation governs private boat docks on department-owned property [waters], the use of lake water for domestic purposes and permitted and prohibited activities on department-owned and controlled land surrounding department-owned waters. ~~[This amendment is necessary to place a term of five (5) years on boat dock permits, specify procedures for applying for and cancelling boat dock permits, limit dock size, delete the limits on the number of boats permanently moored at docks, and bring the wording and formatting requirements into compliance with KRS Chapter 43A-]~~

Section 1. Definitions. (1) "Adjacent property owner" means the owner of real property that shares a common boundary with department property.

(2) "Boat dock" means a privately owned floating or fixed structure in a lake owned, leased or otherwise controlled by the department.

(3) "Department property" means lands or waters owned, leased

or otherwise controlled by the department at the [and surrounding] public fishing lakes listed in Section 2 of this administrative regulation.

(4) "Enclosed superstructure" means a roofed structure with solid, glass, screen or similar walls, but does not include dock boxes and similar storage containers less than four (4) feet high.

(5) "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

Section 2. Boat Dock Permits. (1) An adjacent property owner may construct a boat dock on department property if his [their] property:

(a) Would be lake-front property if not for the intervening department property;

(b) Shares at least a fifty (50) foot boundary with department property; and

(c) ~~[(b)]~~ Is located at one (1) of the following lakes:

1. Beaver;

2. Boltz; ~~[Bullock Pen.]~~

3. Carpenter;

4. Corinth;

5. Elmer Davis;

6. Guist Creek;

7. Kincaid;

8. Kingfisher; or

9. Malone.

(2) A boat dock permit:

(a) ~~[Shall cost twenty-five (25) dollars.]~~

(b) ~~[Shall be valid for the year of issue and five (5) additional calendar years.]~~

(c) ~~[(d)]~~ Shall entitle the holder to construct one (1) boat dock meeting the specifications described in Section 4 of this administrative regulation.

(b) ~~[(d)]~~ May be renewed by:

1. Paying the ~~[appropriate]~~ fee as specified in 301 KAR 3:022; and

2. Submitting an affidavit that an unauthorized addition or modification has [have] not been made to the dock or walkway.

(3) A person who owns multiple contiguous properties adjacent to department property shall:

(a) ~~[Shall]~~ Not be issued more boat dock permits than the number of dwellings on those properties.

(b) ~~[Shall]~~ Be entitled to one (1) boat dock permit if there is no dwelling [are no dwellings] on his contiguous properties.

(4) A person who constructed a boat dock under a permit issued before July 1, 1996, [Existing boat dock permits shall expire on June 30, 1996.]

~~[(5) Holders of existing boat dock permits] shall:~~

(a) Reapply for a new permit; and

(b) Bring his dock ~~[after July 1, 1996; and]~~

~~[(b) Bring their docks]~~ into compliance with the specifications of this administrative regulation by December 31, 1997, except that a dock [docks] built before July 1, 1996 [the effective date of this administrative regulation] may exceed:

1. ~~[Exceed]~~ The single dimension limit specified in Section 4 of this administrative regulation by two (2) feet; or

2. ~~[Exceed]~~ The square footage limit specified in Section 4 of this administrative regulation by thirty-two (32) square feet.

Section 3. Constructing Boat Docks. (1) A person [Persons] wishing to construct a boat dock shall:

(a) Submit a boat dock application on forms provided by the department, accompanied by:

1. The permit fee; and

2. Proof that the applicant's property is adjacent to department lands.

(b) Not begin construction until he has been [they are] issued a construction permit from the department. This permit shall be in

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STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620, 1996 Ky. Acts ch. 380, Part IX, 48.b., Commonwealth Budget Final Budget Memorandum, FB 94-96, page 537

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize ~~require~~ the department to promulgate administrative regulations governing wild turkey hunting. The function of this administrative regulation is to assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state. [This amendment is necessary to designate currently appropriate turkey hunting requirements and seasons for specific counties and wildlife management areas, and to comply with the wording and formatting requirements of KRS Chapter 13A.]

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

(2) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

(3) "Modern gun deer season" means the five (5) or ten (10) day period, as specified in 301 KAR 2:172, when deer hunting with modern firearms is permitted.

(4) "Quota hunt" means a hunt whose participants register in advance and are selected by a drawing.

(5) "Statewide seasons" mean the provisions of Sections 1 through 8 of this administrative regulation.

(6) "Youth hunt" means a hunt open to persons at least ten (10) years old but who have not reached their 16th birthday by the day of the hunt. ["Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.]

~~(2) "Quota hunt" means a hunt whose participants register in advance and are selected by a drawing.~~

~~(3) "Statewide seasons" mean the provisions of Sections 1 through 7 of this administrative regulation.~~

~~(4) "Youth hunt" means a hunt open to persons at least ten (10) years old but who have not reached their 16th birthday by the day of the hunt.~~

~~(5) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.]~~

Section 2. ~~[Seasons and Counties Open to]~~ Wild Turkey Hunting Statewide Seasons and Shooting Hours. (1) A person shall not take wild turkeys:

(a) Except on the dates and during the times specified:

1. In this section;
2. In Section 9 of this administrative regulation; or
3. In 301 KAR 2:111.

(b) By means other than those specified in this administrative regulation.

~~(2) [Season dates and shooting hours.~~

~~(a) Spring[?] gun and archery season. A person may take wild turkeys:~~

~~(a) For twenty-one (21) [fourteen (14)] consecutive days beginning on the Monday closest to April 15. [the third Wednesday in April]~~

~~(b) From: one-half (1/2) hour before sunrise until 1 p.m.~~

~~(c) Using firearms or archery equipment subject to the restrictions of Section 6 of this administrative regulation.~~

~~(3) Fall archery season. A person may take wild turkeys:~~

~~(a) From [the] Archery only,] October 1 through December 31 [November 30], except during the modern gun deer season[; daylight hours].~~

~~(b) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.~~

~~(c) Using archery equipment subject to the restrictions of Section 6 of this administrative regulation.~~

~~[(2) During the 1995 spring and fall seasons, the following~~

counties and portions of counties are open to turkey hunting: Adair, Allen east of Highway 31E, Anderson, Ballard, Barren north of I-65 and Barren south of the Cumberland Parkway, Bath south of I-64, Bell, Boone, Boyd south of I-64, Boyle except west of Highway 68, Braeken, Breathitt east of Highway 15, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Campbell, Carroll, Carter north of I-64, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess north of Highway 54, Edmonson, Elliott, Estill, Fayette, Floyd except east of Highway 80 and south of Highway 460, Franklin except south of Highway 12 O'Nan's Bend Road and west of Kentucky River, Fulton, Gallatin, Garrard, Grant north of Highway 22 and west of I-75, Graves, Grayson, Green, Hancock southeast of Highway 1380, Hardin, Harlan, Harrison east of Highway 27, Hart, Henry, Henderson west of Highway 41, Hickman, Hopkins, Jackson north of Highway 30, Jefferson, Jessamine south of Highway 160, Johnson north of Highway 460 and west of Highway 23, Kenton, Knott, Knox south of Highway 25E and east of Highway 11, and north of Highway 25E and east of Highway 223, Larue except south of Highway 61 and west of Highway 31E, Laurel west of I-75, Lawrence, Lee west of Highway 11, Letcher, Lincoln, Livingston, Logan, Lyon, Madison east of I-75, Mageffin south of Mountain Parkway west of Salyersville and south of Highway 114 east of Salyersville, Marion, Marshall, Martin, Mason, McLean south of Highway 138 and west of Highway 81, McCracken, McCreary, Meade, Menifee, Mercer except south of Highway 1160 and west of Highway 127, Metcalfe, Monroe, Morgan north of the Licking River, Muhlenberg, Nelson, Ohio, Oldham, Owen, Owsley, Pendleton, Perry, Pike east of Highway 23, Powell, Pulaski except north of Highway 80 and west of Highway 461, Robertson, Reekcastle west of I-75 and Reekcastle east of Highway 1055, Rowan, Russell, Scott east of I-75, Shelby, Simpson west of Highway 31W, Spencer, Taylor, Todd, Trigg, Trimble, Union north of Highway 360 east of Uniontown, Warren north of Highway 80 and west of Highway 185, Washington, Wayne, Webster west of Highway 41A, Whitley north of the Cumberland River and west of I-75, Wolfe north of Mountain Parkway and west of Highway 746, and Woodford.

~~(3) All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 8 of this administrative regulation.~~

~~(4) In 1996 and subsequent years, all counties shall be open to wild turkey hunting.]~~

Section 3. Permit Requirements. Unless exempted by KRS 150.170, a person hunting wild turkeys:

(1) During the spring season shall possess a spring turkey hunting permit.

(2) During the fall season shall possess a fall turkey hunting permit.

Section 4. Bag and Possession Limits. Except as specified in Section 9 [8] of this administrative regulation and by 301 KAR 2:111, a person shall not take more than:

(1) One (1) turkey per day;

(2) Two (2) turkeys with visible beards during the spring season;

(3) Two (2) turkeys ~~[One (1) turkey]~~ of either sex during the fall archery season.

Section 5. ~~[4.]~~ Juvenile Hunters, Tagging and Checking. (1) An adult shall accompany and maintain control of turkey hunters under sixteen (16) years of age.

(2) After taking wild turkeys, and before moving the carcass, a person ~~[persons]~~ shall:

(a) Cut, punch, or mark with ink or indelible pencil the number and month on the carcass tag portion of the turkey permit corresponding to the current date. ~~[Immediately attach the transportation tag portion of the turkey permit to the carcass.]~~

(b) Attach the tag to the carcass:

1. While transporting the turkey by vehicle; or

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(8) Green River Wildlife Management Area~~[-Adair and Taylor Counties. Statewide seasons apply except as noted in this subsection].~~

(a) This area shall be open during statewide spring and fall seasons.

(b) Quota youth hunt, the Saturday and Sunday before [weekend preceding] the Monday closest to [third Wednesday in] April 15.

(c) An applicant ~~[(b) Appleeante]~~ for the quota youth hunt shall participate in a drawing held at 1 p.m. on the ~~[first]~~ Saturday closest to ~~[(a)]~~ April 1 on the area.

(d) ~~[(e)]~~ Shooting hours for the youth hunt shall be [are] one-half (1/2) hour before sunrise until noon.

(e) A person ~~[(d) Persons]~~ participating in the youth hunt shall:

1. ~~[Shall]~~ Check in and out daily.
2. ~~[Shall]~~ Not take more than one (1) turkey.

(9) Higginson-Henry Wildlife Management Area~~[-Union County]. Statewide seasons apply except that a person:~~

(a) Shall not use firearms to hunt turkeys or possess firearms while turkey hunting. [Seasons, archery only.]

1. The third Wednesday in April for nineteen (10) consecutive days.

2. October 1 through November 30, except during gun deer hunts.]

(b) May hunt wild turkeys during the modern gun deer season.

(c) Shall not hunt wild turkeys on days when the area is open to gun deer hunting.

(c) ~~[(Turkey hunters)]~~ Shall check in and check out daily.

(10) Land Between the Lakes~~[-Trigg and Lyon Counties].~~

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April ~~[and ending before the third Wednesday in April].~~

2. Up to sixteen (16) days between the first Saturday in April and the second Saturday in May. [Fourteen (14) consecutive days beginning on the third Wednesday in April.]

(b) A person shall: ~~[(Turkey hunters)]~~

1. ~~[Shall]~~ Check in and out.

2. ~~[Shall]~~ Hunt in assigned areas.

3. ~~[Shall]~~ Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.

4. ~~[Shall]~~ Affix a Land Between the Lakes game check card and the carcass tag portion of the turkey permit ~~[a state transportation tag] to the carcass.~~

5. ~~[Shall take turkey only during daylight hours.]~~

6. ~~[Shall]~~ Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(11) Pioneer Weapons Wildlife Management Area~~[-Bath and Menifee Counties]. Statewide seasons apply except that a person [turkey hunters]:~~

(a) Shall not use breech-loading shotguns.

(b) May use crossbows with working safety devices.

(12) Reelfoot National Wildlife Refuge~~[-Fulton County].~~

(a) Season: quota hunt, the Friday closest to April 1 for three (3) consecutive days.

(b) A person shall ~~[(Turkey hunters)]~~:

1. ~~[Shall]~~ Not take more than one (1) turkey.

2. ~~[Shall]~~ Obtain written permission from the area manager [Reelfoot permits] before hunting.

(13) ~~[(Redbird Wildlife Management Area, Clay and Leslie Counties. Statewide seasons apply.)]~~

~~[(14)]~~ Swan Lake Wildlife Management Area shall be [-Ballard County, is] closed to turkey hunting.

~~[(14)]~~ ~~[(15)]~~ West Kentucky Wildlife Management Area shall be [-McCracken County, is] closed to turkey hunting.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

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

## JUSTICE CABINET Department of State Police (As Amended)

**503 KAR 6:020. Application for license to carry concealed deadly weapon.**

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4) requires the Department of State Police to establish the application form for a license to carry a concealed deadly weapon. This administrative regulation establishes the application form and procedures. [KRS 237.110(4) mandates the Department of State Police to promulgate by administrative regulation the form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the characteristics and elements of the form and procedures for completion of an application form.]

Section 1. (1) Application forms shall not be stored in an area accessible to the public.

(2) Except as permitted by Section 10 of this administrative regulation, an application form shall not be removed from the office of the sheriff.

Section 2. An Application Form #52476 shall be identified by a unique number that shall be:

- (1) Expressed on the application form as a bar code that contains the application number;
- (2) Used as the identifying number for the applicant; and
- (3) Machine and human readable.

Section 3. A sheriff shall not issue an application form to an applicant or accept an application fee if:

- (1) An applicant does not meet the requirements established by KRS 237.110(2)(a), (b) and (f); or
- (2) The sheriff has verified that an applicant is:
  - (a) Disqualified for licensure pursuant to KRS 237.110(2)(c), (d), (e), (g), (h), and (3); or
  - (b) Subject to a domestic violence order or emergency protective order issued pursuant to KRS Chapter 403; or
  - (3) Unless exempted by KRS 237.110(2)(f), an applicant has not submitted the material required by KRS 237.110(5); or
  - (4) Verification that an applicant is a resident is not made by:
    - (a) Submission of a valid Kentucky drivers license, or nondriver identification card issued by a circuit court clerk pursuant to KRS 186.410; or
    - (b) Personal knowledge of the sheriff; or
    - (c) Confirmation by another governmental agency; or
    - (5) Verification of an applicant's Social Security number is not made by submission of:
      - (a) The applicant's Social Security card; or
      - (b) Governmental agency document that contains an applicant's name and Social Security number; or
      - (6) Verification of an applicant's age is not made by submission of:
        - (a) The items specified by subsection (4) of this section; or
        - (b) A birth certificate or other evidence of birth issued by a governmental agency.

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ation of a determination by a sheriff that a person is not eligible to complete an application for a license to carry a concealed deadly weapon. [KRS 237.110(2), (3) and (10) mandates the Department of State Police to promulgate by administrative regulation the form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the procedures to be followed by a sheriff for completion and submission of an application form and a review process for persons denied an application form by a sheriff.]

Section 1. If a sheriff determines that a person is not eligible to complete an application for a license to carry a concealed deadly weapon pursuant to the provisions of KRS 237.110(2), (3), and (10), and 503 KAR 6:020, he shall:

- (1) Provide the person with a "CCDW Consideration Request Form";
- (2) Request that the person complete section "Citizen Portion" in his presence; [and]
- (3) Place the completed "CCDW Consideration Request Form" and related material, if applicable, in a "Single Applicant Packet" provided by the department; and
- (4) Transmit the completed "single applicant packet" to the department on the date established by the "Mailing Schedule Form" following completion of the "CCDW Consideration Request Form".

Section 2. A person who has been determined ineligible may attach material establishing that he is qualified to complete an application for a license to carry a concealed deadly weapon [license].

Section 3. Within twenty (20) working days of receipt of the "CCDW Consideration Request Form" and related material, if applicable, the department shall:

- (1) Review the "CCDW Consideration Request Form" and related material, if applicable; and
- (2) Notify in writing the person requesting consideration and the sheriff of its determination.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CCDW Consideration Request Form (8/13/96)"; and
  - (b) "Mailing Schedule Form (8/13/96)".
- (2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

**JUSTICE CABINET**  
**Department of State Police**  
**(As Amended)**

**503 KAR 6:060. Incomplete application for license to carry concealed deadly weapon.**

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4), requires the Department of State Police to establish the application form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the: (1) reasons an application form shall be deemed incomplete; and (2) action to be taken by the department. [KRS 237.110(4) mandates the Department of State Police to promulgate

~~by administrative regulation the form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the factors that render the form incomplete and procedures for completion of an application form.]~~

Section 1. An application form shall not be considered complete if:

- (1) It:

~~(a)]~~ does not contain the information required by 503 KAR 6:020;

or

- (2) It ~~(b)]~~ contains erroneous information; or

(3) ~~(2)]~~ An item of the application form cannot be read or understood.

Section 2. If the department determines that an application form is incomplete pursuant to the provisions of Section 1 of this administrative regulation, the department shall notify the sheriff who transmitted the application form and the applicant on "Missing Information Notice Form" of the:

- (1) Reason the application form has been determined to be incomplete; and
- (2) The action required to complete the application form.

Section 3. Incorporation by Reference. (1) ~~The following material is incorporated by reference:~~

~~(a)] "Missing Information Notice Form (8/13/96)"~~ is incorporated by reference. ~~(b)]~~

(2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

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**JUSTICE CABINET**  
**Department of State Police**  
**(As Amended)**

**503 KAR 6:080. Replacement and renewal of license to carry concealed deadly weapon.**

RELATES TO: KRS 237.110(4), (8), (9), (11)

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4), (8), and (9) require the Department of State Police to establish the procedures for: (1) replacement of a lost or stolen license to carry a concealed deadly weapon; and (2) changes in required information relating to licensure to carry a concealed deadly weapon. This administrative regulation establishes the procedures and forms for these subject matters. [KRS 237.110(4), (8), (9) and (11) mandate the Department of State Police to promulgate by administrative regulation the form and procedures for replacement of lost or stolen and changed information of a licensee and renewal of a license to carry a concealed deadly weapon. This administrative regulation establishes the characteristics and elements of the forms and procedures for replacement and renewal of a licensee.]

Section 1. Lost or Stolen License. (1) If a license is lost or stolen, a licensee shall notify the department on "CCDW Request for Lost/Stolen License Replacement Form".

- (2) A licensee shall:

(a) Complete the "CCDW Request for Lost/Stolen License Replacement Form" in the presence of the sheriff;

(b) State whether the license has been lost or stolen, and the circumstances relating to the loss or theft;

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license to carry a concealed firearm or other deadly weapon if the licensee fails to meet the criteria established by [in] KRS 237.110(2) and (3). This administrative regulation establishes the: (1) procedures for the revocation by the department of a [re-issued] license to carry a concealed deadly weapon; and (2) [the] reinstatement of a revoked license.

Section 1. If the department determines that it will [shall] revoke a license [because the licensee fails to meet those criteria specified in KRS 237.110(2) and (3)], the department shall notify the licensee and sheriff on a "Notice of Revocation Form" [of the]:

- (1) Of the reason for the revocation; and
- (2) The date of revocation; and
- (3) That the licensee may request reconsideration of the revocation by the department by the [a-specific] date specified by the department by completing the [Section] "Request for Reconsideration Section" of the "Notice of Revocation Form" in the presence of the sheriff.

Section 2. If a [the] licensee completes the [section] "Request for Reconsideration Section" of the "Notice of Revocation Form" the [a] sheriff shall:

- (1) Place the completed "Notice of Revocation Form" and related material, if applicable, in a "single applicant packet" provided by the department; and
- (2) Transmit the completed "single applicant packet" to the department on the date established by the "Mailing Schedule Form".

Section 3. License Expiration. If a license is revoked, the date of its expiration shall not be extended. [Revocation Not to Change Expiration Date. In instances of license revocation, the date of expiration shall not be extended to accommodate the time of revocation.]

Section 4. (1) A revoked license shall be reinstated by the department upon:

(a) Receipt of an order from the appropriate court to terminate the revocation; or

(b) Determination by the department to reinstate the license after a request for reconsideration of the revocation.

(2) If a license is reinstated, the department shall notify the applicant and sheriff. [License Reinstatement. Upon receipt of an order from the appropriate court to terminate the revocation or upon successful reconsideration by the Department of State Police, the license shall be reinstated into the LINK System by the Department of State Police and the applicant and sheriff shall be so notified.]

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Notice of Revocation Form (8/13/96)"; and
- (b) "Mailing Schedule Form (8/13/96)".

(2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (As Amended)

#### 601 KAR 11:020. Commercial driving history record.

RELATES TO: KRS 281A.100

STATUTORY AUTHORITY: KRS 186.018, 281A.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.100

requires the Transportation Cabinet to furnish a commercial driving history record to certain persons [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.

Section 1. Employer or Prospective Employer. (1) In order for the Transportation Cabinet to provide a copy of a ten (10) year commercial driving history record to a commercial driver's employer or prospective employer, a commercial driver shall sign a statement authorizing the cabinet to provide a copy of his complete ten (10) year driving history record to:

(a) His employer;

(b) A prospective employer; or

(c) Another person.

(2) The statement shall be submitted to the cabinet prior to release of the record. [the commercial driver shall sign a statement that the firm or person applying for the commercial driving history record is his employer or prospective employer.]

Section 2. Unauthorized Persons. A person not authorized in writing to receive a complete copy of a driver's commercial driving history record may apply for a certified abstract in accordance with KRS 187.310. [Authorized Persons. Any person authorized in writing by a commercial driver may apply for a copy of the commercial driver's complete driving history.]

Section 3. Unauthorized Persons. Any person or company not authorized in writing by a commercial driver to receive a copy of his commercial driving history record may apply for a copy of the commercial driver's three (3) year driving history record authorized by KRS 187.310. The driving history record shall include entries of the last three (3) years relating to commercial as well as noncommercial vehicles.

Section 4. Other Licensing Jurisdictions, Courts and Police Agencies. (1) The driving history record of a commercial driver shall be provided to another licensing jurisdiction on a reciprocal basis.

(2) The driving history record of a commercial driver shall be provided to a court or police agency without charge.

Section 5. Fee. [(1) Except as provided in Sections 4 of this administrative regulation and subsection (2) of this section.] The fee for obtaining a driving history record of a commercial driver shall be three (3) [five (5)] dollars. The fee shall be paid prior to the issuance of the commercial driving history record.]

[(2) Any person submitting a request for driving history records of commercial drivers by any method of data processing recording media adaptable to the Transportation Cabinet's system shall be given a ten (10) cent reduction in cost per record. These persons may be billed periodically by the Transportation Cabinet for all driving history records purchased.]

Section 3. Fee. (1) The fee for obtaining a driving history record for a commercial driver shall be three (3) dollars.

maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade, time of late arrival, time of early departure, parent or legal guardian signature and ~~[any]~~ other information ~~[which may be]~~ required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity which has been authorized by the local board of education and is a definite part of the instructional program of the school; or

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035.

(5) Even if a pupil's absence is due to factors beyond the pupil's control, including ~~[such as]~~ inclement weather or failure of the transportation system to operate, the pupil shall be counted absent.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 7. (1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of instructional time in the regularly scheduled school day for his grade level.

(2) A tardy shall be recorded for a pupil who is absent one (1) to thirty-four (34) percent of instructional time in the regularly scheduled school day for his grade level.

(3) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of instructional time in the regularly scheduled school day for his grade level.

(4) A full-day absence shall be recorded for a pupil who is absent eighty-five (85) to 100 percent of instructional time in the regularly scheduled school day for his grade level.

(5) The percentages described in this section apply to the regularly scheduled instructional day approved by the local board of education and is applicable to entry level through grade level twelve (12).

Section 8. A local board of education may permit released time as an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. Released time shall not be included in calculating the district's average daily attendance.

Section 9. A local board of education may permit shared time as an arrangement in which a pupil concurrently attends a public common school part time and a nonpublic school part time pursuing part of his education under the direction and control of the public common school and part of his education under the direction and control of the nonpublic school. The time the student is served by the public school district shall be included in calculating the district's average daily attendance.

Section 10. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability ~~[disabilities]~~ in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month. ~~[The attendance shall be counted in the public school the child would otherwise attend in the district of residence.]~~

Section 11. (1) If a local school district enrolls a pupil in the entry level program who ~~[that]~~ will not be five (5) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age by October

1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(3) If a local school district enrolls a pupil that is at least twenty-one (21) years of age, the aggregate days attendance for the pupil upon age twenty-one (21) and following shall not be included in calculating the district's average daily attendance.

Section 12. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education prior to November 1 of each year.

Section 13. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education prior to November 1 of each year. The written agreement shall include the names of nonresident pupils enrolled in the district covered by the agreement.

(2) A change ~~[Changes]~~ may be made to the original nonresident pupil agreement up to the close of the school year to include ~~[only]~~ the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education with the local Superintendent's Annual Attendance Report prior to June 30 of each year.

Section 14. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, and student entry and exit logs shall be the original source of attendance data for all pupils enrolled in the public common schools.

(2) The school's records of daily attendance and teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years.

Section 15. The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W6, W7, W10, W13, W14, W16 or W18 during the previous school year;

(4) R01 - A pupil received from another homeroom in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R03 - A pupil received from a nonpublic school in the same public school district;

(7) R04 - A pupil received from a public school in Kentucky outside this public school district;

(8) R05 - A pupil received from a nonpublic school in Kentucky outside this public school district;

(9) R06 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(10) R07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E1, E2 or E3;

(11) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W1 shall be R1.

(12) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W2 shall be



combination of the academic and noncognitive indices for a school or district pursuant to 703 KAR 4.010.

(5) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students during the first two (2) years of each ~~four (4) year~~ accountability cycle.

(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that accountability cycle but which is not five (5) or more points below its baseline, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(7) "Declines by five (5) percent or more" means obtains an average accountability index for an accountability cycle which is five (5) or more points below its baseline for that cycle and obtains a year two (2) accountability index below its improvement goal for that cycle.

(8) "Gained population" means students in grades at which accountability assessments are administered who now ~~must~~ attend a **different** school because of boundary changes.

(9) "Growth accountability index" means the accountability index score that describes the school's or school district's percentage of successful students during the last two (2) years of a four (4) year accountability cycle.

(10) "Improvement goal" or "threshold" means the accountability index score which describes the amount of growth required for a school or school district for the accountability cycle.

(11) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a **particular** school because of boundary changes.

(12) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal for that accountability cycle, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(13) "Maximum reward amount" means the percentage of salary set by the Kentucky Board of Education. "Maximum reward amount" ~~also~~ may be called "reward level 51 amount."

(14) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" ~~also~~ may be called "reward level 1 amount."

(15) "Original threshold" means the threshold for the previous accountability cycle.

(16) "Performance judgment" is defined in 703 KAR 4.090, **Section 1(3).**

(17) "School" means an A1 school as defined in 703 KAR 4.080, **Section 1(1).**

(18) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(19) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after boundary changes.

(20) "Year two (2) accountability index" means the accountability index a school or school district obtains in the last year of an accountability cycle. ~~"School" means an A1 school as defined in 703 KAR 4.080.~~

(2) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(3) "Accountability index" means the statistic which is the combination of the cognitive and noncognitive indices for a school or school district pursuant to 703 KAR 4.010.

(4) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students at the beginning of each biennium.

(5) "Threshold" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.

(6) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.

(7) "Maximum reward amount" means the percentage of salary set by the State Board for Elementary and Secondary Education. "Maximum reward amount" also may be called "Reward level 51 amount."

(8) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" also may be called "Reward level 1 amount."

(9) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium of five (5) or more points below its baseline that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its threshold goal for the biennium.

(10) "Declines by less than five (5) percent" means obtains an average accountability index for the biennium of less than five (5) points below its baseline for that biennium and obtains a year two (2) accountability index below the threshold goal for the biennium.

(11) "Maintains the previous percentage of successful students" means obtains an average accountability index for the biennium not less than its baseline nor equal to or greater than its threshold for that biennium and obtains a year two (2) accountability index below its threshold goal for the biennium, and obtains a year two (2) accountability index below the threshold goal for the biennium.]

Section 2. If [When] a school does not have an accountability grade (grades four (4), five (5), seven (7), eight (8), eleven (11), or twelve (12)), that school shall be combined with the school having an accountability grade its students would subsequently attend.

Section 3. If [When] a school has only one (1) of the two (2) accountability grades at the elementary school level (grades 4 and 5) or the middle school level (grades 7 and 8), the school shall be combined with the school having the higher grade level to which its students will be sent, forming a single accountability unit. If the school described in this section is sending or receiving its students to or from more than one (1) school, the affected schools shall be combined to form a single accountability unit.

Section 4. If [When] a school has more than one (1) accountability level (elementary - grades 4 and 5, middle - grades 7 and 8, or high school - grades 11 and 12) ~~(grade)~~, the school's accountability index shall be the weighted average of the accountability indices for each accountability grade in the school.

Section 5. [4-] A school district's accountability index shall be the weighted average of its schools' accountability indices.

Section 6. (1) If a school or school district has declined in the first accountability cycle and has not met its original threshold in the second cycle and has not declined by five (5) or more points from its Accountability Cycle 2 baseline, then its performance judgment shall be **improving category 2** ~~["in decline"]~~ for **Accountability Cycle 2**.

(2) If a school or district's performance judgment for Accountability Cycle 1 was "improving", it met its original threshold in **Accountability Cycle 2**, but it did not meet its **Accountability Cycle 2** threshold and did not decline below its **Accountability Cycle 2** baseline, its performance judgment for **Accountability Cycle 2** shall be "improving".

(3) A school or district shall be determined to meet its original threshold if ~~[when]~~ the average of its reading, mathematics, writing, science, social studies and noncognitive indices for **Accountability Cycle 2** is equal to or greater than its threshold for **Accountability Cycle 1**.

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Twenty-four	One point above threshold plus 46% of difference between threshold and baseline	41.22	73% of maximum
Twenty-five	One point above threshold plus 48% of difference between threshold and baseline	41.36	74% of maximum
Twenty-six	One point above threshold plus 50% of difference between threshold and baseline	41.50	75% of maximum
Twenty-seven	One point above threshold plus 52% of difference between threshold and baseline	41.64	76% of maximum
Twenty-eight	One point above threshold plus 54% of difference between threshold and baseline	41.78	77% of maximum
Twenty-nine	One point above threshold plus 56% of difference between threshold and baseline	41.92	78% of maximum
Thirty	One point above threshold plus 58% of difference between threshold and baseline	42.06	79% of maximum
Thirty-one	One point above threshold plus 60% of difference between threshold and baseline	42.20	80% of maximum
Thirty-two	One point above threshold plus 62% of difference between threshold and baseline	42.34	81% of maximum
Thirty-three	One point above threshold plus 64% of difference between threshold and baseline	42.48	82% of maximum
Thirty-four	One point above threshold plus 66% of difference between threshold and baseline	42.62	83% of maximum
Thirty-five	One point above threshold plus 68% of difference between threshold and baseline	42.76	84% of maximum
Thirty-six	One point above threshold plus 70% of difference between threshold and baseline	42.90	85% of maximum
Thirty-seven	One point above threshold plus 72% of difference between threshold and baseline	43.04	86% of maximum
Thirty-eight	One point above threshold plus 74% of difference between threshold and baseline	43.18	87% of maximum
Thirty-nine	One point above threshold plus 76% of difference between threshold and baseline	43.32	88% of maximum
Forty	One point above threshold plus 78% of difference between threshold and baseline	43.46	89% of maximum
Forty-one	One point above threshold plus 80% of difference between threshold and baseline	43.60	90% of maximum
Forty-two	One point above threshold plus 82% of difference between threshold and baseline	43.74	91% of maximum
Forty-three	One point above threshold plus 84% of difference between threshold and baseline	43.88	92% of maximum
Forty-four	One point above threshold plus 86% of difference between threshold and baseline	44.02	93% of maximum
Forty-five	One point above threshold plus 88% of difference between threshold and baseline	44.16	94% of maximum
Forty-six	One point above threshold plus 90% of difference between threshold and baseline	44.30	95% of maximum
Forty-seven	One point above threshold plus 92% of difference between threshold and baseline	44.44	96% of maximum
Forty-eight	One point above threshold plus 94% of difference between threshold and baseline	44.58	97% of maximum
Forty-nine	One point above threshold plus 96% of difference between threshold and baseline	44.72	98% of maximum
Fifty	One point above threshold plus 98% of difference between threshold and baseline	44.86	99% of maximum
Fifty-one	One point above threshold plus 100% of difference between threshold and baseline	45.00	100% of maximum

Section 10. [8-] Sanctions shall be applied to schools and school districts pursuant to KRS 158.6455(3)-(7) and [the definitions provided in Section 1(9), (10), and (11) of] this administrative regulation.

Section 11. [8-] Reward Amounts. The maximum reward amount shall be ten (10) percent of the average (mean) salary of the certified personnel in the five (5) highest paying public school districts in Kentucky. This average shall be weighted by the number of certified personnel in each of these five (5) districts. The total amount of rewards to be distributed to schools and school districts earning

rewards shall not exceed 1.75% of the total amount of total funds paid to certificated personnel within Kentucky's public schools during the last year of the accountability cycle. If the reward levels described in this section will result in the allocation of funds that exceed this amount, the reward for each school or school district shall be reduced proportionately.

Section 12. If [When,] as a result of a change in service area boundaries or local policies affecting student population served by a school, less than eighty (80) percent of a school's student population



below the improvement goal for that cycle.

(11) "Matrix-sampled open-ended questions" means assessment items which are taken by a sample of students and ~~[which]~~ require written answers.

(12) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(c), (d), (e), and (f).

(13) "Percentage of successful students" means the accountability index.

(14) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.

(15) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.

(16) "Portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring review procedures, to a collection of a student's best work in a given content area.

(17) "Year two (2) accountability index" means the accountability index a school or school district obtains in the last year of an accountability cycle. ~~["Accountability index" means the statistic which is the combination of the academic and noncognitive indices for a school.~~

~~(2) "Baseline" means the accountability index score which describes the school's percentage of successful students at the beginning of each biennium.~~

~~(3) "Academic index" means the statistic which describes school success on the cognitive goals set forth in KRS 158.6451(1)(b).~~

~~(4) "Common open-ended questions" means assessment items which are taken by all students in the accountability grades and which require written answers.~~

~~(5) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium which is five (5) or more points below its baseline that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its improvement goal for the biennium.~~

~~(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that biennium, but which is not five (5) or more points below its baseline and obtains a year two (2) accountability index below the improvement goal for the biennium.~~

~~(7) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal assigned at the beginning of that biennium, and obtains a year two (2) accountability index below the improvement goal for the biennium.~~

~~(8) "Matrix-sampled open-ended questions" means assessment items which are taken by a sample of students and which require written answers.~~

~~(9) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(c), (d), (e), and (f).~~

~~(10) "Percentage of successful students" means the accountability index.~~

~~(11) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.~~

~~(12) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.~~

~~(13) "Portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring review procedures, to a collection of a student's best work in a given content area.~~

~~(14) "Improvement goal" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.~~

~~(15) "Alternate portfolio" means that component of the assessment system designed for students who cannot with all assistance~~

~~and adaptive devices available participate in the regular assessment process.~~

~~(16) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.~~

Section 2. The data used in the formula for determining successful schools shall be the academic and noncognitive data gathered in the statewide assessment program during each accountability cycle [biennium] pursuant to KRS 158.6453.

Section 3. For the 1992-94 accountability cycle [biennium] the baseline shall be based on data from the 1991-92 assessment program. For subsequent accountability cycles [biennia] the baseline shall be based on the weighted average of the first two (2) years of assessment data of the four (4) year accountability cycle [from the most recent previous biennium].

Section 4. The points assigned to each performance level for purposes of computing the academic indices shall be: novice = zero; apprentice = two (2); proficient = five (5); and distinguished = seven (7).

Section 5. For purposes of computing the academic index, the data shall be transformed to a scale such that a school with all of its students at the novice level shall receive a score of zero and a school with all of its students at the proficient level shall receive a score of 100.

Section 6. Computing the academic index for each content area (writing, reading, mathematics, science, social studies, arts and humanities, and practical living/vocational studies) shall require determining the percentage of students at each performance level with the following weighting and combining of data:

(1) For the 1991-92 to 1993-94 accountability cycle:

(a) Writing: portfolio scores - 100 percent;

(b) [(2)] Reading: common open-ended questions - fifty (50) percent, and matrix-sampled open-ended questions - fifty (50) percent;

(c) [(3)] Mathematics:

[(a) Grade 4:] common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent.

[(b) For the 1992-94 Biennium, Grade 8 and Grade 12 mathematics: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, performance events - twenty (20) percent, and mathematics portfolio scores - zero percent.

[(c) For the 1994-96 Biennium, Grade 8 and Grade 12 mathematics: common open-ended questions - thirty (30) percent, matrix-sampled open-ended questions - thirty (30) percent, performance events - ten (10) percent, and mathematics portfolio scores - thirty (30) percent.]

(d) [(4)] Science: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent; and

(e) [(5)] Social studies: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent;

(2) For the 1992-93 to 1995-96 accountability cycle:

(a) Writing: portfolio - 100 percent;

(b) Reading: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;

(c) Mathematics: for grade 4: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent; and for grades 8 and 12: common open-

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Bureau of Learning Results Services  
(As Amended)

703 KAR 4:090. Statewide assessment and accountability program; school building and local district appeal of performance judgments.

RELATES TO: KRS Chapter 13B, 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455(8) requires the establishment of procedures for an appeal of a ~~[appeal of]~~ performance judgment considered to be grossly unfair resulting in the distribution of rewards or the application of sanctions as specified in KRS 158.6455. This administrative regulation establishes the procedures for an appeal of a performance judgment consistent with KRS 158.6455 and Chapter 13B.

Section 1. Definitions. (1) "Accountability index" means the statistic that is the combination of the academic and noncognitive indices for the school or district.

(2) "Baseline accountability index" means the accountability index score that describes the school or school district's percentage of successful students during the first two (2) years of each four (4) year accountability cycle.

(3) "Growth accountability index" means the accountability index score that describes the school or school district's percentage of successful students during the last two (2) years of each four (4) year accountability cycle.

(4) "Performance judgment" means the decision to declare a school or school district:

(a) Eligible for rewards;

(b) Successful;

(c) Improving;

(d) In decline; or

(e) In crisis. ~~"Accountability index" means the statistic that is the average of the cognitive and noncognitive indices for the school.~~

~~(2) "Baseline accountability index" means the accountability index score that describes the school or school district's percentage of successful students at the beginning of the biennium.~~

~~(3) "Performance judgment" means the decision to declare a school or school district:~~

~~(a) Eligible for rewards (level 5);~~

~~(b) Successful (level 4);~~

~~(c) As not meeting its threshold (level 3);~~

~~(d) In decline (level 2); or~~

~~(e) In crisis (level 1).~~

Section 2. (1) A written request for a review of a performance judgment shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the performance judgments to the public.

(2) An additional twenty (20) working days shall be permitted to appeal a revised performance judgment if there is a revision [for any reason there are revisions] in the performance judgment of a school or school district. If the performance judgment is subsequently revised, a written request for a review of a performance judgment shall be submitted to the Commissioner of Education within thirty (30) days after the school or district has received the official notification of the revised performance judgment.

(3) For a district [districts], the request shall be signed by the superintendent upon the approval of the school board. For a school [schools], the request shall be signed by the principal upon approval of the school council. If there is no school council, the request shall

also be signed by the superintendent, upon approval of the school board.

(4) [(2)] The appeal of a performance judgment shall clearly identify the basis for the wrongful effect on the:

(a) Baseline accountability index;

(b) Growth accountability index; or

(c) Baseline accountability index being established for the next accountability cycle [biennium].

(5) [(3)] The appeal shall detail the requested adjustment to be made to one (1) or more of these indices.

(6) With the advice of the State Advisory Committee for Educational Improvement, [(4)] the Kentucky Department of Education staff shall review the request against the standards set forth in KRS 158.6455, determine if additional information is required, and if the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education [with a recommendation to the State Advisory Committee for Educational Improvement].

(7) [(5)] The hearing officer [State Advisory Committee for Educational Improvement] shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B. [communicate in writing its summary findings and recommendations to both the party appealing the judgment and to the Commissioner of Education. Within thirty (30) working days, the commissioner's office shall forward the committee's recommendation to the State Board for Elementary and Secondary Education with a recommendation to accept, reject, or modify the committee summary report, and notify the appealing party in writing.]

(6) The appealing party shall have ten (10) days from when the report is received to submit written exceptions and responses to the state board.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

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

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Bureau of Learning Results Services  
(As Amended)

703 KAR 4:110. Code of ethics for state required testing.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires [gives] the Kentucky Board of Education [the authority] to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and districts. This administrative regulation establishes a Code of Ethics for appropriate testing practices for state required tests.

Section 1. The "Code of Ethics for Appropriate Testing Practices for School and District Personnel", dated August, 1996, is hereby ~~[adopted and]~~ incorporated by reference, and may be inspected and copied at the Department of Education, Office of Curriculum, Assessment, and Accountability, 18th Floor, Capital Plaza Tower, 500

~~written evaluation report.~~ ["Job category" means term used to signify a group or class of positions with closely related functions (e.g., principal, coordinator, director).]

(14) "Teacher" means a ~~any~~ certified staff person who directly instructs students. ~~["Professional growth plan" means a plan whereby the person being evaluated establishes goals for enrichment and development and the assistance of the evaluator is identified. The individualized plan includes objectives, a plan for achieving the objectives and method for evaluating success. The individualized professional growth plan shall be aligned with specific goals and objectives of the school improvement and professional development or transformation plans.]~~

Section 2. Each local school district shall have an evaluation plan and procedures approved by the Kentucky ~~[State]~~ Board of ~~[for Elementary and Secondary]~~ Education. Approval of the plan and procedures shall be for the purpose of certification as to the compliance of each specific school district's evaluation plan with the broad guidelines set forth herein.

Section 3. The local school district shall have a written policy for the evaluation of all certified employees consistent with KRS 156.101.

Section 4. (1) An evaluation committee consisting of equal numbers of teachers and administrators shall develop evaluation procedures and forms. The evaluation procedures and forms shall be designed to foster professional growth and to support individual personnel decisions.

(2) The procedures shall provide for both formative evaluation and summative evaluation and shall include the following elements:

(a) The immediate supervisor of the certified school employee shall be designated the primary evaluator. Additional trained administrative personnel may be used to observe and provide information to the primary evaluator.

(b) The [All] monitoring or observations of performance of a certified employee shall be conducted openly and with the full knowledge of the teacher or administrator. The local district may determine the length and frequency and nature of observations conducted by an evaluator.

(c) The evaluation system shall include a professional growth plan aligned with specific goals and objectives of the school improvement and professional development transformation plans and shall be reviewed annually.

(d) Evaluation shall include a formative conference between the evaluator and the person evaluated within one (1) work week following each observation. In addition, the summative conference shall be held at the end of the evaluation cycle and include all evaluation data.

(e) Evaluation with multiple observations shall occur annually for each nontenured certified employee. The formative data collected during the beginning teacher internship period may be utilized in summative evaluation of the intern.

(f) Multiple observations shall be conducted with a tenured, certified employee whose observation results are unsatisfactory.

(g) Summative evaluation shall occur a minimum of once every three (3) year period for each tenured teacher.

(h) Summative evaluation shall occur annually for an administrator.

(i) The evaluation of a certified employee ~~[All evaluations of certified employees]~~ below the level of the district superintendent shall be in writing on an evaluation form and become a part of the official personnel record.

(j) The [All] observations shall include documentation of information to be used in determining the performance of the evaluatee.

(k) The evaluation system shall provide an opportunity for a written response by the evaluatee and the response shall become a part of the official personnel record.

(l) A copy of the evaluation shall be provided to the evaluatee.

Section 5. (1) The evaluation form shall include a list of performance criteria characteristic of effective teaching or administrative practices. Under each criterion, specific descriptors or indicators that can be measured and recorded shall be listed. Additionally, standards of performance shall be established for each criterion. The performance criteria shall include the following:

(a) Performs professional responsibilities and duties as outlined in the job description including regular attendance and punctuality;

(b) Demonstrates effective classroom or staff management skills;

(c) Uses appropriate research-based instructional strategies and processes effectively;

(d) Demonstrates effective interpersonal, communication, and collaboration skills among peers, subordinates, students and parents;

(e) Demonstrates knowledge of subject matter or administrative techniques;

(f) Plans, implements, and evaluates instructional or administrative activities. ~~Under each criterion, specific descriptors or indicators that can be measured and recorded shall be listed. In addition, standards of performance shall be established for each criterion;~~

(g) Teaches in a manner that is consistent with missions to which the school, its school council, [school/councils] district board of education, and the Kentucky ~~[State]~~ Board of ~~[for Elementary and Secondary]~~ Education are committed.

(2) The [All] certified school personnel shall be made aware no later than the end of the first month of reporting for employment for each school year of the criteria on which they are to be evaluated.

(3) An evaluation form or instrument shall be specific for each position or job category. Other forms for observation and pre- and postconferences may be used at the discretion of the local district.

Section 6. (1) The [All] primary evaluator, with the exception of a district board of education member, shall be trained, tested, and certified.

(2) Training shall:

(a) Include skill development in the use of the local evaluation process. Each local district shall conduct this training;

(b) Include skill development in the identification of effective teaching and management practices, effective observation and conferencing techniques, establishing and assisting with a certified employee professional growth plan, and summative evaluation techniques relative to the academic expectations in 703 KAR 4:060 [learner outcomes]. This training shall be conducted by a provider who has [providers who have] been approved by the Kentucky ~~[State]~~ Board of ~~[for Elementary and Secondary]~~ Education as a trainer for the Instructional Leadership Improvement Program;

(c) Be provided by the Kentucky Department of Education for all new administrators who are designated as evaluators. Other administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may participate also; and

(d) Be approved as a part of the evaluation plan and procedures submitted to the Kentucky ~~[State]~~ Board of ~~[for Elementary and Secondary]~~ Education.

(3) Testing shall:

(a) Include a cognitive test of research-based and professionally accepted teaching and management practices and effective evaluation techniques listed in subsection (2)(b) of this section; and

(b) Be conducted by an agency [agencies] approved by the State Department of Education.

(4) Initial certification as an evaluator shall be issued by the Kentucky Department of Education upon completion of the required evaluation training program and successful completion of testing.

(5)(a) Continued certification as an evaluator shall be contingent upon the completion of a minimum twelve (12) hours of evaluation training every two (2) years ~~[beginning July 1, 1988]~~.

(b) This training shall be in any one, or a combination, of the

date of application] attained the minimum score required by this administrative regulation on the NTE Core Battery for communication skills or general knowledge [or for the NTE Specialty Test of Educational Administration and Supervision] may meet the requirement[s] for the [such] test[es] by:

- (1) Having the score[s] previously recorded at the Kentucky Department of Education for other professional certifications; or
- (2) Having the Educational Testing Service (ETS) furnish a score report[s] to the Kentucky Department of Education. A request for the [such] score report shall [s-must] comply with all policies and procedures of the ETS.

Section 4. (1) An applicant for certification as principal may take the required NTE tests on a date [any of the dates] established by the ETS. An applicant shall [must] authorize that test results be forwarded to the Kentucky Department of Education by the ETS.

(2) An applicant for certification as principal may take the Kentucky Specialty Test of Instructional and Administrative Practices on a date [any of the dates] established by the Kentucky Department of Education. Scoring and reporting of scores shall be the responsibility of the Kentucky Department of Education or its designated agent.

(3) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the ETS and the Kentucky Department of Education.

(4) It shall be the responsibility of each applicant to seek information regarding the dates and location of the tests and to make application for the appropriate examinations prior to the deadlines established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 5. (1) For the required NTE tests, the applicant shall pay all fees assessed by the ETS.

(2) An applicant shall [not] be assessed a fee of thirty (30) dollars for taking the Kentucky Specialty Test of Instructional and Administrative Practices.

Section 6. An applicant who fails [Applicants who fail] to achieve a minimum score on a [any of the] required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a[ny] regularly-scheduled test administration.

Section 7. A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does [(1) Applicants who attain the minimum passing score on all of the prerequisite examinations shall be issued a statement of eligibility for internship by the Education Professional Standards Board (Superintendent of Public Instruction). This statement of eligibility for internship shall be valid for a five (5) [four (4)] year period.

(2) Applicants who do not participate in the required one (1) year internship within the period of eligibility shall reestablish eligibility by repeating and successfully completing all prerequisite examinations in effect at the time of reapplication.

Section 8. (1) Applicants for principal certification who hold a comparable certificate from another state but who have not completed the required written assessments may be issued a temporary certificate effective for one (1) year if the application is accompanied by a copy of their certificate from another state.

(2) If the applicant successfully completes the assessments within the year, a certificate shall be issued for an additional four (4) years.

(3) The temporary certificate shall not be extended for those applicants who do not successfully complete the assessments within the year.

Section 8. [9-] (1) For an applicant applying for a certificate

under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal. [Initial applicants for principal certification who have completed a preparation program but have not completed all the written assessment requirements prior to having been selected as a principal may be issued a one (1) year temporary certificate. The school superintendent of the employing district shall submit a request for a one (1) year waiver of the principal assessments. The waiver shall be granted only if in the request the superintendent affirms that there was an applicant pool of three (3) or less who met the requirements for selecting a principal.]

(2) Upon successful completion of the assessments and the principal internship, a certificate shall be issued for an additional four (4) years.

(3) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 9. [10-] (1) To provide for confidentiality of information, the Kentucky Department of Education shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant [only]. The [Such] scores shall [will] not be released to other individuals or agencies. [In accordance with published policy, the ETS will release scores on the NTE only to recipients designated in writing by applicants.]

(2) A score shall not [No scores shall] be used by the Kentucky Department of Education in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 10. [11-] On an annual or biennial basis, [9-] the Kentucky Department of Education shall collect and analyze data provided by the Educational Testing Service through NTE Core Battery and Praxis II score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation [on an annual or biennial basis].

ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: October 1, 1996 at 11 a.m.

# EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended)

704 KAR 20:710. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for the [their] respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. A teacher education institution shall [institutions are required to] be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels. This administrative regulation is not required by federal law.

Section 1. Conditions and Prerequisites. (1) The provisional and

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renewal of the professional certificate for instructional leadership - school principal, level II, shall require the following:

(a) Successful completion of two (2) years of experience as a school principal; and

(b) Completion of continuing education requirements to be established by the Education Professional Standards Board prior to the date of applicability of this administrative regulation as set out in Section 7 of this administrative regulation; or

(c) Completion of three (3) semester hours of additional graduate credit for each required year of experience and directly related to the position of school principal, if the applicant has not been successfully employed as a school principal for at least two (2) of the last five (5) years.]

Section 6. **Implementation** [7-Effective] Dates. (1) The provisions for the issuance of the provisional and professional certificate for instructional leadership - school principal, levels I and II, shall apply to a [all] student admitted to a program of preparation beginning September 1, 1998.

(2) A candidate admitted prior to September 1, 1998, to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 shall complete the program by September 1, 2000.

(3) A candidate who fails [Candidates who fail] to complete the approved program and appropriate assessments specified in subsection (2) of this section by September 1, 2000, and does not apply for certification by May 1, 2001, shall be required to qualify for the certificate identified in this administrative regulation.

(4) A college or university [colleges and universities] shall take adequate steps to inform a candidate in these programs regarding the **implementation** [deadline] dates identified in this section.

ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: September 26, 1996 at 4 p.m.

### WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (As Amended)

**781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.**

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), (c), 61 Fed. Reg. 24402 (1996), 29 USC 706(8)(A), (15)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195, 34 CFR 361.31(b), 61 Fed. Reg. 24402 (1996)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires [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. 34 CFR 361.31(b), 61 Fed. Reg. 24402 (1996), requires the department to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 CFR 361.31(c), 61 Fed. Reg. 24402 (1996), established federal guidelines for the imposition of an order of selection. This administrative regulation establishes [sets forth] when an order of selection and an economic need test shall [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 these 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:

(a) Is unlikely to be corrected through surgical intervention or medical treatment; and

(b) Differs from a mental or physical condition that can be remedied through the provision of a physical or mental restoration service. [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; and

(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;

been registered in Kentucky continuously since on or before July 1, 1991; [Individuals employed by registered investment advisors that are registered in the Commonwealth of Kentucky with the Department of Financial Institutions pursuant to the Securities Act of Kentucky, KRS Chapter 292, as investment advisors and have been continuously so registered in Kentucky since prior to July 1, 1991, if, the individual employed has [who have] been continuously employed by said Kentucky registered investment advisors since prior to July 1, 1991;]

(2) An individual (including an officer, partner, director, or clerical staff) employed by a registered investment adviser if the individual does not [these individuals do not themselves] advise the public regarding the value of securities or the advisability of investing in, purchasing, or selling securities.

(3) An investment adviser who is exempt [are exempted] from registration under KRS 292.330(1) and an [these] individual employed by the exempted investment adviser.

Section 3. A [No] registered investment adviser shall not employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this administrative regulation.

LARRY D. LANDER, Commissioner

APPROVED BY AGENCY: October 11, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET**

Department of Financial Institutions

Division of Law and Regulatory Compliance

(As Amended)

**808 KAR 10:300. Registration exemptions - pension plans.**

RELATES TO: KRS 292.330-292.390, 292.400(11), 292.410(1)(q), 17 CFR 230.701

STATUTORY AUTHORITY: KRS 292.400(11), 292.410(1)(q), 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.400(11) exempts from the registration requirements of KRS 292.340 to 292.390 an investment contract issued in connection with certain employee benefit plans, but not the securities in the plan. KRS 292.410(1)(q) exempts from the registration requirements of KRS 292.330 to 292.390 a transaction for which the commissioner finds registration is not necessary or appropriate in the public interest or for the protection of investors. This administrative regulation exempts an offer or sale of a security within the above-referenced employee benefit plans from the registration requirements. [To relieve industry of excess compliance burdens and dispense with the necessity of the Department of Financial Institutions having to issue an order each time such relief is afforded to industry.]

Section 1. (1) The registration provisions of KRS 292.330 to 292.390 shall not apply to an offer or sale of a security by an issuer pursuant to a written compensatory benefit plan including, without limitation, a purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension or similar plan, or an interest in a plan, if the offer or sale qualifies for the registration exemption of 17 CFR 230.701.

(2) In order to provide an exemption from the registration requirements of KRS 292.330 to 292.390 for a security issued in an employee compensatory circumstance, this exemption shall not apply to a plan or scheme to circumvent that purpose, including one to raise capital. In those cases, registration or some other exemption from registration shall be required.

(3) A filing with the department shall not be necessary to

claim the exemption. [Pursuant to KRS 292.410(1)(q), the commissioner having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following class of transactions is determined to be exempt from the registration provisions of KRS 292.330 through 292.390:

(1) Offers or sales of a security by an issuer pursuant to a written compensatory benefit plan including, without limitation, a purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension or similar plan, and interests in any such plan, provided that the offers and sales qualify for use of the registration exemption in United States Securities and Exchange Commission Rule 230.701 (17 CFR 230.701), as such rule exists on September 26, 1996, under Section 3(b) of the Securities Act of 1933 and further provided that the following further conditions and limitations are met:

(2) In view of the primary purpose of this regulation, which is to provide an exemption from the registration requirements of the Securities Act of Kentucky, the "Act", for securities issued in employee compensatory circumstances, the administrative regulation is not available for plans or schemes to circumvent this purpose, such as to raise capital. In such cases, registration or some other exemption from registration under the Act is required.

(3) There shall be no requirement that any filing be made with the Department of Financial Institutions of the Commonwealth of Kentucky to claim this exemption.]

LARRY D. LANDER, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET**

Department of Housing, Buildings and Construction

Division of Plumbing

(As Amended)

**815 KAR 20:120. Water supply and distribution.**

RELATES TO: KRS 318.010, 318.130, 318.150, 318.165, 318.200 [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 establishes [relates to] the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control the water supply system and requires [it as well as identify and publish] the manufacturer's specification number of the material accepted in those installations to be identified and published. [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 40 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



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Cup beverage vending machines	<p>receptacle</p> <p>CL at least 12 in. above flood level of machine</p> <p>On models without built-in vacuum breakers:</p>
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 (i) 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 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 if ~~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 connect- ions.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connect- ions 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	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 independ- ent check valves. Checks are re- movable for testing	Cross connections where there is a low potential health hazard and moderate flow re-	Post ground hydrants.	N T O X I A.S.S.E. No. 1024 Sizes 3/4" & 1"

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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
D. Outlet into domestic water tanks			X		Each case treated separately		
E. Flush valve toilets	X		X	X		X	X
F. Flush valve urinals		X	X	X		X	X
G. Outlets with hose attachments subject to contamination from:							
1. Toxic substances	X		X	X		X	X
2. Nontoxic subst.		X	X	X		X	X
H. Outlets to recirculating cooling tower:							
1. With chemical additives	X		X	X			
2. Without chemical additives		X	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, or valves[-ete]. 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



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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 **shall not be used [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 as 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

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 **it shall not [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) **If [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.

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040 and 216B.105 authorize the Cabinet for Health Services to provide a due process hearing and issue a final determination on all actions by the Cabinet for Health Services to deny, revoke, modify or suspend a license. Executive Order 96-862 reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. This administrative regulation sets forth the hearing procedure for licensure actions.

Section 1. Notice of Action and Request for Hearing. Any applicant or licensee who has been notified of the cabinet's decision to deny, revoke, modify or suspend a license to operate a health facility or health service may request an evidentiary hearing for the purpose of appealing the cabinet's decision. The request must be filed with the cabinet within thirty (30) days of the date of mailing of notice of the cabinet's decision.

Section 2. Notice of Hearing. The cabinet shall provide the appellant with notice of date, time and location of the hearing by certified mail at least thirty (30) days before the date of the hearing.

Section 3. Disqualification of Hearing Officer. No hearing officer shall participate in any hearing in which the hearing officer ~~he or she~~ has had within the past twelve (12) months preceding the hearing, any ownership, employment, staff, fiduciary, contractual, creditor, personal, ~~or~~ consultative relationship that would preclude the hearing officer from conducting a fair and impartial hearing with the applicant or licensee.

Section 4. Hearing Procedure. (1) Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues that may arise during the course of the hearing, including any additional petitions for intervention which may be filed. The hearing officer may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant or licensee may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations, in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced, any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) A written statement from any party, or a statement or resolution of a political subdivision, trade association, civic organization or other organization may be received without cross examination, but will be considered only as argument, and not as proof of any matter addressed in these documents unless the party against whom the document is being offered is allowed to cross-examine the proponent of the document.

(f) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available,

provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least seven (7) days before the hearing.

(g) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(h) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed the ten (10) days after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(2) In lieu of an evidentiary hearing, the parties to a proceeding, with the consent of the designated hearing officer, may file written stipulations of relevant facts. The hearing officer may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as he deems necessary.

(3) The designated hearing officer may, at his discretion, grant a continuance of a hearing in order to secure necessary evidence.

Section 5. Findings and Recommendations. (1) After the hearing, the hearing officer shall prepare written findings of fact and recommendations with a synopsis of the evidence contained in the record on the issues involved. If the applicant or licensee fails to appear and prosecute the appeal, the hearing officer may dismiss or recommend dismissal of the appeal.

(2) The hearing officer shall, within thirty (30) ~~twenty (20)~~ days of the close of the hearing send findings and recommendations by certified mail to the applicant or licensee, to the licensing agency, and to the Secretary of the Cabinet for Health Services. Written exceptions to the recommended decision may be submitted within fifteen (15) ~~seven (7)~~ days of receipt.

(3) The Secretary of the Cabinet for Health Services shall make a final decision pursuant to subsection (2) of this section within ninety (90) days from the date of the recommended order of the hearing officer ~~after review of any written exceptions filed~~.

(4) The decision of the secretary shall be final for purposes of judicial appeal, as set forth in KRS 216B.115.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

### CABINET FOR HEALTH SERVICES Department for Medicaid Services (As Amended)

**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

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 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

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(j) Establishing and overseeing a human rights committee for review of overall procedures and individual behavioral plans; and

(i) 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 [ete].

(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 [i.e.,] 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 [Patient] Status Determinations. The department ~~[cabinet]~~ shall make client ~~[patient]~~ status determinations using the criteria specified under patient status determinations pursuant to [re] 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. This form is incorporated by reference in the Medicaid Alternative Intermediate Services-Mental Retardation (AIS/MR) Manual. Attached to the MAP-620 shall be any written documentation of request made prior to September 27, 1995, made contemporaneously 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

- (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; ~~and~~
  - (k) An advanced registered nurse practitioner (clinical specialist).
- (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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Water  
(Amended After Hearing)

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 an [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 5:005 and 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 5:005 and 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.

(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 as determined by a twenty (20) year present worth cost analysis.

(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



- 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) [(50)] "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) [(51)] "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) [(52)] "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) [(53)] "CSO" means combined sewer overflow.

(58) [(54)] "CWA" means the Clean Water Act, as amended.

(59) [(55)] "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) [(56)] "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) [(57)] "Day" means a twenty-four (24) hour period.

(62) [(58)] "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) [(59)] "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, **revocation** [renewal], 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.



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) [(99)] "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 Dis-

charge 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) [(111)] "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) [(112)] "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

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ment 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) LC<sub>50</sub>) 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) [(436)] "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) [(444)] "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 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) [(448)] "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) [(449)] "POTW" means publicly owned treatment works as defined in KRS 224.01-010.

(179) [(450)] "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and

category which is not a primary industry category.

(215) ~~[(484)]~~ "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 "7Q<sub>10</sub>" 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 depression [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 countermeasure.

(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) ~~[(201)]~~ "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

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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) [(244)] "Underground injection" means a well injection.

(254) [(246)] "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) [(246)] "USC" means United States Code.

(256) [(247)] "U.S. EPA" means the United States Environmental Protection Agency.

(257) [(248)] "USGS" means the United States Geological Survey.

(258) [(249)] "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) [(229)] "WAH" means warm water aquatic habitat.

(260) [(224)] "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(j), 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) [(226)] "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) [(b)] 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 ground-water 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: December 12, 1996

FILED WITH LRC: December 12, 1996 at 10 a.m.

### 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

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 5:000.

(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, offal, 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 35.

(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-ones 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 or modification 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)(a) The following requirements shall apply to agricultural wastes handling systems, as defined by 401 KAR 5:001:

1. Agricultural wastes handling systems which convey, store, or treat manure from concentrated animal feeding operations as defined by 401 KAR 5:001 shall:

a. Obtain a permit to construct or modify the facility, complying with only Sections 2, 24, and 29(2)(h) and (i) of this administrative regulation; and

b. Obtain a KPDES permit and comply with 401 KAR 5:026 through 5:080.

2. All other agricultural wastes handling systems shall obtain permits to construct, modify, or operate the facility pursuant to this administrative regulation complying with only Sections 2, 24, 25, 27, and 29(2)(h) and (i) of this administrative regulation. No KPDES permit shall be required for these facilities.

(b) The following shall apply to industrial wastewater treatment plants (IWWTPs) as defined by 401 KAR 5:001:

1. IWWTPs with closed loop systems shall obtain a KNDOP complying with only Sections 2, 25, 27, and 29(2)(e) through (g) of this administrative regulation and any other applicable standard or requirements of 401 KAR Chapter 5. No KPDES permit shall be required for these facilities.

2. IWWTPs with a discharge to the waters of the Commonwealth shall not be required to obtain a permit to construct or modify the facility. These facilities shall, however:

a. Comply with the "Five Mile Limit Policy" incorporated by reference in Section 29 of this administrative regulation;

b. Obtain a KPDES permit to discharge into the waters of the Commonwealth; and

c. Comply with all other requirements of 401 KAR Chapter 5.

3. Sewer lines which convey wastewater to IWWTPs shall not be required to obtain a construction permit.

(c) The following requirements shall apply to WWTPs which collect, convey, or treat only storm water:

1. WWTPs which collect, convey, or treat only storm water and discharge into the waters of the Commonwealth shall not be required to obtain a permit to construct or modify the facility pursuant to this administrative regulation. These facilities shall, however, comply with 401 KAR 5:026 through 5:080. 401 KAR 5:060 further specifies when these facilities are required to obtain a KPDES permit.

2. WWTPs which collect, convey, or treat only storm water and do not discharge into the waters of the Commonwealth shall obtain an operational permit under this administrative regulation, complying with only Sections 2, 25, 27, and 29(2)(e) through (g) of this administrative regulation. No KPDES permit shall be required for these facilities. [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



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 applicant shall provide a detailed evaluation of alternatives by conducting a twenty (20) year present worth cost analysis.** 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 (NH<sub>3</sub>-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. [5. 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 **including karst topography**, 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

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. This subsection shall not apply to building sewers which serve single-family residences.

(13) The length of building sewers shall be less than or equal to 150 feet. This subsection shall not apply to building sewers which serve single-family residences.

(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 (7½) 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



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 public water supply intake or discharge directly into a wellhead protection area shall meet the requirements of a Grade One reliability category.

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 violations of the standards in 401 KAR Chapter 5. [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 violations of the standards of 401 KAR Chapter 5 result [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 for agricultural wastes handling systems may be used as an interim operational permit [for agricultural waste handling systems] until the operational permit is issued or

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
Large Facility	\$1,800
Intermediate Facility	\$ 900
Small Facility	\$ 450
Large Facility: Sewer Lines	\$ 800
Intermediate Facility: Sewer Lines	\$ 400
Small Facility: Sewer Lines	\$ 200

(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: December 12, 1996

FILED WITH LRC: December 12, 1996 at 10 a.m.

#### 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

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 amend-

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.

**The basis for the projected population change shall be identified.**

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 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 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



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.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(Amended After Hearing)**

**401 KAR 50:035. Permits.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.10-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 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 a change in ownership or operational control of a source, pursuant to Section 13(2) of this administrative regulation; ~~[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) Allows for the relocation of a minor source within the Commonwealth of Kentucky, pursuant to Section 13(3) of this administrative regulation;

(f) Allows for the addition (to a permit) of an insignificant activity after a permit has been issued;

(g) Allows for the modification or replacement of existing control equipment that is required to comply with an applicable requirement with equivalent or more efficient equipment, except at a Part 70 source after the initial draft permit has been issued, or a major source subject to 401 KAR 51:017 or 51:052; and

(h) ~~[(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 (23) ~~[(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



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 (PM<sub>10</sub>) nonattainment areas classified as "serious," sources that emit or have the potential to emit seventy (70) tons per year or more of PM<sub>10</sub>.
- (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 (23) [(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;
  - (d) A state origin permit revision required to be processed pursuant to Section 22(4) of this administrative regulation; or
  - (e) An interim permit revision required to be processed

pursuant to Section 22(6) 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 (i) (Section 112(g) and (i) 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

an emission limit pursuant to 401 KAR 63:020; and

(iii) 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 subsection (3) of this section shall comply with all applicable requirements. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements that apply to non-permitted sources, emissions units, or activities. [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 7030, Minor Source Registration, prior to any construction, reconstruction, alteration, or modification. Form DEP 7030 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 or revise 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. All applications shall be submitted in triplicate, and the cabinet may request as many as seven (7) additional copies if the draft permit or permit revision is subject to public review.

(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. A major source commencing construction after December 14, 1996, or a minor source that becomes major through a reconstruction commenced after December 14, 1996, shall file a complete application prior to commencing construction or reconstruction.

3. 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.

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.

(3) [(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.

(e) [(4)] 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.

(4) [(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 of typical [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

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) The permit shall contain other provisions which the cabinet deems necessary to ensure compliance with applicable requirements. ~~[Other provisions required by the cabinet.]~~

(3) General provisions. The permit shall contain terms and conditions ~~[statements]~~ consistent with the general provisions specified in this paragraph.

(a) ~~[4-]~~ For major sources, all applicable requirements for emissions units;

(b) ~~[2-]~~ For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation;

(c) ~~[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(23) ~~[(24)]~~(b) of this administrative regulation.

(d) ~~[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.

(e) ~~[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.

(f) ~~[6-]~~ The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the

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) A source that moves to a new location within the Commonwealth of Kentucky shall notify the cabinet prior to the relocation, and shall obtain a new or revised permit prior to commencing construction or operation at the new location. If the source is minor and its current permit did not require public review, and if no other change in the permit is required, the revised permit shall be processed as an administrative amendment pursuant to Section 14 of this administrative regulation.

(4) Compliance demonstration.

(a) 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.

(b) ~~(a)~~ A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

(c) ~~(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. **The procedures in this section shall be available to all sources, and shall be used to process only those changes described in Section 1(3) of this administrative regulation. [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) For Part 70 permits, 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 a Part 70 ~~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 in this section shall be used to process the revisions specified in subsections (1) and (2) of this section at Part 70 sources after the initial draft permit has been issued for the entire source, except as provided in the Acid Rain Program. [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;



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 to **federally enforceable permits, to state origin permits that become federally enforceable as a result of the permit action to be taken, and to conditional major and synthetic minor permits containing limits that equal or exceed fifty (50) percent of a major source threshold.** ~~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 (8) ~~(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, **pursuant to the requirements in subsection (4) of this section:**

- (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

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 action 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(6) [(42)] 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. **Draft and proposed permits shall be issued on a schedule consistent with the final permit.**

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.



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 101-540 (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 29, 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 29, 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 thorough 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 7661e(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 7661e(c) (Section 504(c) 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.

(19) "Final permit" means:

(a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.

(b) For a state origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(20) "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.

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 51:017 or 401 KAR 51:052, 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 57:061 or a lesser amount specified in an applicable requirement; and

3. Is not subject to a requirement in 40 CFR Parts 60, 61, or 63; 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 63:010, 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 51:010; 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

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)(b) 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 7651e, 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

administrative regulation.

(b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:

1. Enter upon the premises where a source is located or emissions related activity is conducted, or where records are kept;

2. Have access to and copy, at reasonable times, any records required by the permit:

a. During normal office hours; and

b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet; and

3. Inspect, at reasonable times, any facilities, equipment, (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

(c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.

(d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and

2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the following:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. Whether compliance was continuous or intermittent;

d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(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 50:055 and Section 5(4) of this administrative regulation, or the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

(a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the Acid Rain Program.

(b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

(5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this administrative regulation.

(6) Permit shield.

(a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:

1. The applicable requirements are included and are specifically identified in the permit; or

2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(c) Nothing in this subsection or in a permit shall alter or affect the following:

1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the Acid Rain Program; or

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.

e. 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 29, 1993, pursuant to Section 3(1)(a)5 of this administrative regulation shall be processed as follows:

(a) Applications for the proposed construction of new sources or reconstruction of existing sources shall be processed as follows:

1. Constructing or reconstructing sources that are subject to new source review for major sources or prevention of significant deterioration requirements or who propose to accept permit limitations which cause the source to be a synthetic minor source. Applications received for the proposed construction or reconstruction of a source that is subject to, or would otherwise be subject to, 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 source shall be processed as follows:

a. Preliminary determination/draft permit. The cabinet shall make a preliminary determination if the source should be approved, approved with conditions or disapproved, and issue or deny a draft permit within sixty (60) days after the application is deemed complete.

b. Public and affected state review. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice for public review pursuant to Section 7 of this administrative regulation. The cabinet shall also provide the draft permit for affected state review pursuant to Section 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

c. Final determination/proposed permit. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA and public review is completed. The cabinet shall notify the applicant in writing of the final determination, issue or deny a proposed permit, and make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

d. If the source is 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

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 c of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

a. Meet the criteria for minor permit revision procedures in

paragraph (a) of this subsection; and

b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(22) 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(2) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

b. The source's suggested draft permit revision.

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.

d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

e. Certification, for federally enforceable permits, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

f. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3. U.S. EPA and affected state notification for federally enforceable permit revisions. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance for federally enforceable permits. Subsection (2)(a)5 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5. The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures. These procedures shall become effective after the classification date for sources that have filed an application for a permit pursuant to 40 CFR Part 70 or that have permits issued pursuant to 40 CFR Part 70. 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



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 61:017, 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 commenters 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,



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:

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

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 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.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Vehicle Enforcement  
(Amended After Hearing)**

**601 KAR 1:005. Safety administrative regulations.**

RELATES TO: KRS Chapters 138, 281, 49 CFR Parts 40, 382-383, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730, 281.750, 49 CFR Parts 40, 382-383, 390-397

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. This administrative regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

- (a) To transport agricultural products from his farm;
- (b) To transport farm machinery or farm supplies to his farm; or
- (c) Generally thought of as farm machinery; and
- (d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

Section 2. Governing Federal Regulations. All commercial motor vehicles and their operators meeting the definitions set forth in 49 CFR 390.5 operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this administrative regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) 49 CFR Part 40, as effective October 1, 1996, Procedures for Transportation Workplace Drug Testing Programs;

(2) 49 CFR Part 382, as effective October 1, 1996, Controlled Substances and Alcohol Use and Testing [~~as amended at 61 Fed. Reg. 9567, March 8, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(3) 49 CFR Part 383, as effective October 1, 1996, Commercial Driver's License Standards; Requirements and Penalties [~~as amended at 61 Fed. Reg. 9567, March 8, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(4) 49 CFR Part 390, as effective October 1, 1996, General [~~as amended at 61 Fed. Reg. 9567, March 8, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(5) 49 CFR Part 391, as effective October 1, 1996, Qualifications of Drivers [~~as amended at 61 Fed. Reg. 1843, January 24, 1996 and at 61 Fed. Reg. 9567, March 8, 1996, at 61 Fed. Reg. 13338, March 26, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(6) 49 CFR Part 392, as effective October 1, 1996, Driving of Motor Vehicles [~~as amended at 61 Fed. Reg. 9567, March 8, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(7) 49 CFR Part 393, as effective October 1, 1996, Parts and Accessories Necessary for Safe Operation [~~as amended at 61 Fed. Reg. 1843, January 24, 1996 and at 60 Fed. Reg. 46245, September 6, 1995~~];

(8) 49 CFR Part 395, as effective October 1, 1996, Hours of Service of Drivers [~~as amended at 61 Fed. Reg. 14677, April 3, 1996~~];

(9) 49 CFR Part 396, as effective October 1, 1996, Inspection, Repair and Maintenance; and

(10) 49 CFR Part 397, as effective October 1, 1996, Transportation of Hazardous Materials; Driving and Parking Rules.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(1)(a) City buses and suburban buses are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(b) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Part 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(2)(a) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education are not required to comply with the federal regulations adopted in this administrative regulation.

(b) Any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(c) The operators of the vehicles specified in paragraph (a) of this subsection shall meet the requirements of 49 CFR Part 382 relating to drug and alcohol testing.

(3) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have

(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 comment hearing was not held, but the changes in this administrative regulation should have no effect on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held, but the changes in this administrative regulation should have no effect on the cost of living or employment.

(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: Same as first year.

(3) Effects on the promulgating administrative body: The only effect on the Transportation Cabinet of this change to the administrative regulation is to the cabinet as a motor carrier rather than as the administrative body. Therefore, this subsection will remain uncompleted.

(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:

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Road Fund as authorized in the Transportation Cabinet, Department of Vehicle Regulation Biennial Budget. A significant portion of these funds are made available to Kentucky as a grant from the Federal Motor Carrier Safety Program.

(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 economic impact.

(b) Kentucky: No anticipated economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives to the federal mandates which were the primary changes to 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: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The amendments to the federal motor carrier safety regulations also included many minor technical amendments to keep the regulations accurate and up to date. Changes made by the US Department of Transportation since the last adoption of the federal motor carrier safety regulations include the following:

Allow commercial drivers additional time to provide sufficient specimens for urine drug tests.

Require medical review officers to provide test results to employer regardless of who paid for the test.

Extend until January 2, 1997 the effective date of the new requirements for intermodal containers.

(11) TIERING: Is tiering applied? Yes. The administrative regulation is tiered in that more stringent safety requirements are

imposed on the owners and operators of larger vehicles.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 390 - 399. These federal regulations extensively reference 49 CFR Part 383 relating to the commercial driver's license.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Part 40, Parts 382 - 383 and 390 - 397. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 398 relating to the transportation of migrant workers and 49 CFR Part 399 relating to motor carrier employee safety and health standards.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a. Commercial driver's license standards for the issuance, testing and withdrawal of a CDL;

b. Establishes 0.04% BAC as the level at which an operator of a commercial vehicle is considered to be DUI;

c. Establishes the maximum number of hours a commercial driver may be on-duty and how he must keep a record of the amount of time he has worked;

d. Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate and intrastate motor carriers;

e. Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of an accident; and fueling precautions;

f. Defines the parts and accessories necessary for the safe operation of a commercial vehicle;

g. Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be preformed by certified inspectors or mechanics; and

h. Driving and parking rules while transporting hazardous materials.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky, with reluctantly given federal approval, has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program. However the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles.

5. Justification for the imposition of the stricter standard, or

## ADMINISTRATIVE REGISTER - 2821

and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).  
Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 5, 1996

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

### REGULATORY IMPACT ANALYSIS

Contact Person: Thomas L. Willis, Associate Commissioner

(1) Type and number of entities affected: All certified personnel in the 176 school districts of the Commonwealth.

(2) Direct and indirect costs or savings on the: Potential savings in utility costs for school districts.

(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 on the competition) for the:

1. First year following implementation: Same requirements stated in 702 KAR 4:160.

2. Second and subsequent years: Same requirements stated in 702 KAR 4:160.

(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: Same requirements stated in 702 KAR 4:160.

(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:

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: Potential savings for local school districts in utility costs.

(a) Geographical area in which administrative regulation will be implemented: 176 local school districts.

(b) Kentucky: 176 local school districts.

(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: This regulation assists school districts in identifying ways to improve the infrastructure of their buildings.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This regulation facilitates the process of identifying improvements to the infrastructure of the buildings.

(c) If detrimental effect would occur, explain detrimental effect: Without the regulation, improvements to school buildings may not occur, affecting the welfare of school children.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: KRS 45A.351.

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. The regulation applies equally to all local school districts.

### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(Amended After Hearing)

#### 702 KAR 5:150. Transportation of preschool children.

RELATES TO: KRS 156.160, 157.226, 157.3175, 189.540

STATUTORY AUTHORITY: KRS 156.160, 189.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.150 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations regarding the transportation of children to and from school. KRS 189.540 requires the KBE to promulgate administrative regulations to govern the design and operation of Kentucky school buses. This administrative regulation provides school [the] districts [superintendent] with [the] guidelines necessary to provide transportation for preschool children.

Section 1. Kentucky school districts may transport three (3) and four (4) year old children. These children shall be transported on post federal standard (1978 through present) school buses. Local boards of education shall develop and incorporate within the existing board of education transportation policy, guidelines consistent with the child's mental and physical characteristics.

Section 2. (1) Local boards of education shall require each school bus transporting three (3) and four (4) year old children to be staffed with a minimum of one (1) driver assistant, of at least junior high or middle school age who is [minimum sixteen (16) years of age.] qualified and trained to assist in the transportation of three (3) and four (4) year old children by a certified local board of education school bus driver training instructor. If the driver assistant is not a volunteer and instead is to receive pay or other remuneration for serving as a driver assistant or school bus monitor, the employed driver assistant shall be at least sixteen (16) years of age.

(2) The driver training instructor shall qualify the driver assistant with training in student entrance of bus, student egress from bus, safety rules of transportation, first aid as it pertains to emergency and immediate care, emergency evacuation, and student management as it relates to seated positions and seat occupancy.

(3) The Division of Pupil Transportation of the Department of Education shall provide the curriculum for driver assistant training.

(4) The number of assistants required for any one (1) school bus shall be recommended to the superintendent by the driver training instructor.

(5) Liability insurance shall be provided for the driver assistant as a named insured.

(6) The driver assistant shall be selected who has personal attributes and indicators which show the individuals ability to handle preschool [aged] children.

Section 3. ~~Local boards of education shall develop a policy requiring all three (3) and four (4) year old children to be transported on school bus seats located approximately midship of school bus. Loading shall begin in the middle of the bus and continue toward the front and rear. These children shall not occupy a front or rear row seat.~~

~~Section 4.] It shall be the responsibility of the parent, guardian, or person authorized by the parent of a preschool child to provide safe supervision to and from the bus stop and delivery to and receipt from the driver assistant.~~

(2) Approximately six (6) months prior to their scheduled accreditation visit, institutions seeking NCATE accreditation shall announce the upcoming visit to their local and state publics. The EPSB shall annually place a two (2) year schedule of Board of Examiner visits in the board minutes for all Kentucky institutions.

Section 4. Annual Reports. Each institution shall report annually to the EPSB regarding data and information about faculty and students in each of its approved programs, progress made in addressing weaknesses identified by its last accreditation evaluation, and major program developments in each of the NCATE categories of standards. NCATE-accredited institutions may use the annual report sent to NCATE/AACTE as the annual report to the EPSB. Non-NCATE institutions shall use the EPSB Annual Report Form, dated 1996.

Section 5. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups of the EPSB. The Reading Committee shall conduct a preliminary review process by which the materials received from teacher education institutions shall be analyzed with respect to their adequacy, timeliness, and conformity with the corresponding standards.

(2) In the spring and fall semesters of each year, the Reading Committee shall analyze the preconditions reports for initial accreditation visits and the program descriptions (folios) of all the state-only institutional reports submitted by that date.

(3) For institutions seeking initial accreditation by NCATE, the analysis of the institutional report on preconditions for initial accreditation shall be made by NCATE, but shall be available to the EPSB for informational purposes.

(4) For NCATE institutions, the Reading Committee shall analyze the folios, matrices, and any available reports from specialty area groups. Since the preconditions section will be analyzed by NCATE, the Reading Committee shall review that section for information purposes and shall adopt the NCATE analysis. The Reading Committee shall analyze the reports to determine conformity with standards for the preconditions, program standards, and the guidelines of professional associations.

(5) The Reading Committee may:

(a) Ask that the staff of the EPSB resolve any discrepancies or omissions in the reports with the institution.

(b) Refer unresolved discrepancies or omissions to the visiting team for resolution.

(c) Recommend to the EPSB that the evaluation and approval process be terminated, as a result of severe deficiencies in the report.

(6) When the EPSB terminates the evaluation and approval process at this point, the institution may be given a one (1) year extension of state program approval.

(a) At the end of that year, if the preconditions report and the program folios are still not submitted in acceptable form, a denial of approval recommendation shall be made by the Reading Committee for transmission to the EPSB.

(b) If the institutional reports are submitted in acceptable form, the institution shall report on standards for unit accreditation.

(c) An on-site visit shall occur.

(d) If the outcome of the visit is a team recommendation for approval with stipulations, the institution shall then be into its second year of extension.

Section 6. Preconditions for Initial Unit Accreditation. (1) Eighteen (18) months prior to the scheduled campus visit of the evaluation team, the teacher education institution shall submit information to the EPSB documenting the fulfillment of the preconditions for the accreditation of the teacher education unit, as described below:

(2) As a precondition for experiencing an on-campus evaluation for teacher education, the institution shall present documentation to show that the following conditions are satisfied.

(a) Precondition Number 1. There is a written description of the professional education unit that is primarily responsible for the preparation of teachers and other professional education personnel. Required documentation shall include:

1. Verification by an appropriate central administration officer of the unit with primary responsibility for professional education and a statement of the unit's authority.

2. Chart depicting all programs for the preparation of school personnel in the institution, indicating the unit in which each is administratively located (e.g., school of education, school of music, school of arts and sciences), and the administrative unit's relationship to the professional education unit.

3. Program summary that includes the number of graduates by program and level.

4. Unit statement of mission, purpose, or goals.

5. Summary of meetings and actions of the professional education unit for the preceding year (maximum of two (2) pages).

(b) Precondition Number 2. A dean, director, or chair is officially designated to represent the unit and assigned the authority and responsibility for its overall administration and operation. Required documentation shall include:

1. Job description for dean, director, or chair.

2. Chart depicting administrative and organizational structure of the unit.

(c) Precondition Number 3. There are written policies and procedures upon which the operations of the unit rest. Required documentation shall include codified policies and operating procedures of the unit, such as policy manual or constitution and bylaws.

(d) Precondition Number 4. The unit regularly monitors and evaluates, both internally and externally, its operation, scope, quality of its offerings, and the effectiveness of its graduates. Required documentation shall include:

1. Policies for conducting ongoing evaluation reviews.

2. Summary of the findings of evaluation reports completed within the past five (5) years documenting internal programs review (maximum of two (2) pages).

3. Summary of the findings of evaluation reports completed in the past three (3) years documenting external program review, including follow-up study of graduates and employers (maximum of two (2) pages).

4. Summary of recent program modifications based on evaluation results (maximum of (2) two pages).

(e) Precondition Number 5. The unit has criteria for admission to basic teacher education programs that include an assessment of basic skills. Required documentation shall include:

1. List of basic skills that are assessed and the measures used to assess them.

2. Published criteria for admission to professional education programs.

3. Summary of report of assessment results for students admitted for at least the past three (3) years (maximum of two (2) pages).

(f) Precondition Number 6. The unit assesses the academic and professional competencies of education students at exit from all programs at all levels, through multiple evaluation methods. Required documentation shall include:

1. Listing of multiple assessment measures used to evaluate academic and professional competence of professional education graduates.

2. Summary of reports of competency assessment outcomes for at least the past three (3) years.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency. Required documentation shall include copies of the most recent approval letter(s) from the EPSB attesting that state standards have been met.

(h) Precondition Number 8. The institution is fully accredited by the appropriate institutional accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation and the

(3) The function of the evaluation team shall be to conduct an on-campus evaluation of the self-study materials prepared by the institution, and to seek out additional information, as needed, to make a determination as to whether the standards are met for the accreditation of the institution's teacher education unit and for the approval of individual teacher preparation programs. The evaluation team shall make use of the analyses prepared through the preliminary review process.

(4) The evaluation team shall also visit off-campus sites where the institution offers courses. Off-campus sites which offer self-standing programs shall require a full team visit. If additional team time is required for visiting off-campus sites, the team chair, the institution, and the EPSB shall negotiate special arrangements.

(5) In joint teams, all team members shall vote on all accreditation and program approval decisions.

(6) The on-site evaluation process shall end with the team chair giving an oral summary of the team's findings. Since the institution shall respond in writing to the team's written report, there shall be no discussion at the time of the exit report.

(7)(a) A state-only team shall make its report to the EPSB. For each teacher preparation program, the evaluation team shall make one (1) of three (3) recommendations:

1. Full approval;
  2. Approval with stipulations specified; or
  3. Denial of approval.
- (b) For each standard, the team will render a judgment of:
1. Met;
  2. Met with specified stipulations; or
  3. Not met.

Section 12. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble for the evaluation team the records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include, but not be limited to the following:

- (1) The faculty handbook;
- (2) Committee minutes;
- (3) Samples of student files and portfolios;
- (4) Faculty transcripts;
- (5) A random sample of graduates' transcripts;
- (6) Course syllabi;
- (7) Forms used in admission and retention of teacher education students; and
- (8) Documents showing methodology and results of continuous assessment within programs and follow-up studies of program graduates.

Section 13. Preparation and Distribution of the Draft Evaluation Report. (1) For state-only visits, the EPSB staff liaison shall collect the written evaluation pages from each team member before leaving the institution and shall have the first draft typed and distributed to all team members. Any revisions shall be consolidated by the team chair who shall then prepare the final report of the evaluation team. The final report of the evaluation team shall be printed by the EPSB and delivered to the institution and to the Board of Examiner members within thirty (30) days of the conclusion of the on-campus visit.

(2) For NCATE institutions, the joint team report shall be compiled by the team chair and sent to NCATE. NCATE shall send a copy of the report to the EPSB and to the institution.

Section 14. Institutional Response to the Evaluation Report. (1) The institution shall provide a written response to the team report within thirty (30) days of receipt of the report. The response shall address the NCATE standards related to unit accreditation and the state program approval standards. The institutional response shall focus on possible errors of process or lack of information. NCATE

institutions shall send their written response to NCATE and to the EPSB. Non-NCATE institutions shall send their written response to the EPSB.

(2) In the event that a follow-up report is prescribed as a consequence of the evaluation process, the institution shall follow the instructions that are provided with the follow-up report.

(3) In the event the institution chooses to appeal any part of the evaluation results, the procedure stated in Section 20 of this administrative regulation shall be followed.

(4) The institution shall make annual reports relating to the unit for teacher education and relating to the programs of preparation as described in Section 5 of this administrative regulation.

Section 15. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, reporting to the Program and Technical Assistance Committee of the Board. The chairperson of the EPSB shall appoint the Accreditation Audit Committee as follows:

- (a) Two (2) lay members;
  - (b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;
  - (c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent teacher education institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and
  - (d) One (1) school administrator appointed from nominees provided by the Kentucky Association of School Administrators.
- (2) The chairperson of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chairperson and to report to the Program and Technical Assistance Committee.

(3) Appointments shall be for a period of four (4) years except that one-half (1/2) of the initial appointments shall be for two (2) year terms. Members may serve additional terms if renominated and reappointed in the manner described for membership. Vacancies shall be filled as they occur in a manner consistent with the provisions for initial appointment.

(4) All members of the Accreditation Audit Committee shall be trained in the national accreditation standards and procedures by NCATE or by NCATE-approved Kentucky trainers.

(5) The Accreditation Audit Committee shall review the reports and materials constituting the institutional self studies, the report of the evaluation team, and the institutional response to the evaluation report and shall then prepare recommendations for consideration by the Program and Technical Assistance Committee.

(a) For all institutions, the committee shall review procedures of the Board of Examiners to determine whether approved accreditation guidelines have been followed.

(b) For institutions participating in both state and national accreditation, the committee shall accept the NCATE decision with respect to accreditation of the institutional unit for teacher education, but shall make its own recommendations about the individual programs of teacher preparation offered by the institution.

(c) For institutions seeking state accreditation and program approval, the committee shall make a recommendation with respect to accreditation of the institutional unit for teacher education as well as for the individual programs of preparation.

(6) The Accreditation Audit Committee shall compile accreditation data and related information across all Kentucky institutions that prepare school personnel. It shall periodically prepare for the EPSB reports and recommendations regarding accreditation standards and procedures that might be needed to improve and streamline the accreditation process and the preparation of school personnel.

Section 16. Official Action by the Education Professional Standards Board. (1) For both the NCATE-accredited institutions and the state-accredited institutions, the evaluation team report, the institutional response, and the recommendations of the Accreditation



study data bank information and a continuing accreditation self-study that includes all programmatic (and other institutional) changes, and shall visit the institution.

(2) The unit's continuous assessment program shall be expected to provide the institution and the EPSB with systematic and ongoing information regarding program and unit strengths, weaknesses, and areas of progress.

Section 20. The "National Council for Accreditation of Teacher Education Standards for the Accreditation of Professional Education Units", revised 1995, and the EPSB Annual Report Form, dated 1996, are hereby adopted and incorporated by reference and may be inspected, copied, and obtained from the Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROSA WEAVER, Chair

APPROVED BY AGENCY: November 25, 1996

FILED WITH LRC: November 27, 1996 at 2 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Betty Lindsey

(1) Type and number of entities affected: 26 institutions of higher education offering teacher education programs.

(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 additional cost.

(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: Each institution will be required to modify its admissions reporting and assessment to include criteria for acceptance.

2. Second and subsequent years: None

(3) Effects on 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:

(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: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current policies contain out-of-date requirements and are fragmented. The regulation will combine new standards and updated policies in a single regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas 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: None

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: Teacher Education Committee Policy 12.2.

(a) Necessity of proposed regulation if in conflict: Regulation will remove overlap and contradiction between old policies and regulations and this regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, this regulation removes conflicts, includes new program standards and, eliminates duplicative policies.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? No. All teacher education programs will follow the same regulations in the preparation of professional educators.

#### CABINET FOR HEALTH SERVICES

Department for Mental Health

Mental Retardation Services

(Amended After Hearing)

**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

professional or become a Kentucky certified prevention professional within thirty (30) ~~twenty-four (24)~~ months of the effective date of this administrative regulation or within thirty (30) ~~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 prevention agency shall establish a system of ongoing staff development to include training and supervision of all prevention 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 prevention 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) [(d)] Provisions for recruiting, selecting, promoting, disciplining and terminating staff;~~

~~(d) [(e)] Procedures for confirming previous checks or conducting background checks from the Justice Cabinet for all agency staff and subcontract employees [volunteers] working with minors [consumers] to assure that there is no previous record of conviction related to abuse or molestation of children;~~

~~(e) [(f)] 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) [(g)] Written job specifications for all positions identifying the qualifications, duties, reporting supervisor, and positions supervised [work schedule and salary range];~~

~~(g) [(h)] 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) [(i)] Information on equal employment opportunities and affirmative action policies;~~

~~(i) [(j)] Requirements for length of sobriety for potential employees in recovery from alcohol or other drug abuse;]~~

~~(j) [(k)] 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) [(l)] 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) [(m)] Ethical standards identifying acceptable employee conduct regarding consumer's rights;~~

~~(m) [(n)] Conflict of interest policies governing dual relationships with other legal entities;~~

~~(n) [(o)] Provisions to assure the confidentiality of personnel records;~~

~~(o) [(p)] Procedures for providing an employee with access to their personnel record; and~~

~~(p) [(q)] Procedures for the storage and retention of personnel records.~~

(2) A staff member shall be given access to a copy of the agency's policies and procedures ~~[shall be given to a staff member]~~ at the time of employment and shall be notified of ~~[and periodically]~~ revisions as they are made.

Section 7. Program Operation and Services. (1) Each program

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 prevention 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 notice of hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(4) The hearing officer shall issue a recommended decision in accordance with KRS 13B.110. Upon receipt of the recommended order and following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120. ~~[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.]~~

(5) [(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.

(6) [(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.

(7) [(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: December 3, 1996

FILED WITH LRC: December 4, 1996 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth R. Wachtel, Commissioner

(1) Type and number of entities affected: Currently there are 14 community mental health centers and 10 private programs providing alcohol and other drug prevention services in 32 different locations and 125 preventionists which are affected. These programs provide services to 300,000 consumers per year. All of the aforementioned programs and preventionists will be affected by the additional licensing and certification requirements.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the notice of intent being published 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 hearing was requested as a result of the notice of intent being published and no comments were received.

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

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 13, 1996

LEGISLATIVE RESEARCH COMMISSION  
Capital Planning Advisory Board  
(Amendment)

1 KAR 6:020. Policies and procedures.

RELATES TO: KRS Chapter 7A

STATUTORY AUTHORITY: KRS 7A.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 7A.140

authorizes the Capital Planning Advisory Board to adopt any administrative regulations necessary to carry out its planning and advisory functions. The purpose of this administrative regulation is to establish the policies and procedures for the capital planning process.

Section 1. State agencies and institutions of public higher education shall submit information specified by the board in the document entitled "Agency [Six-Year] Capital Planning Instructions." This document is incorporated by reference and may be reviewed or obtained at the office of the Capital Planning Advisory Board, Room 102 [992], Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m. (ET).

Section 2. The Capital Planning Advisory Board shall use the expertise of the Kentucky Information Resources Management Commission and the Council on Higher Education in the review and preparation of the biennial capital improvements plan. [Agencies providing information to the Kentucky Information Systems Commission pursuant to KRS 61.050 shall not be required to provide that information directly to the board.]

(1) The Kentucky Information Resources Management [Systems] Commission shall review and report to the board [provide the board with the following information] by July 1 of each odd-numbered year on all computing and communications items and systems having capital project status submitted in the agency capital plans. That report shall contain:

(a) List and approval or disapproval status of all submitted computing and communications items or systems having capital project status;

(b) List of selected computing and communications items or systems having capital project status on which the Kentucky Information Resources Management [Systems] Commission places high value; ~~and~~

(c) List, in priority order, of computing and communications items or systems having capital project status proposed for funding with state cash or state bonds; and

(d) Report of any statewide initiatives involving multiple-agency projects for which the Kentucky Information Resources Management [Systems] Commission seeks the support and endorsement of the board.

(2) The Council on Higher Education shall review and report to the board by July 1 of each odd-numbered year on projects submitted by the public higher education institutions in their capital plans. That report shall contain:

(a) List, in priority order, of projects proposed for funding with state cash or state bonds;

(b) Recommendations on any other items affecting the capital needs or higher education; and

(c) Any other information deemed appropriate by the council relative to the board's review of the higher education plans. [The board may use the information received from the Kentucky Information Systems Commission in the formulation of the board's statewide six (6) year capital improvements plan.]

~~Section 3. As provided in KRS 164.020(5), the Council on Higher Education shall consider the requirements and review the six (6) year capital plans of the institutions of public higher education. The plans shall be prepared in the manner and submitted by the institutions to the council by dates prescribed by the board. The institutions' individual six (6) year capital plans, along with the council's system capital plan for higher education, shall be submitted to the board by April 15 of each odd-numbered year.]~~

Section 3. [4-] The board shall exclude road projects from its information request. Instead, the board shall accept, for review only, the Biennial Highway Construction Program developed by the Transportation Cabinet pursuant to KRS Chapters 45 and 48, and the additional four (4) year highway construction plan developed pursuant to KRS Chapter 176 which shall be submitted to the board by July 1 of each odd-number year.

~~[(1) The Transportation Cabinet shall submit to the board copies of the recommended updates to the most recently enacted Biennial Highway Construction Program and the additional four (4) year highway construction plan by July 15 of each odd-numbered year.~~

~~(2) The board may use the information received from the Transportation Cabinet in the formulation of the board's statewide six (6) year capital improvements plan.]~~

REP. FRED NESLER, Chairman

APPROVED BY AGENCY: December 12, 1996

FILED WITH LRC: December 12, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 28, 1997 at 9 a.m. in Room 111 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 21, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. An 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: Pat Ingram, Staff Administrator, Capital Planning Advisory Board, Room 102, Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-8100, ext. 586.

REGULATORY IMPACT ANALYSIS

Contact person: Pat Ingram

(1) Type and number of entities affected: The amendment will affect 2 state government agencies (Council on Higher Education (CHE) and Kentucky Information Resources Management Commission) and the eight state universities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable

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

## ADMINISTRATIVE REGISTER - 2835

Section 6. The retirement office shall provide a Certification of Service, Form 6120 [493], dated January 1997 [~~July 1994~~], to the member to certify service with another agency participating in the Kentucky Retirement Systems for which he may be eligible to purchase credit prior to retirement. The retirement office shall, upon request, provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit. [~~The member shall have the right to purchase the service credit within thirty (30) days following his retirement date.~~]

Section 7. (1) The retirement office shall provide forms for the selection of medical insurance coverage for the member, his spouse and dependents under the group insurance plan or to waive the right to insurance coverage at the time of retirement. The forms provided are [~~the Kentucky Retirement Systems Health Insurance Coverage Form, dated July 1994,~~] the Kentucky Retirement Systems High & Low Option Coverage Form 6200 dated January 1997 [~~June 1994~~] and the Waiver of Insurance Coverage, Form 6210, dated January 1997. For individuals who are not eligible for Medicare coverage, the form shall be provided by the Health Purchasing Alliance. [~~July 1994.~~]

(2) If the insurance form is received prior to the date the initial retirement check is processed, the insurance coverage shall be effective the first day of the month in which the initial check is processed. If the form is received after the date the initial retirement check is processed, coverage shall be effective the first day of the month following the month in which the initial retirement check is processed.

(3) Members who fail to submit a form selecting medical insurance coverage within thirty (30) days following the first day of the month in which their initial retirement check is processed shall not be eligible for benefits under the insurance plan until the following open enrollment period.

Section 8. The retirement office shall provide an Income Tax Withholding Preference, Form 6017, dated January 1997 [~~October 1999~~], to the member to request that federal income taxes be withheld or not withheld from his retirement allowance.

Section 9. The retirement office shall provide a Death Benefit Designation, Form 6030 [36], dated January 1997 [~~August 1994~~], to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems.

Section 10. The forms required by this administrative regulation are incorporated by reference and are available from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

FRANK W. BURKE, Chair

APPROVED BY AGENCY: November 21, 1996

FILED WITH LRC: December 6, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1997, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: All members who retire from KERS, CERS and SPRS, approximately 2,500 per year.

(2) Direct and indirect costs or savings to those affected: This regulation will not increase costs for retiring members.

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Once additional form is required only for new retirees who wish to receive payment by check rather than electronic fund transfer (EFT). Other existing forms are revised only to the extent necessary to become readable by an optical imaging system.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement system.

(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 not be a significant change in paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with the regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

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

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The vast majority of members retiring in recent years have elected to have their benefits transferred directly to their bank accounts. In FY 95-96 the number of retirees receiving checks increased by only 10, while the number of retirees receiving payment by EFT increased by nearly 1,500. Payment by EFT is a quicker means of delivering benefits to members. Further, EFTs can be traced if an error occurs. Checks cannot be traced once delivered to the post office. Hundreds of benefit checks are lost, stolen or damaged each year and must be replaced after the original check has been voided. The costs associated with printing, sorting, mailing and replacing checks will decrease as new retirees use EFT. The Social Security Administration is now requiring recipients to have funds electronically transferred to bank accounts in order to save costs.

(8) Assessment of expected benefits: Fewer benefit payments will be lost or stolen each year.

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

standards:

(1) Each clerkship (begun after the effective date of this administrative regulation) must have been evaluated and approved by the foreign medical school prior to commencing in accord with the foreign school's established standards for approval of clerkships performed in the United States.

(2) Seventy-five (75) percent of the clerkships performed in the United States must have been performed in hospitals that:

(a) Possess accreditation by the Joint Commission on Accreditation of Hospitals;

(b) Have residencies in the subject area of the clerkship approved by the Accreditation Council on Graduate Medical Education; and

(c) Have affiliation with a medical school located in the United States.

The board will not recognize the degree of any applicant who cannot demonstrate that the clerkships he performed in the United States met the above standards. However, the board may waive the above requirement if the applicant commenced the unapproved clerkship prior to February 12, 1985, and can present verifiable proof of satisfactory completion of an approved three (3) year postgraduate training program at one (1) hospital or institution, or proof of acceptance into or current enrollment in the second or third year of an approved postgraduate training program. Licensure will not be granted unless the board recognizes the applicant's degree.

Section 6. Application of KRS 311.271. (1) An applicant shall not obtain any license or permit issued by the board unless and until the applicant provides written proof that he or she has been credited with not less than sixty (60) transferable units of study by a college or university accredited by the Southern Association of Colleges and Schools or an accrediting agency recognized by the Southern Association of Colleges and Schools; provided, however, that the executive director may determine the equivalency of premedical or preosteopathic units of study credited by a college or university located outside the United States or Canada on an individual basis.

(2) It is the declared policy of the Commonwealth that a physician, who becomes initially enrolled in a school of medicine or osteopathy after June 13, 1968, should not be authorized to practice medicine or osteopathy in this state unless and until the physician can provide satisfactory evidence that he or she has fulfilled the premedical or preosteopathic undergraduate requirement delineated in subsection (1) of this section. Therefore, the board will not issue any license or permit to an applicant except upon the fulfillment of this requirement.

Section 7. Hearings. The board, in its discretion, may direct that formal or informal hearings be held in connection with the approval, denial of approval or withdrawal of approval of any medical or osteopathic school, college or university, or in the determination of qualification pursuant to KRS 311.271.

Section 8. Amount of Postgraduate Training Required. (1) All applicants for regular licensure who are graduates of medical and osteopathic schools located within the United States or Canada shall provide written proof of having completed one (1) full year of postgraduate training approved by the board.

(2) All applicants for regular licensure who are graduates of medical and osteopathic schools located outside the United States and Canada shall provide written proof of having completed two (2) ~~three (3)~~ full years of postgraduate training approved by the board.

(3) All applicants for limited licensure-institutional practice shall provide written proof of having completed one (1) full year of postgraduate training approved by the board.

Section 9. Postgraduate Training Programs Approved by the Board. (1) All postgraduate training programs in hospitals and institutions located in the United States and approved by the

Accreditation Council for Graduate Medical Education (ACGME) are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

(2) All postgraduate training programs in hospitals and institutions located in Canada and approved by the National Joint Committee on Accreditation of Preregistration Physician Training Programs in the United States or Canada are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

(3) All postgraduate training programs in hospitals and institutions located in the United States or Canada and approved by the American Osteopathic Association are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

Section 10. Fellowship Training in the United States or Canada. The board will consider on an individual basis written proof of satisfactory completion of fellowship training recognized by the board to be of satisfactory quality as substitution for the second or third year of required postgraduate training approved by the board pursuant to this administrative regulation.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: December 13, 1996

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

PUBLIC HEARING: A public hearing on the proposed amendment, 201 KAR 9:021, to current administrative statutes and regulation will be held on the 28th day of January, 1997, at 3 p.m. eastern time, at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by January 21, 1997, 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. 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 this hearing, you may submit written comments on the proposed administrative regulation. Send notification of intent to attend the public hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

#### REGULATORY IMPACT ANALYSIS

Contact person: C. William Schmidt

(1) Type and number of entities affected: All applicants for regular licensure who are graduates of medical and osteopathic schools located outside of the United States and Canada.

(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: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(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: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

1. First year following implementation: No significant effect.



public interest.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Paperwork and staff workload will increase.

(a) Direct and indirect costs or savings: None

1. First year: No change.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Do not anticipate paperwork and reporting requirements to increase.

(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: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(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 throughout the state of Kentucky.

(b) Kentucky: Yes

(7) Assessment of alternative methods; reasons why alternatives were rejected: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(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:

(a) Necessity of proposed regulation if in conflict: Board is not aware of any statute, regulation, or government policy which is in conflict or is duplicated by this proposed regulation.

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

(10) Any additional information or comments: The board feels that this regulation needs to be changed for housekeeping purposes only. The board collects the examination fee, which is then paid in its entirety to the Federation of State Medical Boards. The fee was previously listed incorrectly.

(11) TIERING: Is tiering applied? No. This regulation shall pertain to all physicians wishing to take this examination. There is no valid reason to impose varying requirements.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Medical Licensure  
(Amendment)**

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

RELATES TO: KRS 311.650 to 311.658, 311.990(18)

STATUTORY AUTHORITY: KRS 311.654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654

directs the Board of Medical Licensure to adopt rules and administrative regulations relating to paramedics. The function of this administrative regulation is to establish procedures for taking disciplinary action against certified paramedics, or paramedic applicant.

Section 1. Discipline [Denial, Revocation, and Suspension] of Certificates. The board may deny an application for certificate; place a certificate on probation for a period not to exceed five (5) years; suspend a certificate for a period not to exceed five (5) years; limit or restrict a certificate for an indefinite period; issue a reprimand; impose a fine of not greater than \$5,000 per violation; or revoke ~~or suspend~~ the certificate of any person upon proof that the holder of a certificate ~~who~~:

(1) Has engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(2) 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 222.011(3);

(4) Develops such physical or mental disability or other condition that continued practice or performance of his duties may be dangerous to patients or the public;

(5) Fails to comply with any administrative regulation of the board relating to the certification of paramedics.

(6) Knowingly makes or presents, or causes to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other thing, in connection with an application for a certificate;

(7) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion or conspiracy in connection with an examination for a certificate;

(8) Has been convicted, including a nolo contendere plea, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any misdemeanor involving moral turpitude;

(9) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession;

(10) Knowingly employed, as a certified paramedic in the practice of his profession, in this state, any person not duly licensed, or otherwise aided, assisted or abetted the unlawful practice of any healing art;

(11) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any practice which regulates the functions of a paramedic or any administrative regulation promulgated by the board under KRS 311.654 or any other valid administrative regulation of the board;

(12) Violated any order of suspension, or the terms or conditions of any order of probation, issued by the board;

(13) Performed or attempted to perform as a certified paramedic under a false or assumed name or impersonated another paramedic of a like, similar or different name;

(14) Willfully violated a confidential communication except as required by a court of law;

(15) Had his certification to practice as a paramedic in another state, territory or foreign nation revoked, probated, suspended, restricted or limited or has been subjected to other disciplinary action by the licensing authority thereof;

(16) Been removed, suspended or expelled by any professional medical association or society when the action was based upon unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311, or administrative regulations promulgated by the board; or

(17) Has been disciplined by a medical director, approved advanced life support provider, physician coordinator or course

American Osteopathic Association. Verification of such attainment shall be submitted to the board before April 1 of a given year and can be submitted in the following ways:

(a) Submit evidence that the licensee has received the American Medical Association's (AMA's) "physician recognition award" (PRA) or the American Osteopathic Association's (AOA's) "osteopathic physicians' recognition award" (OPRA) and that such award is in effect at the time a license is renewed.

(b) Submit verification that the licensee has completed continuing medical education requirements of any specialty organization which are recognized by the AMA or AOA as at least equivalent to their recognition awards, and that such certification is in effect at the time a license is renewed.

(c) Submit verification that the licensee is in or has been in an approved postgraduate training program. Each year of postgraduate training is equivalent to fifty (50) hours of continuing medical education.

(2) The board may grant an extension of time to a physician who for sufficient cause has not yet received continuing medical education certification.

(3) A minimum of two (2) of the continuing medical education hours shall be in HIV/AIDS courses approved by the Cabinet for Human Resources pursuant to 201 KAR 2:160.

(4) Each year, with the application for renewal of an active license to practice medicine, the board will include a question which requires the licensee to certify by signature, that he has met the continuing medical education requirements for the three (3) year cycle. In addition, the board may randomly require physicians submitting such a certification to demonstrate satisfactory completion of the continuing medical education requirements stated in his certification.

(5) The licensee who fails to timely complete the continuing medical education requirements, or who fails to obtain an extension of time ~~[as outlined in Section 4 of this administrative regulation]~~ shall be fined a minimum of \$200 and allowed six (6) months to come into compliance. After the six (6) month period of time, should the licensee still be in noncompliance, his license shall be immediately suspended until such time as verifiable evidence is submitted indicating completion of the continuing education requirements.

(6) A waiver from the requirements established by the provisions of this administrative regulation shall not be granted.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: December 13, 1996

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

PUBLIC HEARING: A public hearing on the proposed amendment, 201 KAR 9:310, to current administrative statutes and regulation will be held on the 28th day of January, 1997, at 10 a.m. eastern time, at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by January 21, 1997, 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. 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 this hearing, you may submit written comments on the proposed administrative regulation. Send notification of intent to attend the public hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

## REGULATORY IMPACT ANALYSIS

Contact person: C. William Schmidt

(1) Type and number of entities affected: All physicians who are licensed to practice in the Commonwealth of Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(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: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

1. First year following implementation: No effect.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body: Paperwork and staff workload will increase.

(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 anticipated.

(b) Reporting and paperwork requirements: Do not anticipate paperwork and reporting requirements to increase.

(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: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(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 throughout the state of Kentucky.

(b) Kentucky: Yes

(7) Assessment of alternative methods; reasons why alternatives were rejected: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Comments not available due to first public hearing being cancelled. Hearing cancelled due to lack of public interest.

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

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

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

(a) Necessity of proposed regulation if in conflict: Board is not aware of any statute, regulation, or government policy which is in conflict or is duplicated by this proposed regulation.

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

(10) Any additional information or comments: The board feels that this regulation will assure the public of continued competency of physicians licensed in Kentucky.

(2) In the Northeast Special Hunt Zone, one-half (1/2) hour before sunrise until 2 p.m.

Section 5. Ballard Wildlife Management Area ~~[North of Terrell Landing Road]~~. (1) Ducks, coots and mergansers.

(a) December 5 ~~[42]~~ through January 18 ~~[46]~~ or until the Ballard Reporting Area goose quota is reached.

(b) During waterfowl hunts occurring before October 15.

(2) Geese, December 5 ~~[42]~~ through January 18 ~~[27]~~ or until the Ballard Reporting Area quota is reached.

(3) No hunting on Sundays, Mondays, Christmas Day or New Year's Day.

(4) Shooting hours: one-half (1/2) hour before sunrise until noon.

(5) A waterfowl hunter ~~[Waterfowl hunters]~~:

(a) Shall apply in advance as stipulated in 301 KAR 2:222.

(b) Shall not have more than ten (10) shotgun shells in his ~~[their]~~ possession.

(c) Shall case his gun ~~[their gun]~~ while using department-supplied transportation to and from blinds.

(d) Shall be accompanied by an adult if under eighteen (18) years old.

(6) More than four (4) person shall not occupy a blind.

(7) A person ~~[Persons]~~ shall not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.

Section 6. Falconry Waterfowl Season and Limits. (1) Season: statewide, November 5 through January 31 for ducks, coots, mergansers, Canada geese, and except in the Western Goose Zone, other geese.

(2) For other geese in the Western Goose Zone, November 24 through November 27 and during the open gun and archery season.

(3) ~~[(2)]~~ Daily limit: three (3) waterfowl.

(4) ~~[(3)]~~ Possession limit: six (6) waterfowl.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 8,000 ~~[22,425]~~ Canada geese in the Ballard Reporting Area before January 20, goose hunting ~~[34-]~~

~~[(a) Goose season]~~ shall cease ~~[close]~~ in the Ballard Reporting Area.

~~[(b) In the counties associated with the Ballard Reporting Area, the goose season shall close:~~

~~1. Seven (7) days later; or~~

~~2. On the scheduled closing date, whichever occurs first.]~~

(2) If hunters reach a quota of 3,990 ~~[6,555]~~ Canada geese in the Henderson-Union Reporting Area before January 31:

(a) Goose hunting ~~[season]~~ shall cease ~~[close]~~ in the Henderson-Union Reporting Area.

(b) In the counties associated with the Henderson-Union Reporting Area, goose hunting ~~[season]~~ shall cease ~~[close]~~:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(3) If hunters reach a quota of 21,000 Canada geese in the Western Goose Zone before January 31, goose hunting shall cease in the Western Goose Zone.

(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of early closures.

(5) Closures as stipulated in this section shall not apply to the February 15-March 10 portion of the snow goose season.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: December 12, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regu-

lation shall be held on January 28, 1997 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 21, 1997, 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: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502)564-6508.

#### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on 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: No impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration 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 received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was

## ADMINISTRATIVE REGISTER - 2845

Section 3. Requirements for Waterfowl Hunters in the Ballard Reporting Area, as Described in 301 KAR 2:224. (1) A waterfowl hunter:

- (a) Shall hunt from a blind unless hunting in flooded, standing timber.
- (b) Shall not hunt from or establish a blind:
  - 1. Within 100 yards of another blind; or
  - 2. Within fifty (50) yards of a property line.
- (c) Shall not possess more than one (1) shotgun while in a blind.
- (2) More than five (5) persons shall not occupy a blind.
- (3) The requirements of subsection (1) of this section shall not apply during the February 15-March 10 portion of the snow goose season.

Section 4. Blind Restrictions on Wildlife Management Areas. (1) Except as specified in this section or in Section 5 of this administrative regulation, on wildlife management areas:

- (a) A waterfowl hunter shall not establish or hunt from:
  - 1. A permanent blind.
  - 2. A blind within 200 yards of:
    - a. Another blind; or
    - b. A waterfowl refuge.
- (b) A person shall not hunt in designated recreation areas or access points.
- (c) More than four (4) persons shall not occupy a blind.
- (d) A hunter shall remove decoys and personal effects from the wildlife management area daily.
- (2) A person wishing to establish permanent blinds on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake and Taylorsville Lake Wildlife Management Areas:
  - (a) Shall first obtain a permit from the U. S. Army Corps of Engineers.
  - (b) May designate one (1) other person as a partner.
  - (c) Shall participate in a drawing for blind permits on the Barkley, Barren, Green, Paintsville, and Taylorsville areas.
  - (d) Shall present a valid hunting license at the time of the drawing.
  - (e) Shall not hold more than one (1) permit per area.
  - (3) The holder of a blind permit:
    - (a) Shall construct his blind before November 20 or forfeit the permit.
    - (b) Shall not lock blinds.
    - (c) Unless an extension of time is granted, shall remove his blind within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.
    - (4) A blind not occupied by the permit holder one-half (1/2) hour before sunrise shall be available to other hunters on a first-come, first-serve basis.
    - (5) Blind restrictions specified in this section shall not apply to falconers when gun or archery seasons are not open.

Section 5. Exceptions for Wildlife Management Areas. (1)(a) Statewide waterfowl seasons apply unless otherwise stated in this section.

(b) ~~{(2)}~~ If specific hunting dates are given in this section, a person shall not hunt waterfowl except on those dates. [persons may hunt waterfowl only on these dates.]

(2) A person shall not:

(a) Hunt on areas or portions of areas marked by signs as closed to hunting;

(b) Enter an area or a portion of an area marked by signs as closed to public access; or

(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County. [Ballard Wildlife Management Area. Waterfowl hunting requirements are stipulated in

301 KAR 2:224.]

(a) Seasons and hunting requirements for the Ballard Wildlife Management Area shall be as stipulated in 301 KAR 2:221.

(b) Barlow Bottoms Wildlife Management Area.

1. A person shall:

a. Not hunt waterfowl after 12 noon;

b. Not possess more than fifteen (15) shotgun shells while waterfowl hunting;

c. Not hunt Mondays through Wednesdays;

d. During Canada goose season, check in and out daily at the designated check station.

2. When hunting from blinds assigned by the department as stipulated in Section 6 of this administrative regulation:

a. At least one (1) person in the blind shall be eighteen (18) years old or older.

b. The blind of a person who has not checked in by 5 a.m. shall be available to other hunters on a first-come, first served basis.

(c) Lower Bottoms Public Waterfowl Hunting Area. In addition to the requirements of paragraph (b) of this subsection:

1. A person shall not:

a. Hunt waterfowl except from permanent department blinds.

b. Except as authorized by the department, be on the area after 1 p.m. during waterfowl seasons.

2. During Canada goose seasons, permanent department blinds shall be allocated by advance application as specified in Section 6 of this administrative regulation.

(d) Peal Public Hunt Lakes. In addition to the requirements of paragraph (b) of this subsection:

1. More than seven (7) parties shall not hunt at the same time on:

a. Buck Lake; or

b. Flat Lake.

2. More than four (4) parties shall not hunt at the same time on Fish Lake.

3. More than three (3) parties shall not hunt at the same time on:

a. First Lake; or

b. Second Lake.

(e) Swan Lake Unit. In addition to the requirements of paragraph (b) of this subsection:

1. A person shall not hunt ducks, coots, mergansers or geese other than Canada geese unless:

a. The season for these species is open; and

b. The season for Canada geese is also open.

2. A waterfowl hunter shall use the blind assigned by the department as stipulated in Section 6 of this administrative regulation.

(4) Barkley Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) A person shall establish permanent blinds within ten (10) yards of his [their] assigned and numbered blind marker within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);

a. Including the row of islands on the west side of the main river channel; and

b. Not including Taylor Bay and Jake Fork Bay.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, a person shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

## ADMINISTRATIVE REGISTER - 2847

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) The portion east of Van Buren Boat Ramp as marked by signs shall be [is] closed to the public from the Monday following the scheduled quota deer hunt through the last day of February. [~~March 15.~~]

(25) [(27)] Westvaco Wildlife Management Area.

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by signs shall be [is] closed to the public from November 1 through March 15.

(c) A person shall obtain a Westvaco Permit before hunting.

(26) [(28)] White City Wildlife Management Area. Shooting hours shall be [are] from one-half (1/2) hour before sunrise until 2 p.m.

(27) [(29)] Yellowbank Wildlife Management Area. The area designated by signs and painted boundary markers shall be [is] closed to the public from October 15 through March 15.

Section 6. Applying for Waterfowl Hunts. (1) A person wishing to apply to hunt waterfowl on Ballard, Swan Lake or the Sauerheber unit of Sloughs wildlife management areas shall:

(a) Apply on forms provided by the department.

(b) Submit completed application forms before the deadline date on the form.

(2) A form which are not completed according to the instructions on the form shall be disqualified from the drawing.

(3) A person shall not apply more than one (1) time for each hunt.

(4) Each hunter drawn may bring up to three (3) additional hunters.

(5) The following application forms are incorporated by reference. They may be obtained from or examined at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, from 8 a.m. until 4:30 p.m. eastern time during business days.

(a) Sloughs Wildlife Management Area Waterfowl Hunting Application, August, 1995.

(b) Ballard Wildlife Management Area Goose Hunt Application, August, 1995.

(c) Application for Lower Bottoms/Swan Lake Waterfowl Blind Drawings in Ballard County, August 1996. [~~Swan Lake Wildlife Management Area Waterfowl Hunting Application, August, 1996.~~]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: December 12, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 28, 1997 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 21, 1997, 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: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on 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: No impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration 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 received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

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

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

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

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

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

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being

shoreline in Morgan County.

Section 2. Duck, Coot, and Merganser Hunting Zones. (1) The Western Duck Zone includes [ie] the portion of Kentucky [included] in the Western and Pennyroyal-Coalfield Goose Zones.

(2) The Eastern Duck Zone includes [ie] the portion of Kentucky not [included] in the Western Duck Zone.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: December 12, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 28, 1997 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 21, 1997, 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: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502)564-6508.

#### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on 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: No impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife

Restoration 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 received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

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

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

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

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

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

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 61, No. 188, Thursday, September 26, 1996.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 50 day season with a five bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 5 ducks and may not include more than 4 mallards (no more than 1 hen mallard), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1 and March 10. The season framework for white-fronted geese is between the Saturday nearest October 1 and



## ADMINISTRATIVE REGISTER - 2851

(b) A nonpaying toll road identification card issued to a local police or fire department shall only be valid within its jurisdiction or in a county contiguous to the county of jurisdiction.

(e) The identification card shall not be used except for official business.

(2)(a) By November 1 of each year, the Transportation Cabinet shall notify each local fire or police department with a nonpaying toll road identification card account that the existing nonpaying toll road identification cards shall expire February 1.

(b) By January 1 of each year, each nonpaying toll road identification card account holder shall apply for that year's identification cards.

(c) The application shall:

1. Be made on form TC 34-120;

2. Identify each emergency vehicle for which a nonpaying toll road identification card is requested for that year;

3. Be accompanied by the five (5) dollar fee required by KRS 175.525 for each of the nonpaying toll road identification cards requested; and

4. Be executed by the responsible mayor or county judge executive.

(3)(a) During an emergency trip of fire department, local police, or other emergency vehicle on a toll road when the emergency lights of the vehicle are flashing, the toll collector shall pass the emergency vehicle through the least congested lane of traffic without attempting to stop or process the vehicle.

(b) When the fire department, local police, or other agency has been summoned by the Division of Toll Facilities under emergency conditions, the return passage, although it may not be under emergency conditions, shall also be toll free.

(c) If the vehicle has been issued a nonpaying toll road identification card, it shall be presented on the return trip.

[(3) During trips on the toll roads not involving an emergency, the operator of the vehicles set forth in this section shall stop at each toll collection station and shall pay the toll as required by 600 KAR 2:010. Toll assessment on turnpikes or if on official business may present a valid nonpaying toll road identification card.]

Section 4. Funeral Processions. (1) The Transportation Cabinet shall establish a nonpaying toll road identification card account for each funeral establishment licensed by the State Board of Embalmers and Funeral Directors in accordance with KRS 316.125 and which applies for an account. The application for the account shall be made on Form TC 34-124, "Application for Nonpaying Identification Card Account for Funeral Processions".

(2)(a) By November 1 of each year, the Transportation Cabinet shall notify each funeral establishment service with a nonpaying toll road identification card account that the existing nonpaying toll road identification cards shall expire February 1.

(b) By January 1 of each year, each funeral establishment identification card account holder shall apply for that year's identification cards.

(c) The application shall:

1. Be made on form TC 34-124;

2. Identify each hearse for which a nonpaying toll road identification card is requested for that year;

3. Be accompanied by the five (5) dollar fee required by KRS 175.525 for each of the nonpaying toll road identification cards requested; and

4. Provide proof of current licensing by the State Board of Embalmers and Funeral Directors.

(3)(a) All of the motor vehicles in a funeral procession which has a lead hearse for which a nonpaying toll road identification card has been issued shall proceed through the toll collection booth using the same identification card.

(b) The funeral establishment shall make arrangements to retrieve the identification card after the last motor vehicle in the procession has passed through the toll collection booth.

(c) On the return trip, only the motor vehicles accompanying the hearse shall be allowed through the toll collection booth using the identification card.

(d) The identification card shall only be valid for a funeral procession on the parkway and the return trip of the motor vehicles still accompanying the hearse.

Section 5. United States Military Convoys and Other Processions.

(1) Each vehicle in a [funeral] United States military or other type convoy or procession is required to pay the toll at each toll collection station.

(2) Arrangements may be made to allow all vehicles in the convoy to pass through the toll collection station using one (1) or more credit cards by contacting the Transportation Cabinet, Division of Toll Facilities, 643 Teton Trail [State Office Building], Frankfort, Kentucky 40622, in advance of the convoy date(s). The telephone number of the Division of Toll Facilities is (502) 564-4628.

(3) The convoy or procession may request a special procession credit card from the Division of Toll Facilities.

Section 6. Transportation Cabinet Personnel. (1) [6-] The Transportation Cabinet shall establish a nonpaying toll road identification card account for the Kentucky Transportation Cabinet.

(2) A Transportation Cabinet employee if [while] in the discharge of his official duties on the toll roads and if operating a state-owned motor vehicle may be issued a nonpaying identification card to be used on the toll road [during trips not involving an emergency].

(3) The identification card may be presented in lieu of toll payment at a toll collection station.

(4) The identification card shall not be used except for official business.

Section 7. Kentucky National Guard. (1) [6-] The Transportation Cabinet shall establish a nonpaying toll road identification card account(s) for the Kentucky National Guard.

(2) The Kentucky National Guard shall [may] be issued nonpaying identification cards for use by their employees on the toll roads during official trips [not involving an emergency].

(3) The identification card may be presented in lieu of toll payment at a toll collection station.

(4) The identification card shall not be used except for official business of the Kentucky National Guard.

(5)(a) By November 1 of each year, the Transportation Cabinet shall notify the Kentucky National Guard that the existing nonpaying identification cards shall expire February 1.

(b) By January 1 of each year, the Kentucky National Guard shall apply for that year's identification cards.

(c) The application shall:

1. Be made on form TC 34-127, "Updated National Guard Application";

2. Be accompanied by the five (5) dollar fee required by KRS 175.525 for each of the nonpaying toll road identification cards requested.

Section 8. Material Incorporated by Reference. (1) The Transportation Cabinet form TC 34-121, "Application for Nonpaying Identification Card Account for Ambulance Service", October 1996 edition, is incorporated by reference in this administrative regulation.

(2) The Transportation Cabinet form TC 34-125, "Updated State Police Application", October 1996 edition, is incorporated by reference in this administrative regulation.

(3) The Transportation Cabinet form TC 34-120, "Application for Nonpaying Identification Card Account, Local Police and Fire Departments", October 1996 edition, is incorporated by reference in this administrative regulation.

(4) The Transportation Cabinet form TC 34-124, "Application for Nonpaying Identification Card Account for Funeral Processions",

determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): It will cost the unit of government \$5 for each nontoll paying identification card. However, that vehicle will be able to be operated in the course of business on the toll road without paying the toll. Therefore, since it is likely that a local government will only pay the \$5 administrative fee for an identification card for vehicles which will be operated on a toll road, there should be a positive financial impact on the local governments located in the vicinity of a toll road.

Other Explanation:

**TRANSPORTATION CABINET  
Department of Fiscal Management  
Division of Toll Facilities  
(Amendment)**

**600 KAR 2:030. Toll road credit cards.**

RELATES TO: KRS 175.450, 175.470, 175.520, 175.525

STATUTORY AUTHORITY: KRS 175.525 [~~174.080, 175.470, 175.520~~]

NECESSITY, FUNCTION, AND CONFORMITY: Tolls are charged on Kentucky's turnpike or toll road system in accordance with 600 KAR 2:010. KRS 175.525 requires either the Turnpike Authority or the Transportation Cabinet to issue a toll road identification card to paying credit card account holders. ~~The [Some companies and individuals make extensive use of the toll roads. To simplify payment for such companies or individuals, the]~~ Transportation Cabinet has promulgated this administrative regulation to establish eligibility criteria for a toll road credit card account, the application, the billing procedures, and the account termination.

**Section 1. Application for a Commercial Toll Road Credit Card.**

(1) Except for other state agencies as set forth in Section 7 of this administrative regulation, each applicant [Applicants] for a commercial toll road credit card account shall [must] submit a completed form TC34-39, "Application for Commercial Credit Card Account" to the Transportation Cabinet.

(2) Each applicant for an individual toll road credit card account shall submit a completed form TC 34-40, "Individual Application for Credit Card Account" to the Transportation Cabinet. [Forms are available from and must be submitted to the Transportation Cabinet, Division of Toll Facilities, 9th Floor, State Office Building, Frankfort, Kentucky 40622. (Phone No. 502/564-4644)]

**Section 2. Credit References.** (1) On the "Application for Commercial Credit Card Account" form or the "Application for Individual Credit Card Account" form, the applicant for a toll road credit card account shall [must] list at least three (3) companies as credit references including at least one (1) bank. Upon receipt of the completed application, the Transportation Cabinet shall request a credit status from each company cited as a credit reference. A positive credit status is required [must be received] from three (3) companies including at least one (1) bank or the credit card account shall be denied.

(2) If in addition to the three (3) positive credit status reports a negative report is received, the Transportation Cabinet may deny the company or individual a credit card account.

(3) If the applicant is a trucking company, it shall also submit its U.S. Department of Transportation number or its Kentucky intrastate identifier number. A trucking company subject to the provisions of 601 KAR 1:200 shall not have an unsatisfactory safety rating or not be delinquent in payment of its highway use taxes to be eligible for a credit card account.

**Section 3. [Minimum Use.]** ~~(1) Because of the cost of administering this program, all credit card accounts shall maintain a minimum monthly usage average of twenty five (25) dollars for any six (6) month period.~~

~~(2) A company or individual whose business is seasonal may make special arrangements with the Transportation Cabinet.~~

~~(3) Failure of a company or individual to maintain the required minimum credit card usage may result in cancellation of the credit card account.~~

**Section 4. Bill and Payment.** (1) Each active toll road credit [card] account shall be sent an itemized bill by the Transportation Cabinet on a monthly basis.

(2) The payment due date shall be included on each billing. The payment due date shall be at least twenty-five (25) days from the date the bill is mailed to the credit account [card] customer.

(3) The credit account [card] customer shall pay his bill on or before [by] the due date.

(4) If the credit account [card] customer is delinquent in paying his bill:

(a) A surcharge of five (5) percent of the amount owed the Transportation Cabinet each month shall be added to the bill; and

(b) The credit [card] account may be cancelled. [Any credit card account which has been delinquent more than five (5) times during the life of the account may be permanently cancelled.]

(5) If a credit account [card] customer's payment check is returned to the Transportation Cabinet for insufficient funds:

(a) The account shall be cancelled immediately; and

(b) A fifteen (15) dollar fee shall be assessed the account holder for each returned check.

(6) After cancellation of a credit [card] account, the credit account [card] customer may apply in writing for reinstatement of his account. Reinstatement is at the sole discretion of the Transportation Cabinet.

(7) The Transportation Cabinet shall actively pursue collection of each delinquent account.

**Section 4. Credit Account Cards.** (1) By November 1 of each year, the Transportation Cabinet's Division of Toll Facilities shall notify each credit account holder, including other state agencies which applied for an account pursuant to Section 7 of this administrative regulation, that the current credit account cards expire on February 1 and shall only be renewed if the five (5) dollar annual fee authorized by KRS 175.525 is received by the cabinet.

(2)(a) Prior to January 1 of each year, each credit account customer continuing in the program shall notify the Transportation Cabinet, Division of Toll Facilities of the number of credit cards it needs for that year.

(b) The customer shall surrender surplus cards or may request the issuance of additional account cards.

(c) The notice shall be accompanied by the five (5) dollar fee required by KRS 175.525 for each of the number of credit cards requested. [5. No Charge for Credit Card Service. (1) The Transportation Cabinet shall impose no charge for maintaining the credit card accounts which includes issuance of cards, replacement of cards, billing and payment processing.]

(3) ~~(2)~~ Each credit account [card] customer shall [must] pay all toll charges made by any person using any credit card assigned to the associated credit card account [unless and] until the Transportation Cabinet, Division of Toll Facilities, has received notice that the credit card has been lost, stolen or cancelled.

**Section 5. [6.] Cancellation.** The Transportation Cabinet may cancel a credit card account for any reason stated in this administrative regulation and also for any reason which the cabinet, in its sole discretion, determines to be good cause for the [such] cancellation.

**Section 6. [7.] Return of Cards.** If for any reason a credit card is

a company.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Driver Licensing  
(Amendment)**

**601 KAR 12:020. Expired, transferred, or suspended driver's license; retesting requirements ~~[for renewal]~~.**

RELATES TO: KRS 186.401, 186.412, 186.440(8), 186.480

STATUTORY AUTHORITY: KRS 186.400(1)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation requires a driver whose Kentucky driver's [operator's] license has been expired or whose driving privilege has been withdrawn for a period in excess of one (1) year to demonstrate pursuant to KRS 186.480 that he is able to safely operate a motor vehicle. It establishes that the testing provisions of KRS 186.480 may be waived for a Kentucky resident who holds a valid driver's license issued by another jurisdiction and who is applying to transfer his driver's license to Kentucky. It further requires proof that a driving privilege withdrawal period has ended prior to licensing.

Section 1. (1) Any person whose driving privilege [Kentucky operator's license] has been expired for a period in excess of one (1) year shall be required to comply with KRS 186.480(1) as a part of the process for applying for restoration of his driving privilege. [unless the applicant has a visible or known physical defect, the actual demonstration of his driving ability may be waived. This administrative regulation shall not validate any license which has been expired.]

(2) A person whose Kentucky driver's [operator's] license has been expired for a period of one (1) year shall make application for renewal pursuant to KRS 186.412. [as prescribed in the Kentucky Revised Statutes.]

Section 2. Testing pursuant to KRS 186.480 may be waived for the following Kentucky driver's license applicants:

(1) A Kentucky resident with a valid driver's license issued by another licensing jurisdiction; and

(2) A person whose Kentucky driving privilege has been withdrawn, suspended, or revoked for a period of one (1) year or less.

Section 3. A ~~[No]~~ person whose driving privilege has been withdrawn, denied, suspended, cancelled, or revoked in any state or licensing jurisdiction shall not be issued a Kentucky driver's [operator's] license until proof of clearance or termination of the driving privilege withdrawal from the state or licensing jurisdiction withdrawing the driving privilege has been submitted to the Transportation Cabinet.

Section 4. This administrative regulation shall not validate:

(1) A driver's license which has expired; or

(2) Driving privilege which has been withdrawn, denied, suspended, canceled, or revoked.

ED LOGSDON, Commissioner  
JAMES C. CODELL III, Secretary

APPROVED BY AGENCY: December 12, 1996

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

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 23, 1997 at 1 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 16, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing

may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by January 16, 1997. 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 January 23, 1997. 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.

**REGULATORY IMPACT ANALYSIS**

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All drivers in Kentucky whose driving privilege has been withdrawn, canceled, suspended, or revoked and all new residents of Kentucky who are transferring their driving privilege from another licensing jurisdiction.

(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 one requested a public comment hearing on this issue, however, no impact is expected on the cost of living or employment as a result of the implementation to this change in the administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No one requested a public comment hearing on this issue, however, no impact is expected on the cost of living or employment as a result of the implementation to this change in the administrative regulation.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: 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: Kentucky's road fund as budgeted for use by the Kentucky State Police and the Department of Vehicle 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 one requested a public comment hearing on this issue, however, no impact is expected on the economy as a result of the implementation to this change in the administrative regulation.

(b) Kentucky: No one requested a public comment hearing on this issue, however, no impact is expected on the economy as a result of the implementation to this change in the administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet, Kentucky State Police, and Circuit Court Clerks have extensively discussed the concept of eliminating the driver's examinations for persons with a valid driver's

~~Materials (20083) with no passing score established.~~

~~(4) Applicants for school media librarian certification shall take the Library Media Specialist Test (10310) with a passing score of 500.~~

~~(4) An [(5)] applicant for certification for teacher of exceptional children (except for communication disorders) shall take the Special Education Test (10350) with a passing score of 500 through September 30, 1997. After this date, an applicant for certification for teacher of exceptional children shall take the specialty test(s) based on the applicant's specialty with the corresponding passing score(s) as identified in this subsection:~~

~~(a) Communication disorders:~~

~~1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and~~

~~2. Speech Language Pathology (10330) - 450;~~

~~(b) Learning behavior disorder:~~

~~1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and~~

~~2. Teaching Student with Behavioral Disorders/Emotional Disturbances (20371) - 147;~~

~~(c) Moderate and severe disabilities:~~

~~1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and~~

~~2. Teaching Students with Mental Retardation (20321) - 139;~~

~~(d) Hearing impaired: Special Education Test (10350) - 500;~~

~~(e) Visually impaired: Special Education Test (10350) - 500.~~

~~(5) An [(6)] applicant for certification at the secondary level shall take the specialty test(s) corresponding to the teaching area or major with the passing score as identified in this subsection through September 30, 1997. An [August 31, 1996:] applicant whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.~~

~~(a) Biology:~~

~~1. Biology: Content Knowledge Part 1 (20231) - 139; and~~

~~2. Biology: Content Essays (30233) - no passing score;~~

~~(b) Chemistry:~~

~~1. General Science: Content Knowledge Part 2 (10432) - 150;~~

~~and~~

~~2. Either:~~

~~a. Chemistry: Content Knowledge (20241) - 144; or~~

~~b. Physics: Content Knowledge (10261) - 141;~~

~~(c) Dramatics:~~

~~1. English Language and Literature: Content Knowledge (10041) - 138; and~~

~~2. English Language, Literature and Composition Essays (20042) - no passing score;~~

~~(d) Dramatics-speech:~~

~~1. English Language and Literature: Content Knowledge (10041) - 138; and~~

~~2. English Language, Literature and Composition Essays (20042) - no passing score;~~

~~(e) English:~~

~~1. English Language and Literature: Content Knowledge (10041) - 138; and~~

~~2. English Language, Literature and Composition Essays (20042) - no passing score;~~

~~(f) History:~~

~~1. Social Studies: Content Knowledge (10081) - 146; and~~

~~2. Social Studies: Interpretation of Materials (20083) - no passing score;~~

~~(g) History - political science:~~

~~1. Social Studies: Content Knowledge (10081) - 146; and~~

~~2. Social Studies: Interpretation of Materials (20083) - no passing score;~~

~~(h) Mathematics:~~

~~1. Mathematics: Content Knowledge (10061) - 141; and~~

~~2. Mathematics: Proofs, Models, and Problems (20063) - no~~

~~passing score;~~

~~(i) Mathematics - physical science: select from either:~~

~~1. Mathematics Test (10060) 500; or~~

~~2. Chemistry, Physics, and General Science Test (10070) - 510;~~

~~(j) Physics:~~

~~1. General Science: Content Knowledge, Part 2 (10432) - 150;~~

~~and~~

~~2. Either:~~

~~a. Chemistry: Content Knowledge (20241) - 144; or~~

~~b. Physics: Content Knowledge (10261) - 141;~~

~~(k) Physical science:~~

~~1. General Science: Content Knowledge Part 2 (10432) - 150;~~

~~and~~

~~2. Either:~~

~~a. Chemistry: Content Knowledge (20241) - 144; or~~

~~b. Physics: Content Knowledge (10261) - 141;~~

~~(l) Political science:~~

~~1. Social Studies: Content Knowledge (10081) - 146; and~~

~~2. Social Studies: Interpretation of Materials (20083) - no passing~~

~~score;~~

~~(m) Science: select from either:~~

~~1. Biology and General Science Test (10030) - 550; or~~

~~2. Chemistry, Physics and General Science Test (10070) - 510;~~

~~(n) Speech:~~

~~1. English Language and Literature: Content Knowledge (10041) - 138; and~~

~~2. English Language, Literature and Composition Essays (20042) - no passing score. [Art - Art Education Test (10130) - 510;~~

~~(b) Biology - Biology and General Science (10030) - 550;~~

~~(c) Chemistry - Chemistry, Physics and General Science (10070) - 510;~~

~~(d) Comprehensive Business - Business Education Test (10100) - 540;~~

~~(e) Distributive Education - Business Education Test (10100) - 540;~~

~~(f) Dramatics - Speech Communication Test (10220) - 540;~~

~~(g) Dramatics Speech - Speech Communication Test (10220) - 540;~~

~~(h) English - English Language and Literature Test (10040) - 510;~~

~~(i) French - French Test (10170) - 510;~~

~~(j) German - German Test (20180) - 400;~~

~~(k) Health - Education Professional Standards Board test for health education - 67;~~

~~(l) Health Occupations - Test by the State licensing agency corresponding to the health specialty;~~

~~(m) History - Social Studies Test (10080) - 500;~~

~~(n) History - Political Science - Social Studies Test (10080) - 500;~~

~~(o) Industrial Education - Orientation and Exploration Levels - Technology Education Test (10050) - 550;~~

~~(p) Industrial Education - Preparation Level (area) shall take other designated special test corresponding to the preparation specialty;~~

~~(q) Mathematics - Mathematics Test (10060) - 500;~~

~~(r) Mathematics - Physical Science (area) Select from either Mathematics Test (10060) - 500; or Chemistry, Physics and General Science Test (10070) - 510;~~

~~(s) Music (vocal and instrumental) - Music Education Test (10110) - 510;~~

~~(t) Physical Education - Physical Education Test (10090) - 540;~~

~~(u) Physics - Chemistry, Physics, and General Science Test (10070) - 510;~~

~~(v) Political Science - Social Studies Test (10080) - 500;~~

~~(w) Science (area) Select from either Biology and General Science Test (10030) - 550; or Chemistry, Physics and General Science Test (10070) - 510;~~

~~(x) Social Studies (area) - Social Studies Test (10080) - 500;~~

~~(y) Spanish - Spanish Test (10100) - 400;~~

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examination fee for the relevant test(s) required to be taken, to the Educational Testing Service, publisher of the National Teacher Examinations, unless a lesser fee has been negotiated by the Department of Education. Fees for specialty tests developed by the Department of Education shall be equivalent to the current fees for the ~~[such]~~ tests administered by the Educational Testing Service.

Section 6. An applicant ~~[Applicants]~~ who fail to achieve at least the minimum score on one (1) or more of the core battery examinations (communication skills, general knowledge, professional knowledge) or on the specialty examination appropriate to the teaching field shall be permitted to retake the test or tests during one (1) of the scheduled test administrations.

Section 7. The Education Professional Standards Board shall collect ~~[such]~~ data and conduct ~~[such]~~ analyses of the score and institutional reports provided by the Educational Testing Service to determine the impact of these tests and ~~[as to]~~ permit a review of this ~~[these]~~ administrative regulation on an annual or biennial basis.

ROSA WEAVER, Chair

APPROVED BY AGENCY: November 25, 1996

FILED WITH LRC: December 5, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 21, 1997, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 1997, five work days prior to 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. 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: Dr. Betty Lindsey, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX (502) 573-1610.

### REGULATORY IMPACT ANALYSIS

Contact Person: Patricia Hartanowicz

(1) Type and number of entities affected: Teacher preparation programs and preservice teachers.

(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: Some preservice teachers shall be required to take two tests thus incurring an average additional expense of \$50. Reports of students' performances are provided to the Kentucky Department of Education, the preservice teacher and the teacher preparation programs. A biannual review of all teacher assessment is conducted by the Office of Teacher Education and Certification.

2. Second and subsequent years: For those tests for which a passing score has not been set in the first year, the Office of Teacher Education will recommend passing scores to the Education Profes-

sional Standards Board based on actual student performance and a comparison with national performance during the second year.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Office of Teacher Education and Certification prepares an annual report of student performance for the Education Professional Standards Board.

(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: Annual state budget.

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

(a) Geographical area in which administrative regulation will be implemented: No effect.

(b) Kentucky: No effect.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Assessments from other developers either did not match the teaching certificate description or would be more costly.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: The new assessments correlate with the new teacher certificates that were mandated by the state legislature. As a result teachers are more appropriately assessed on information that is relevant to the area of training.

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

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

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applied. All candidates are required to take the same assessment that correlates with their teaching certificates. No - A consistent standard of performance is applied to all teacher candidates.

### CABINET FOR HEALTH SERVICES

Office of Inspector General

(Amendment)

902 KAR 20:018. Operation and services; renal dialysis facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the licensure requirements for the operation and services of renal dialysis facilities. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Administrator" means a person who holds a baccalaureate degree or its equivalent and has at least one (1) year of experience in an ESRD unit.

(6) Incident and accident reports. The facility shall report all incidents or accidents that present a direct or immediate relationship to the health, safety or security of any patient or staff member. Examples of the type of incidents to be reported include but are not limited to the following: any incident requiring emergency treatment or hospitalization, cleaning agents left in a machine and used on a patient, contamination of the water supply, development of infection or communicable disease, etc. The reports shall be submitted to the Cabinet for Health Services, Office of Inspector General, Division of Licensing and Regulation, 4th Floor, East, 275 East Main Street, Frankfort, Kentucky 40621 within three (3) days of the occurrence on the forms provided by the cabinet. A copy of the report shall be retained at the facility and shall be made available for inspection by the cabinet.

Section 4. Services. (1) Each patient is admitted on the medical authority of, and is under the supervision of, the medical director. When absent from the facility the medical director shall designate a qualified physician to be responsible for admission and supervision of patients.

(2) Laboratory services. All renal dialysis facilities shall have access to laboratory facilities and services (other than the specialty of tissue pathology and histocompatibility testing) to meet the needs of the ESRD patients. All services shall be performed either by a laboratory in a licensed hospital or by a laboratory licensed by the Department for Health Services pursuant to KRS Chapter 333 and administrative regulations promulgated thereunder.

(3) Medical records.

(a) A current and complete medical record shall be maintained for each patient.

(b) Organization. The supervisor of medical records shall be responsible for the proper documentation, completion and preservation of all the facility's medical records.

(c) Indexing. Medical records shall be properly indexed and systematically filed.

(d) Ownership. Records of patients shall not be removed from the facility's custody except in accordance with a court order or subpoena.

(e) Confidentiality. Records of patients shall be available for inspection only to members of the professional staff, the patient, or an authorized individual acting in behalf of the patient. This shall not preclude the record being used for research or statistical investigation, providing that the patient's anonymity is protected.

(f) Content. Complete medical records shall be prepared for all patients admitted to the facility. A minimum medical record shall include the following information:

1. Name and address of the patient, and guardian or committee, if any;
2. Identification data (name, address, age, sex, marital status);
3. Date of admission;
4. Date of transfer to renal transplantation center if applicable;
5. Referring and attending physicians' name;
6. History and physical examination record prior to the initial treatment;
7. Treatment plans;
8. Records of special examinations, consultations, and clinical, laboratory, and x-ray services;
9. Doctor's orders, dated and signed;
10. Nurses' notes;
11. Dialysis chart including pulse, respiration and blood pressure;
12. Social evaluation and plan developed by the social worker;

and  
13. Orders for medication and treatment written in ink and signed by the prescribing physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8).

(g) Retention of records. All medical records shall be retained for a minimum of five (5) years from the date the patient was last seen

in the facility, or in the case of a minor, three (3) years after the patient reaches the legal age of majority, whichever is longest.

(4) Pharmaceutical services.

(a) The facility shall have provisions for promptly obtaining prescribed drugs and biologicals from licensed pharmacies.

(b) The facility shall provide appropriate methods and procedures for storage, control and administering of drugs and biologicals.

(c) All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical and Nurse Practice Acts. The medical record shall include a record of each dose administered including date and time of administration, type of medication, dosage, method of administration, name of physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8) who prescribed the medication, and name of the person who administered the medication.

(5) Social services. The qualified social worker shall be responsible for each patient's social evaluation and treatment, participating in team review of patient progress and recommending changes in treatment based on the patient's current social needs, providing casework and group work services to patients and their families, financial advice, referrals for vocational rehabilitation, and for identifying community social agencies and other resources and assisting patients and their families to utilize them.

(6) Dietetic services. The nutritional needs of each patient shall be evaluated by the attending physician and the qualified dietician. The dietician, in consultation with the attending physician, shall be responsible for assessing the nutritional and dietetic needs of each patient, recommending therapeutic diets, counseling patients and their families on prescribed diets, and monitoring adherence and response to diets.

(7) Self-care dialysis support services. Renal dialysis facilities which offer self-care dialysis training shall make the following services available either directly, under agreement, or by arrangement with another ESRD facility upon completion of the patients' training:

(a) Monitoring the patients' home adaptation, including provisions for visits to the home or the facility;

(b) Consultation for the patient with a qualified social worker and a qualified dietician;

(c) A recordkeeping system which assures continuity of care;

(d) Installation and maintenance of dialysis equipment;

(e) Testing and appropriate treatment of the dialysis water;

(f) Ordering of supplies as needed; and

(g) Infection control (i.e., control of hepatitis and peritonitis).

Section 5. Physical Environment. (1) Building and equipment.

(a) All electrical and other equipment used in the facility shall be maintained free of defects which could be a potential hazard to patients or personnel. There shall be a program of preventive maintenance of equipment used in dialysis and related procedures in the facility.

(b) Water used for dialysis purposes shall be analyzed periodically and treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques. Records of test results and equipment maintenance shall be maintained at the facility.

(2) Hepatitis testing.

(a) Candidates for dialysis shall be screened for the hepatitis B surface antigen (HBsAg) and antibodies to the hepatitis B virus (Anti-HBs) within one (1) week before or at the time they enter the unit in order to determine their serologic status for surveillance purposes. All potential employees shall be screened within one (1) week prior to or within the first week of employment. Thereafter, routine serologic testing to monitor for hepatitis B infection shall be conducted in accordance with the following schedule:



- (8) Assessment of expected benefits:
- (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.
- (b) State whether a detrimental effect on environment and public health would result if not implemented: 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. No conflict.
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

**CABINET FOR HEALTH SERVICES**  
**Office of Inspector General**  
**(Amendment)**

**902 KAR 20:041. Operation and services; family care homes.**

RELATES TO: KRS 216B.010 to 216B.130, 216B.990~~(1), (2)~~  
 STATUTORY AUTHORITY: KRS 216B.042, [216B.040-]  
 216B.105, 314.011(8), 314.042(8), 320.240(14), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 [216B.040] and 216B.105 mandate that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation provides for the licensure requirements for the operation of family care homes. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Ambulatory" means able to walk without assistance.

(2) ~~"Board" means the Commission for Health Economics Control in Kentucky.~~

~~(3)~~ "Home" means a family care home.

(3) ~~(4)~~ "Impaired capacity for self care" means mental or physical limitation which decreases the ability to function in a normal adult manner and requires supervision, assistance, or the use of prescription medicines to normalize daily living.

(4) ~~(6)~~ "Licensee" means the operator of the family care home.

(5) ~~(6)~~ "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or wheelchair and capable of independent bed-to-chair transfer.

(6) ~~(7)~~ "Protective environment" means an environment in which basic health care needs, personal care needs, nutritional needs and safety are insured for the resident who is not capable of providing these services in an effective manner.

(7) ~~(8)~~ "Resident" means any person who is admitted to a family care home for the purpose of receiving personal care and assistance.

Section 2. Scope of Operations and Services. Family care homes are operated and maintained to provide twenty-four (24) hour supervision and personal care services in residential accommodations for two (2) or three (3) individuals who are not related within the third degree of consanguinity to the licensee, are at least eighteen (18) years of age, and who because of impaired capacity for self care, elect to have or require a protective environment but do not have an illness, injury, or disability for which constant medical care or skilled nursing services are required. Residents must be ambulatory or

mobile nonambulatory and able to manage most of the activities of daily living.

Section 3. Operation and Management. (1) The licensee shall be legally responsible for the operation of the home and for compliance with all federal, state and local laws and regulations pertaining to the operation of the home.

(2) The licensee shall provide twenty-four (24) hour supervision and assistance to the residents and shall be a mature literate adult, at least eighteen (18) years of age, who has knowledge and understanding of adults who require supervision and personal care services.

(3) The licensee shall be the person directly responsible for the twenty-four (24) hour daily operation of the home or for delegating that responsibility to another similarly qualified individual when a temporary absence is necessary. The name of that individual to whom the responsibility may be designated shall be in writing and provided to the agents of the board inspecting the home.

(4) No employee of the home contracting an infectious disease shall appear for work until the infectious disease can no longer be transmitted.

(5) The licensee shall attend at least one (1) training program for family care home operators per year when offered or approved by the Cabinet for Health Services [Human Resources].

(6) The home shall have no more than three (3) persons residing in the home who are not related to the operator within the third degree of consanguinity.

(7) The licensee shall provide opportunities for the residents to become involved in community activities and activities within the home. Residents in cooperation with the licensee and family shall be allowed to use areas of the home, other than their bedroom, such as living rooms, kitchen, dining areas, and recreation areas for entertainment, recreation, and visitation.

(8) The licensee shall maintain a ~~notebook~~ ~~(record)~~, located on the premises and available for inspection ~~(by the board's agents)~~ which contains the following information ~~(typed or in ink)~~ about each resident:

(a) Resident name and sex.

(b) Marital status.

(c) Birthdate and age.

(d) Religion and personal clergyman, if any, ~~(with consent of resident)~~.

(e) Attending physician and dentist, if any; address and phone number for each.

(f) Next of kin ~~and~~ or responsible person ~~(or agency)~~, address and telephone number.

(g) Date of admission and discharge.

(h) Other relevant information including physician visits and/or assessment reports.

(i) Amount charged per week or month as compensation for care.

(9) The licensee shall make arrangements with other health agencies and facilities for residents who, at some time, may require a transfer to a different level of care.

(10) The licensee shall have phone numbers of a hospital, an ambulance service, fire department, and a physician for emergencies posted by the telephone in large legible print if phone service is available in the area.

(11) The licensee shall have a written procedure for providing or obtaining emergency services.

(12) The licensee shall make a written report of any accident involving a resident, any incident involving a resident's health, welfare or safety, and any death of a resident. The licensee shall keep one (1) copy in the file and make the original available to the board's agents within seven (7) days of the incident. The original shall be sent to the Cabinet for Health Services [Human Resources], Office of the Inspector General, Division for Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

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allow them to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned;

(f) Have appropriate toilet facilities which dispose of wastes in a sanitary manner into a public system where available, or if none is available into a system which shall meet the requirements of applicable plumbing codes. Outside toilets shall be allowed only if local county health department approves; and

(g) Collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and administrative regulations. Garbage containers shall be made of metal or other impervious material and shall be water tight and rodent proof and shall have tight-fitting covers.

### Section 5. Accommodations. Each family care home shall:

(1) Be safe and of substantial construction and comply with applicable state and local laws relating to location, zoning, plumbing, and sanitation.

(2) Be adequately lighted by natural or artificial light including each hall, stairway, entryway, patient area, kitchen, and bathroom.

(3) Have a water supply of a safe, sanitary quality approved by the local health department or other qualified laboratory or agency.

(4) Have an ample supply of hot and cold running water available at all times for general use. The water temperature at any tap used by residents shall not exceed 110 degrees Fahrenheit.

(5) Have appropriate sanitary toilet and bathing facilities conveniently available for resident use with no less than one (1) toilet and lavatory per six (6) persons residing in the home.

(6) Have adequate ventilation in all areas used by residents. Toilet rooms shall be vented to the outside, if there is no window. There shall be an exterior window in each resident room which can be opened.

(7) Beds occupied by residents shall be placed so that no resident may experience discomfort due to proximity to radiators, heat outlets or exposure to drafts.

(8) Not use "bunk" beds.

(9) Have beds that are no less than thirty-three (33) inches wide and six (6) feet long.

(10) Not house residents in rooms or detached buildings or other enclosures which have not been previously inspected and approved for resident use, or in basements not constructed for sleeping quarters. Approved basements must have an outside door.

(11) Not be located in a house trailer or motor homes.

(12) Provide a heating system which can maintain an even temperature, and is capable of maintaining a minimum temperature of seventy-two (72) degrees Fahrenheit in resident occupied areas under winter conditions and a maximum temperature of eighty-five (85) degrees under summer conditions.

(13) Have telephone service, if available in the area, accessible to the residents.

(14) If the home accepts a resident who uses ~~(confined to)~~ a wheelchair, appropriate measures must be taken to insure that the resident is able to exit the building without assistance (i.e., ramps, rails, etc.).

(15) Have a three (3) day supply of food on hand at all times.

### Section 6. Safety. Each home shall take appropriate precautions to insure the safety of the residents and visitors by:

(1) Having all exterior grounds including sidewalks, steps, porches, ramps, and fences in good repair;

(2) Having all the home's interior including walls, ceilings, floors, floor coverings, steps, windows, window coverings, doors, plumbing, and electrical fixtures in good repair;

(3) Having a fire control and evacuation plan;

(4) Having an adequate number of ABC-rated fire extinguishers located throughout the home with a minimum of one (1) per floor or level of the residence;

(5) Having a person in charge thoroughly oriented in the evacuation of the residents in the event of a fire;

(6) Having all firearms and ammunition locked in a cabinet, drawer, or closet with the key not accessible to residents. Firearms shall not be loaded; and

(7) Having at least two (2) functioning smoke detectors in the home, one of which shall be in each ~~(the)~~ resident bedroom~~{e}~~ or in a hall adjacent to the resident bedroom~~{e}~~.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: December 10, 1996

FILED WITH LRC: December 12, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1997, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen M. Heslen, General Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently (378) licensed family care homes.

(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 public comments addressing this issue 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 public comments addressing this issue 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: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

(6) To the extent available from the public comments received,

board and shall meet at least quarterly. The advisory board shall be composed of at least three (3) members and shall include representatives from each of the following groups:

(a) Mental retardation ~~or~~ [A] developmental disability representative from regional mental health and [A] mental retardation board;

(b) Parents or guardians of an individual with mental retardation or developmental disability or a consumer advocate knowledgeable of the needs of group home residents; and

(c) A qualified mental retardation or developmental disability professional.

(5) Policies. The licensee shall develop with the input of the advisory board:

(a) Written outline of the objectives and goals it is striving to achieve. Such outline shall be available for distribution to staff, consumer groups and the interested public.

(b) Written policies which include:

1. Current routine operational procedures;

2. Procedures for the protection of resident's rights;

3. Procedures for the protection of the resident's financial interests; and

4. Procedures for the reporting of cases of abuse, neglect or exploitation of adults and children ~~[to the Cabinet for Human Resources]~~ pursuant to KRS Chapters 209 and 620 ~~[KRS 199.335]~~.

(6) The licensee shall incorporate the normalization principle into its objectives and shall implement programs consistent with this principle.

(7) The licensee shall establish job descriptions and qualifications for all group home personnel and shall delegate necessary authority for the daily management of the group home program.

(8) The licensee shall conduct a program evaluation annually.

(9) The way residents are represented to the public shall be appropriate to the purposes and programs of the group home and these terms shall not emphasize mental retardation or deviancy.

(10) The advisory board shall appoint a services committee which shall be responsible for:

(a) All decisions pertaining to resident admissions, transfers and discharges.

(b) Assuring that a comprehensive habilitation plan is established for each resident on an individual basis.

(11) The services committee shall:

(a) Be composed of the manager and two (2) other persons both of whom shall be qualified mental retardation and developmental disability professionals.

(b) Utilize appropriate evaluations in determining eligibility for admission based on areas of comparable need for programming. In such instances where the chronological age span of the program participants exceeds five (5) years for individuals twelve (12) years or younger, ten (10) years for individuals aged thirteen (13) to eighteen (18), and twenty (20) years for individuals eighteen (18) years and older adequate written justification demonstrating the appropriateness of the program must be a part of the individual habilitation plan.

(12) Upon admission, all residents must be free from communicable disease which is reportable to the health department, except a (noninfectious) tuberculosis patient under continuing medical supervision for his or her tuberculosis disease. Within thirty (30) days prior to or within fourteen (14) days after admission, all residents must have a physical examination.

(13) For all individuals who are admitted to the group home, the services committee shall assure that the following information is a part of the resident's record:

(a) Persons to contact in case of emergency;

(b) Next of kin;

(c) Legal competency status and presence or absence of committee; and

(d) Financial resources.

Section 4. Personnel. (1) The group home shall employ an

adequate number of supervisory and direct care personnel and establish an on-call procedure to assure that the home has staff present when residents are present.

(2) Volunteers may be utilized but not substituted for the employment of full- or part-time staff.

(3) The group home shall provide an orientation program for all employees to include:

(a) History of retardation;

(b) Normalization principle;

(c) Habilitation planning techniques; and

(d) Basic first aid.

(4) A regular in-service program for the entire staff shall be conducted at least four (4) times a year. Volunteers may participate in such program.

Section 5. Services. (1) Within thirty (30) days after admission to the facility the services committee shall establish a comprehensive habilitation plan for each resident. The resident's habilitation plan shall be reviewed at least every ninety (90) days. In all cases, whether children or adults, the resident or resident's representatives shall participate in the development of the comprehensive habilitation plan.

(a) Such plan shall address the following:

1. Sensorimotor needs;

2. Communicative needs;

3. Social needs;

4. Emotional needs;

5. Educational needs; and

6. Vocational training needs.

(b) The individual habilitation plan shall outline the responsible parties for meeting each of the above listed needs.

(c) Each resident's habilitation plan shall be maintained as an integral part of the resident's records.

(2) Availability of services. The licensee shall assure that a comprehensive array of services is available as needed by each resident of the group home. These services shall be obtained from agencies through a written agreement. The following components shall be available:

(a) Medical services, including emergency medical services and an annual physical examination. For women this examination shall include gynecological services.

(b) Dental services to include at least two (2) visits annually.

(c) Psychological and psychiatric services, to be available as needed according to the resident's habilitation plan.

(d) Physical therapy.

(e) Social services, to include individual, group and family counseling as appropriate, according to individual needs.

(f) Occupational rehabilitative services, to include vocational counseling, planning and training as appropriate, according to individual needs.

(g) Speech therapy and audiology services, as needed.

(h) Public education for school age persons in accordance with 20 USC 1400 ~~[Public Law 94-142]~~.

(i) Recreational opportunities to provide the resident with adequate physical fitness and constructive leisure time activities.

Section 6. Physical Standards. The ultimate aim of the environment and design for a group home shall be to foster those skills necessary for maximum independence of the resident and enhance the resident's ability to cope with his or her environment. To this end the following shall be required:

(1) Location.

(a) Group homes can be located in urban, suburban or rural settings, but shall not be isolated from the mainstream of their community, and must be in an area zoned for residential use where applicable. The residence shall have the style and appearance of neighborhood houses.

nel.

(c) Medications in the home shall be kept in a locked cabinet. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration.

(d) Self-administration of prescription medications shall be allowed only upon the written instructions of the client's attending physician.

(e) Each individual who requires prescription medication shall receive medical supervision which includes regular evaluation of the individual's response to the medication including appropriate monitoring and laboratory assessment.

(f) The group home shall comply with all federal and state laws and regulations relating to the procurement, storage, dispensing, administration and disposal of drugs ~~(subject to the Federal Controlled Substance Act).~~

(5) Restraints. Physical and chemical restraints shall not be used.

Section 8. Resident Rights. (1) The residents shall be treated in a manner which preserves their feelings of self-worth and human dignity, have visitation rights, the right of privacy and freedom of worship.

(2) A resident's correspondence shall not be opened, except as authorized by the resident or resident's legal guardian or committee.

(3) Residents shall not be physically punished in any way.

(4) Residents shall be appropriately dressed at all times.

(5) Each resident shall have their individual:

(a) Clean wash cloth and towel;

(b) Toothbrush;

(c) Brush and comb;

(d) Other appropriate toilet articles; and

(e) Bureau or cupboard for storage of personal belongings.

(6) Residents shall not be denied the privilege of rest periods in their beds.

(7) Residents shall be allowed free movement within the group home and shall have access to all common living areas.

(8) Residents shall have access to the community.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: December 10, 1996

FILED WITH LRC: December 12, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1997, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen M. Heslen, General Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 36

licensed group homes for persons with mental retardation or developmental disabilities.

(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 public comments addressing this issue 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 public comments addressing this issue 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: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

5. Is assured confidential treatment of records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third party payment contract; and

6. Is treated with consideration, respect and full recognition of personal dignity and individuality including privacy in treatment and in the care of personal health needs.

(5) Personnel.

(a) The licensee shall establish personnel policies for the program which shall be reviewed, revised, approved and updated on an annual basis.

(b) There shall be an individual personnel record for each person employed by the facility which shall include the following:

1. All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter;

2. Evidence of education, training and experience of the individual along with a copy of the current license or certification credentials, if applicable;

3. Evidence that employees have received orientation to the facility's written policies within the first week of employment; and

4. Evidence of regular in-service training which corresponds with job duties and includes a list of training and dates completed.

(6) Staffing requirements. The program shall have adequate personnel to meet the needs of patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the individual treatment plans. If the staff to [A] patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(a) Medical director. There shall be a medical director who is a physician having responsibility for the medical direction of the program including admission of individuals, approving individual treatment plans and participating in the quality assurance review. The medical director or a physician designated by the medical director shall be available twenty-four (24) hours a day on at least an on-call basis.

(b) Interdisciplinary team. There shall be an interdisciplinary team responsible for developing the individual treatment plans, aftercare plans and conducting the quality assurance reviews.

(c) Treatment coordinator. The program shall have a full time treatment director whose qualifications are defined in writing and approved by the governing authority. The treatment director shall be responsible for:

1. Coordinating the interdisciplinary team in developing the individual treatment plans;

2. Initiating a periodic review of each patient's treatment plan for necessary changes;

3. Supervising the proper maintenance of patient records; and

4. Coordinating the interdisciplinary team in developing an aftercare plan for each patient which assures continuity of care.

(d) Nursing services. Nursing services shall be available on a twenty-four (24) hour basis. The program shall have at least one (1) full-time registered nurse. When a registered nurse is not on duty there shall be a licensed practical nurse present who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

(e) Medical supervision. A physician, or registered nurse under the direction of a physician, shall supervise implementation of the medical aspects of the treatment plan and all staff directly involved in patient medical care.

(f) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities. These programs shall include thorough job orientation for new personnel and regular in-service training programs emphasizing professional competence and the human relationship necessary for

effective health care.

(7) Patient records.

(a) An individual record shall be maintained for all patients with entries signed and dated by the person making the entry.

(b) At the time of admission the following information shall be entered into the patient's record:

1. Name, date of admission, birth date and place, marital status and Social Security number;

2. Person to contact in case of emergency;

3. Next of kin; and

4. Type and place of employment.

(c) The record shall contain documentation of all medical services provided during detoxification and rehabilitation including the results of physical examinations.

(d) The record shall contain the patient's treatment plan outlining goals and objectives for the individual during treatment. The record shall also contain documentation of how the plan was implemented and of patient progress in meeting the goals and objectives outlined in the treatment plan.

(e) The record shall contain notation of all medication administered including date, time, dosage, frequency of administration and the name of the person administering each dose.

(f) The record shall contain a discharge summary and a plan for aftercare.

(g) The discharge summary shall be entered in the patient's record within seven (7) days after discharge and include:

1. The course and progress of the patient with regard to the individual treatment plan;

2. The general observations of the patient's condition initially, during treatment and at discharge; and

3. The recommendations and arrangements for further treatment including prescribed medications and aftercare.

(h) If the patient is referred to other service providers after discharge, a copy of the discharge summary shall be promptly sent to the provider with the patient's permission.

(i) After a patient's death or discharge the completed record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longest.

(8) Linkage agreements. The program shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the program. These linkages shall include a hospital and an emergency medical transportation service in the area.

(9) Quality assurance. In order to determine the appropriateness and the quality of the services delivered the service shall have a quality assurance program that includes effective mechanisms for reviewing and evaluating patient care on a regular basis by the interdisciplinary team.

(10) Medications.

(a) All prescription and nonprescription medications administered to patients shall be noted in writing with the date, time and dosage and signed by the person administering the medication.

(b) All prescription medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, date, physician name, caution statement and directions for use.

(c) Prescription and nonprescription medication shall not be administered to any patient except on the written order of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14). All medications shall be administered by licensed personnel.

(d) All medicines shall be kept in a locked storage area which shall be well lighted and of sufficient size to permit storage without crowding. Medications requiring refrigeration shall be kept in a separate locked box in a refrigerator. Drugs for external use shall be stored separately from those administered by mouth or injection.

## ADMINISTRATIVE REGISTER - 2873

closed containers and stored in separate areas ventilated to the exterior of the building.

Section 6. Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

- (a) The maximum room capacity shall be six (6) patients.
- (b) The minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes or vestibules shall be 100 square feet in one (1) bed room and eighty (80) square feet per bed in multibed rooms.
- (c) In multiperson rooms partitioning, cubicle curtains or placement of furniture shall be used to provide privacy. An ample closet and drawer space shall be provided for the storage of patient's personal property.

(d) The placement of patients in multibed rooms shall be appropriate to the ages and program needs of the patients.

(2) Lavatory. In single and multibed rooms with a private toilet room, the lavatory may be located in the toilet room. Where two (2) or more patients share a common toilet a lavatory shall be provided in each patient room.

(3) Centralized toilet area. Where a centralized toilet area is used, the facility shall provide the following for each sex on every floor: one (1) toilet for each eight (8) residents or a major fraction thereof. Toilets must be separated by a permanent partition and at least one (1) toilet for each sex must be designed for wheelchair use.

(4) Patient baths. There shall be one (1) shower stall or one (1) bathtub for each fifteen (15) patients not individually served. Each bathtub or shower shall provide space for the private use of the fixture and for dressing.

(5) Patients shall be encouraged to take responsibility for maintaining their own living quarters and for other day-to-day housekeeping activities of the program, as appropriate to their clinical status.

(6) Dietary services.

(a) The facility shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietician to supervise the nutritional aspects of patient care and approve all menus on at least a consultative basis.

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with physician orders.

(c) Meals served shall correspond with the posted menu. When changes in the menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) Food shall be prepared by methods that conserve nutritive value, flavor and appearance, and shall be served at the proper temperature.

(e) At least three (3) meals shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(f) The facility shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 [~~Kentucky's Food Service Establishment Act and Food Service Code~~].

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: December 10, 1996

FILED WITH LRC: December 12, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1997, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen M. Heslen, General Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently two (2) licensed chemical dependency treatment programs.

(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 public comments addressing this issue 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 public comments addressing this issue 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: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.



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of collecting past-due child support.

(22) [(20)] "Order to withhold earnings" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and when applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.

(23) [(21)] "Preoffset notice" means a letter notifying an absent parent who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, or state tax refund intercept only.

(24) [(22)] "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of the child support order.

(25) [(23)] "Public assistance" means the receipt of K-TAP [(AFDC)], Medicaid, or foster care benefits.

(26) [(24)] "Responding state" means the state that is managing the child support case received from an initiating state.

(27) [(25)] "Unassigned arrearage" means any arrearage that accrues that is not assigned to the Cabinet for Families and Children [Human Resources].

(28) "Voluntary Acknowledgement of Paternity Form" is the form by which a mother and putative father voluntarily agree to the parentage of a child as specified by KRS 213.046, 405.430, 406.021 and 406.025.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: December 9, 1996

FILED WITH LRC: December 12, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1997 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1997 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-3674.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This administrative regulation clarifies terminology utilized within the Child Support Enforcement Program and for related judicial and administrative actions. This is an expansion of materials previously promulgated. Definitions are being added in order to harmonize with statutory requirements of KRS 194.050, 213.046, 205.710-205.800, 405.430, 405.520, 406.021, 406.025 and PL 104-193. No clients of the Child Support Enforcement agency should be affected by the clarification of terminologies.

(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 public comments received. No public hearing was held on the NOI and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available

from public comments received. No public hearing was held and the NOI and no public comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funding-66%; agency funding-34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held on the NOI and no public comments were received.

(b) Kentucky: No public hearing was held on the NOI and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because of the necessity to harmonize with statutory language.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

(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. The purpose of the regulation amendment is only for clarification of terminology.

### 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. This regulation does not contain new services of new requirements, and therefore does not affect local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not affect local governments.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect local governments.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Omnibus Reconciliation Act of 1993, the Family Support Act of 1988, PL 104-193.

2. State compliance standards. There are no differing or additional state compliance standards.

## ADMINISTRATIVE REGISTER - 2877

- (7) Services available to Medicaid only clients shall include:
- (a) Location of the absent parent;
  - (b) Establishment of paternity;
  - (c) Establishment of medical support obligations;
  - (d) Enforcement of medical support obligations;
  - (e) Review and modification of medical support aspects of support obligations when appropriate;
  - (f) Application for health insurance coverage through an employer for the child if court or administratively ordered but not acquired by either parent;
  - (g) Collection of medical support payments if ordered.

### Section 4. Services to an Individual not Receiving K-TAP [AFDC].

- (1) Child support services shall be made available to any individual who:
- (a) Assigns rights for medical support only; ~~or [and]~~
  - (b) Files a nonpublic assistance application for services with the child support agency; or
  - (c) Is a Medicaid only client who requests and gives consent for child support services in addition to medical support; or
  - (d) Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance; or
  - (e) Is receiving Medicaid only nonfoster care services.
- (2) Notification shall be made within five (5) working days to the family no longer eligible for public assistance that services shall continue unless the child support agency is notified to the contrary by the family.

Section 5. Application Process for a Nonpublic Assistance Individual. (1) Upon the request of a nonpublic assistance applicant, an application packet shall be given to the applicant.

- (a) If the request is made in person, the packet shall be provided the same day.
  - (b) If the request is made by telephone or mail, the packet shall be sent to the applicant within five (5) working days of the request.
- (2) The application packet shall include:
- (a) Nonpublic assistance application form;
  - (b) Nonpublic assistance services fact sheet;
  - (c) Civil rights information pamphlet.
- (3) The applicant shall be required to complete and return a notarized authorization and acknowledgment of no representation form.
- (4) Medical support services shall be provided with the consent of a nonpublic assistance client. When a nonpublic assistance child support application is provided to an individual requesting child support services, the child support agency shall:
- (a) Inform the client that medical support enforcement is available; and
  - (b) Obtain the following information:
    - 1. The name of the noncustodial ~~[absent]~~ parent;
    - 2. The name and Social Security number of the noncustodial ~~[absent]~~ parent;
    - 3. The Social Security number of the child;
    - 4. The home address of the noncustodial ~~[absent]~~ parent; and
    - 5. The name and address of the noncustodial ~~[absent]~~ parent's place of employment.
- (5) If enforcement becomes necessary and a lien is to be filed in order to collect past due support, the child support agency shall [may] take an assignment of support rights and authority to collect from an individual receiving nonpublic assistance child support services as prescribed by KRS 205.720(1). [if enforcement becomes necessary and a lien is to be filed in order to collect past due support.]
- (6) The child support agency shall open a case within twenty (20) calendar days of receipt of a nonpublic assistance application.
- (7) The nonpublic assistance application fee may not exceed twenty-five (25) dollars and shall be determined by an income fee scale.

(a) The income fee scale shall be based on the previous year's net income.

(b) If the previous year's net income is unknown, the fee shall be based on an estimate of the previous year's net income.

(c) The following fees shall be charged for services other than location only:

Yearly Net Income	Fee
\$0 to 2,000	\$5.00
2,001 to 3,000	8.00
3,001 to 4,000	10.00
4,001 to 5,000	13.00
5,001 to 6,000	15.00
6,001 to 7,000	18.00
7,001 to 8,000	20.00
8,001 to 9,000	23.00
9,001 and above	25.00

Section 6. Parent Locator Service and Associated Fee for Service. (1) For all public assistance cases referred to the child support agency or nonpublic assistance cases for which child support services are being provided, the child support agency shall attempt to locate a noncustodial ~~[an absent]~~ parent or a noncustodial ~~[an absent]~~ parent's sources of income and assets when location is necessary to take the next appropriate action.

(2) Location services may be provided upon application by a noncustodial parent as described in KRS 205.730.

(3) For a nonpublic assistance case in which location is the only service requested, a ten (10) dollar nonrefundable fee shall be charged. For parental kidnapping requests, a twenty (20) dollar nonrefundable fee shall be charged.

Section 7. Interstate Process for Child Support Services. (1) The child support agency shall extend to interstate child support cases the same ~~[full range of]~~ services available to intrastate cases. These services shall include:

- (a) Location of the noncustodial ~~[absent]~~ parent;
  - (b) Location of the custodial parent for establishment of paternity;
  - (c) Establishment of paternity;
  - (d) Establishment of a child support obligation for:
    - 1. A K-TAP [AFDC] or foster case;
    - 2. A Medicaid only case with the consent of the recipient; and
    - 3. A nonpublic assistance case.
  - (e) Establishment of medical support obligation for:
    - 1. An public assistance case; or
    - 2. A nonpublic assistance case with the consent of the applicant.
  - (f) Enforcement of support orders;
  - (g) Review and modification of child support or medical support orders, or both, if appropriate; and
  - (h) Collection and distribution of current and past due support payments.
- (2) To enforce child support laws between states the child support agency shall:
- (a) ~~[The child support agency shall]~~ Receive, distribute, and monitor all incoming interstate cases and apprise other states of changes in interstate cases; and
  - (b) ~~[The child support agency shall]~~ Establish an interstate central registry responsible for:
    - 1. Receiving and distributing incoming interstate requests; and
    - 2. Responding to inquiries received from other states on interstate cases.
  - (3) Within ten (10) working days of receipt of an interstate case, the central registry shall:
    - (a) Ensure review of submitted documentation for completeness;
    - (b) Forward the case to the appropriate functional unit for case processing;

## ADMINISTRATIVE REGISTER - 2879

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: December 10, 1996

FILED WITH LRC: December 12, 1996 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on January 21, 1997 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1997 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: July H. Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available. The policy changes incorporated within this regulation will affect all child support enforcement cases where medical support and maintenance is an issue. An accurate count of the number of the cases affected is not available at 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 public comments received. No public hearing was held and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

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

1. First year following implementation: There is no anticipated increase in reporting or paperwork.

2. Second and subsequent years: There is no anticipated increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No fiscal impact as health insurance will be acquired through the wage assignment process. Wage assignments for support enforcement are current policy.

2. Continuing costs or savings: No fiscal impact as health insurance will be acquired through the wage assignment process. Wage assignments for support enforcement are current policy.

3. Additional factors increasing or decreasing costs: No fiscal impact as health insurance will be acquired through the wage assignment process. Wage assignments for support enforcement are current policy.

(b) Reporting and paperwork requirements: There is no anticipated increase in reporting or paperwork anticipated as these duties will be incorporated in daily procedures.

(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 funding-66%;

agency funding-34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as policy is necessary to harmonize with statutory language.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

(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 the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains new services and new requirements of the contracting officials, and therefore does affect contracting officials of local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation specifies the process by which individuals may apply for child support services, including medical support and maintenance. Contracting officials for child support enforcement program provide services to individuals seeking assistance enforcement of child support orders and related issues such as maintenance and medical support.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide child support enforcement program services provided by contract including the enforcement of medical support and maintenance.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 302.34; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and PL 104-193.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available.

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 standards, or additional or different responsibilities or requirements. None

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form development.

2. Second and subsequent years: No additional reporting or paperwork requirements will be realized.

(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:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be realized as these duties are incorporated within daily procedures.

(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 funding-66%; agency funding-34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative adjustments were not considered as changes to the regulations are mandated by federal 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: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

(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 the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains new services and new requirements of the contracting officials, and therefore does affect local governments by requiring additional administrative work in establishments of paternity cases.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the establishment of paternity cases for child support enforcement program.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide for additional paternity services to custodial parents and noncustodial parents.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 302.34; and PL 104-193, the

Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

2. State compliance standards. KRS 213.046, 205.710-205.800, 405.430, 405.520, 406.021, and 406.025.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation provides requirements of the child support agency in the establishment of paternities.

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 standards, or additional or different responsibilities or requirements. None

### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (Amendment)

**904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.**

RELATES TO: KRS 205.710 to 205.800, 403.210 - 403.240, 405.520, 45 CFR 302.50, 302.56, 303.4, 303.6, 303.8, 303.31

STATUTORY AUTHORITY: KRS [Chapter] 13B.170, 194.050, 205.710 - 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, EO 96-862 [96-79]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support Enforcement Program [(CSEP)] in accordance with the provisions of KRS 205.710 to 205.800. Executive Order 96-862, effective July 2, 1996, reorganized [96-79, effective 12-28-95, reorganizes] the Cabinet for Human Resources and placed [places] the Department for Social Insurance and its programs under the Cabinet for Families and Children. This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:

(a) [By] A court of competent jurisdiction; or

(b) An administrative order.

(2) The amount of the obligation shall be:

(a) The amount specified in Section 2(4)(a) of this administrative regulation; or

(b) The amount determined by the child support guideline contained in KRS 403.212, as computed on Form CS-71, Commonwealth of Kentucky Worksheet, for a child support obligation administratively established by child support agency staff.

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For all public assistance cases referred to the child support agency, or for those nonpublic assistance cases for which child support services are being provided, the agency shall use state statute and legal process in establishing a child support and medical support obligation, including KRS 405.430 and 454.220 [454.200].

(5) In addition to the deductions as specified in KRS 403.212(2), an administratively or judicially imputed child support obligation shall be determined by:

(a) 100 percent of the income of the parent with whom the child resides, when:

1. There is no support order; or

2. There is a support order but there is no support obligation worksheet; or

3. A worksheet cannot be obtained; or

(b) That parent's portion of the total support obligation as indicated on the worksheet, when:

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(8) The parent or any other person or entity having standing to request a modification, or his authorized representative may withdraw the hearing request by writing to the area child support office or the Hearing Branch in the Department for Social Insurance, Division of Administrative Review.

(9) If the parent or any other person or entity having standing to request modification, or his authorized representative fails to appear at the hearing, the Hearing Branch may allow the parent to reschedule the hearing.

(a) The parent or any other person or entity having standing to request modification or his authorized representative shall be notified by mail that he has ten (10) days to show good cause for failing to appear or the action shall be dismissed.

(b) If the parent or any other person or entity having standing to request modification or his authorized representative does not reschedule or show good cause, the hearing officer shall dismiss the action.

Section 5. Material Incorporated by Reference. (1) Forms necessary for the establishment, review, and modification of child support orders, medical support orders, or both, provided through the Division of Child Support Enforcement are incorporated [effective ~~March 15, 1995~~]. These forms are:

(a) CS-66, revised ~~2/97~~ 7/04; and

(b) CS-71, revised ~~7/94~~ and

~~(c) CS-72, revised 6/99~~.

(2) These forms 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: December 10, 1996

FILED WITH LRC: December 12, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1997 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1997 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: July H. Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders and the utilization of the developed child support guideline form. This form and instructions will affect any child support case in which the obligation amount was determined after July 15, 1994. As of 6/30/96 there were 315,956 IV-D cases. However, because the cabinet has no way of obtaining information regarding private cases, an accurate count of the number of non IV-D cases affected is not available at this time. However, one of every three dissolution of marriage actions affects families with children. This number excludes paternity and child support orders on out of wedlock.

(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 public comments received. No public hearing was held and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

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

1. First year following implementation: This regulation contains services and requirements of the contracting officials, and therefore does affect local governments by requiring additional administrative work in establishments of child support and medical support orders.

2. Second and subsequent years: No increase in paperwork will be realized by child support offices or legal representatives. No additional costs should be incurred by the clients.

(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:

(b) Reporting and paperwork requirements: No increase in paperwork will be realized by child support offices or legal representatives.

(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 funding-66%; agency funding-34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(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: It is anticipated that appeal processes will be more clearly defined.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

### 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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months and twenty four (24) months.

Section 2. Certification Process. (1) The department shall be responsible for the certification of family child care homes.

(2) Authorized representatives of the department shall be trained to apply the administrative regulation and have the authority to:

- (a) Inspect premises;
  - (b) Review records required by this administrative regulation; and
  - (c) Review the program of family child care homes.
- (3) Inspections by the department shall be unannounced.

~~(4) [A provider shall apply for certification if the provider is caring for four (4) to six (6) unrelated children and may apply if caring for three (3) or fewer children as governed by KRS 199.8982.]~~

~~(5) [A person who has had a certification, license, registration or permit to operate a human services center denied for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revocation action shall not apply for a certificate to operate a family child care home for a period of five (5) years from the date of revocation.]~~

(a) After the expiration of the five (5) year period, the person may apply for certification after establishing that the applicant has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If certification is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the family child care home shall be inspected on at least a quarterly basis. Inspections shall be unannounced as governed by KRS 199.8982.

~~(5) [(6)]~~ A provider making application for certification shall:

(a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference herein;

(b) Complete the DSS-79, Self-Check List, incorporated by reference herein;

(c) Meet the minimum requirements as governed by KRS 199.8982;

(d) Submit a criminal records check for adult persons living in the home;

(e) Comply with provisions set forth in Sections 5 through 11 of this administrative regulation.

~~(6) [(7)]~~ Upon receipt of the application and fee, staff of the department shall:

(a) Review the application; and

(b) Conduct an inspection of the home as governed by KRS 199.8982.

~~(7) [(8)]~~ If the requirements have been met excluding the provisions of Section 5(3)(a) and (b) of this administrative regulation which shall be met within three (3) months of the application date, the home shall be certified and a certificate shall be issued for a two (2) year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

1. The name and address of the provider;
2. Limit of children to be served;
3. Identification number; and
4. Effective and expiration dates.

(b) The certification shall be valid for the certified provider and the address listed. A change of location shall require a change of location application and inspection as specified in subsections (6) and (7) of this section.

~~(8) [(9)]~~ If the provider does not comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, the application shall be denied.

~~(9) [(10)]~~ The application for Certification ~~[process]~~ shall be

renewed [repeated] every two (2) years. The provider shall submit a certification renewal request [new application] and fee one (1) month prior to the expiration of the certification.

(10) A certified family child-care home shall not have a certification suspended or revoked for failure to comply with standards of this administrative regulation until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met, except for conditions as governed by Section 3(2) of this administrative regulation.

Section 3. Denial, Suspension, or Revocation. (1) The cabinet shall review and may deny, suspend, revoke or refuse certification if the:

(a) Provider, an adult living in the provider's home or person under the supervision of the provider:

1. Has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult; or

2. Refuses to provide a criminal records check;

(b) Provider or/and an adult living in the provider's home has abused, neglected or exploited a child or an adult;

(c) Provider fails to comply with certification standards set forth in this administrative regulation; or

(d) Provider has had a human services center or facility registration, certification, permit or license denied for reasons set forth in paragraph (a) or (b) of this subsection or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in paragraph (a) or (b) of this subsection or revocation action.

(2) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

Section 4. Appeal. (1) If the cabinet denies, suspends, or revokes a certification, the provider shall be afforded a hearing in accordance with KRS Chapter 13B. [the cabinet shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.]

~~(2) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receiving the notice of the action from the cabinet.~~

~~(3) Upon receipt of the request for hearing, the commissioner, or designee, shall notify the provider in writing within fifteen (15) days of the time and place of the hearing. The commissioner, or designee, shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.~~

~~(4) The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.~~

~~(5) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision of the hearing officer shall be final. The provider shall be notified in writing of the decision of the hearing officer.~~

~~(6) If a provider whose certification has been suspended or revoked pursuant to Section 3(2) of this administrative regulation request a hearing, the department shall conduct a hearing within five (5) working days of receipt of the request. The hearing may be continued at the request of the provider.~~

~~(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the children in care.~~

~~(b) The department shall render a decision within five (5) working days of the close of the hearing. If a decision is not rendered within~~



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- (f) Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;
- (g) Serve only pasteurized milk or milk products;
- (h) Screen windows and doors used for ventilation;
- (i) Have household pets vaccinated for rabies;
- (j) Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;
- (k) Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be provided for each child and shall be changed at least weekly or if they become soiled or wet.
- (15) Program for children. A plan for daily activities and routines shall be established.
- (16) Children shall be released from the family child care home to:
  - (a) The child's custodial parent;
  - (b) The person designated in writing by the parent to receive the child; and
  - (c) A person in an emergency designated over the telephone by the parent.

Section 7. To assure a healthy environment, the provider shall:

- (1) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;
- (2) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and shall include the following information:
  - (a) The child's name, address, and date of birth;
  - (b) The names of individuals to whom the child may be released;
  - (c) The general status of the child's health;
  - (d) Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
  - (e) The names and phone numbers of persons to be contacted in an emergency situation;
  - (f) The name and phone number of the child's physician and preferred hospital; and
  - (g) Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.
- (3) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;
- (4) Prohibit prescription medications or aspirin to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian;
- (5) Administer nonprescription medication to a child only with written daily request of parent or guardian; and
- (6) The provider shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect as governed by KRS Chapter 620.

Section 8. Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

- (1) Have written permission from a parent or guardian to transport his child;
- (2) Have a car or van equipped with seat belts which allow each child to be individually secured;
- (3) Require that each child shall have a seat, be individually seat-belted and remain seated while the vehicle is in motion. A child under forty (40) inches in height shall be transported restrained in a federally-approved motor vehicle safety seat in good repair;
- (4) Have a valid driver's license issued by the Division of Motor Vehicles;
- (5) Have emergency and identification information about each child in the vehicle whenever children are being transported; and
- (6) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, 186.020 and Chapters

189 and 189A.

- (7) Never leave children in a vehicle unattended by an adult.
- (8) Never use the back of pickup trucks to transport children.

Section 9. Child Records. The provider shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Families and Children [~~Human Resources~~] or as governed by this administrative regulation.

Section 10. The program shall ensure ongoing communication with a child's parent by:

- (1) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;
- (2) Make available a copy of the certification standards to each parent;
- (3) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; and
- (4) Post and provide to each parent copies of children and parent rights pursuant to KRS 199.898.

Section 11. The provider shall comply with the following:

- (1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.
- (2) Wash hands with soap and water before and after diapering a child.
- (3) Use sanitary procedures when preparing and serving food.
- (4) Assure that children shall not share cups, eating utensils, wash cloths or towels.
- (5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.
- (6) Prohibit smoking in the presence of children in care.
- (7) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.
- (8) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.
- (9) Infants in care shall be held during feeding and bottles shall never be propped.
- (10) If overnight care is provided, the provider shall:
  - (a) Remain awake until every child in care is asleep;
  - (b) Sleep on the same level as infants and toddlers; and
  - (c) Provide comfortable, clean and safe bedding for each child.
- (11) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.
- (12) Provide opportunities for outdoor play or fresh air.
- (13) Be able to recognize symptoms of childhood illnesses.
- (14) Visually supervise children who are awake and be able to respond to the children immediately.
- (15) Be able to provide basic first aid.
- (16) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.

Section 12. Incorporation by Reference. (1) The DSS-78, Application for Family Child Care Certification, revised June 1996 [~~September 1993~~], and the DSS-79, Self Check List, revised July

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Administration and Development**  
**(Amendment)**

**907 KAR 1:450. Nurse aide training criteria and registry.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396r, EO 95-

79

**NECESSITY, FUNCTION, AND CONFORMITY:** The Cabinet for Health Services, Department for Medicaid Services, ~~(Human Resources)~~ has responsibility to administer the Medicaid Program. Executive Order 95-79, effective December 28, 1995, 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 nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

**Section 1. Definitions.** (1) "Cabinet" means the Cabinet for Health Services.

(2) "Competency evaluation program" means the competency evaluation program required by 42 USC 1396r for nurse aides employed by Medicaid participating nursing facilities prior to October 1, 1989, when the program is approved by the state in which the nursing facility is located.

(3) "Department" means the Department for Medicaid Services and its designated agents and representatives.

(4) ~~(2)~~ "Licensed health professional" means a:

- (a) Physician;
- (b) Physician assistant;
- (c) Nurse practitioner;
- (d) Physical, speech, or occupational therapist;
- (e) Registered ~~(professional)~~ nurse;
- (f) Licensed practical nurse;
- (g) Registered dietitian; or
- (h) Licensed or certified social worker.

(5) ~~(3)~~ "Nurse aide" means any individual, including nursing students, medication aides and those employed through nursing pools, providing nursing or nursing-related services to residents in a nursing facility, excluding:

(a) ~~(but does not include)~~ An individual who is a licensed health professional; ~~(or)~~

(b) Volunteers who provide the nursing or nursing-related services without monetary compensation; and

(c) Persons who are hired by the resident or family to sit with the resident.

(6) ~~(4)~~ "Nurse aide training and competency evaluation programs (NATCEP)" means the program(s) of nurse aide training and competency evaluation for nurse aides, ~~required by~~ 42 USC 1396r requires that these programs ~~(be)~~ be in place for Medicaid participating nursing facilities, when the program is approved by the state in which the nursing facility is located.

(7) ~~(5)~~ "State approved program" means the nurse aide training and competency evaluation program requirements shown in the manual entitled "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program [Manual]" ~~(revised November 1, 1992 which is hereby incorporated by reference)~~. Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the Commonwealth ~~(state)~~ of Kentucky in accordance with the terms, conditions, and criteria specified for a state approved program as designated in the manual specified in this

subsection for the state approved program.

(8) ~~(6)~~ "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.

**Section 2. Material Incorporated by Reference.** (1) The "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program", dated January 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, 40621.

(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 3. [2-] General Requirements.** A participating nursing facility shall not use an individual as a nurse aide on a permanent basis, as follows: ~~(as on or after October 1, 1990)~~

(1) For more than four (4) months unless the nurse aide has completed the:

(a) Nurse aide training and competency evaluation program; ~~(or)~~

(b) The competency program if the individual was used by the facility prior to October 1, 1989 as a nurse aide; or

(c) Is deemed to meet the competency evaluation prior to January 1, 1989, ~~(as specified in the manual for the approved state program).~~

(2) A facility shall not use an individual as a nurse aide on a temporary, per diem, leased or any other nonfull-time basis unless the person has completed the:

(a) Nurse aide training and competency evaluation program; or

(b) Competency evaluation program.

**Section 4. [3-] Regular In-service Education and Ongoing Staff Development.** Following successful completion of the nurse aide competency evaluation program, each nursing facility shall be ~~(be)~~ required to provide and document, ~~(as specified in the Medicaid Services (state approved program) Manual for Nurse Aide Training and Competency Evaluation Program, (b) twelve (12) hours of ongoing staff development annually for each nurse aide.~~

**Section 5. [4-] Minimum Curriculum and Content Requirements.**

(1) The nurse aide training program shall, at a minimum, consist of no less than seventy-five (75) hours, which includes a minimum of sixteen (16) hours of supervised practical training.

(2) Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content shall be ~~(are)~~ shown in the Medicaid Services Manual for the Nurse Aide Training and Competency Evaluation Program ~~(state approved program).~~

**Section 6. [5-] Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs.** (1) The nurse aide training program shall ~~(may)~~ be conducted by:

(a) The ~~(means of a)~~ Department for ~~(of Adult and)~~ Technical Education program;

(b) Nursing facility program;

(c) Community college; ~~(or)~~

(d) University program; ~~(or)~~

(e) A licensed proprietary education program;

(f) A licensed health care facility offering a nurse aide training program to its own employees; or

(g) A nonprofit, church related or tax supported program that is

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Agency Contact Person: Karen Doyle or Ked Fitzpatrick

(1) Type and number of entities affected: Nursing facilities and nurse aides employed by Medicaid participating nursing 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: 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.

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: No public comments were received during the public hearing process; therefore, we anticipate no economic impact from this administrative regulation.

(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: Medicaid recipients will continue to have adequate access to nursing facility services.

(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: Medicaid recipients may not have adequate access to nursing facility services if nursing facilities were found out of compliance with 42 USC 1396r and could not participate in the Medicaid Program.

(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.

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.

### 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

## ADMINISTRATIVE REGISTER - 2893

the provisions of 13 KAR 2:045 under which relief is sought. The petition for hearing shall indicate on its face the name and address of each party to be served by the agency. Any doubts about whether a document constitutes a petition for hearing shall be resolved in favor of the filing party.

(2) The administrative action shall commence upon the filing of the petition for hearing.

(3) The notice of hearing shall conform to KRS 13B.050.

(4) The agency shall file an answer to the petition within fifteen (15) days of the service of notice.

**Section 11. Prehearing Conferences and Orders.** A hearing officer may hold a prehearing conference in any administrative action assigned to him to consider any matter as set forth in KRS 13B.070 and 13B.080.

**Section 12. Discovery.** (1) No fewer than five (5) days before the hearing and within thirty (30) days of service of the notice required under this administrative regulation, the parties shall produce and serve on every other party the following information:

(a) The name, address, and telephone number of each witness whom the disclosing party expects to call at the hearing, with a designation of the subject matter of which each witness might be called to testify.

(b) The name and address of each person whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the proceeding and the nature of the knowledge or information each such individual is believed to possess.

(c) The name and address of each person who has given statements, whether written or recorded, signed or unsigned, regarding matters relevant to the petition, and the custodian of the copies of those statements.

(d) The existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use at the hearing.

(e) A list of the documents or, known by a party to exist, whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the proceeding and the date(s) when those documents will be or have been made available for inspection and copying.

(2) The hearing officer may allow any party to use any form of discovery allowed in the Kentucky Rules of Civil Procedure.

(3) All matters produced under this section shall include information in the possession, custody, and control of the parties as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation.

(4) The parties shall be under a continuing duty to produce information under this section, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed.

(5)(a) Unless a hearing officer orders otherwise, transcripts of depositions, interrogatories and responses thereto, requests for production, inspection or for admission and responses thereto shall not be filed in the record.

(b) The hearing officer shall determine what is to be included in the record in addition to the requirements set forth in KRS 13B.130.

(6) Upon the failure of any party to produce information under this section, another party may move for an order compelling production.

(7) If a party fails to comply with the prehearing discovery required by this section or an order of the hearing officer under this section, the hearing officer may impose sanctions consistent with the provisions set forth in KRS 13B.080(6).

**Section 13. Subpoenas.** (1) The hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of any tangible items in the possession or under the

control of witnesses.

(2) A motion for issuance of a subpoena shall be in writing, filed with the agency at least five (5) days before the hearing. The motion shall set forth the need for the subpoena and shall specify the name and address of the person to be subpoenaed and the name, address, and phone number of the party requesting a subpoena. If the subpoena requests the production of tangible items, the motion shall describe those items with particularity.

**Section 14. Default.** If a party fails to timely comply with an order of a hearing officer or a requirement of these regulations or to appear at a hearing, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend the agency head enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend that the agency head enter a final order in conformity with the relief requested by the opposing party in the administrative action.

**Section 15. Burden of Proof.** (1) The student shall have the burden of going forward to establish a case and shall bear the ultimate burden of persuasion consistent with requirements of 13 KAR 2:045.

(2) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of the evidence in the record.

**Section 16. Evidence.** (1) The hearing officer shall admit evidence in the record in accordance with KRS 13B.090 and reasonable administrative practice.

(2) The hearing officer may on his own motion or motion of a party separate the witnesses while testimony is being offered and may limit cumulative testimony by any witness.

(3) The hearing officer may admit documentary evidence in the record in the form of a copy or excerpt if the original document is not available. Any party to the proceeding shall have the right to compare the copy or excerpt with the original prior to the copy or excerpt being admitted in to the record.

**Section 17. Recording Proceedings; Transcripts; Exhibits.** (1) All testimony, oral motions, objections, and rulings thereon in an administrative action shall be recorded verbatim stenographically, electromechanically, or by other means.

(2) Upon the filing of a signed agreed order, any administrative hearing may be conducted in whole or in part by telephone, television, or other electronic means in accordance with KRS 13B.080(7). If any part of a hearing is conducted by electronic means for which there is a charge, each party shall bear a pro rata portion of the cost of conducting the proceedings electronically, or shall bear such costs as the hearing officer deems just. Any part of a hearing conducted by electronic means shall be recorded stenographically or by electro-mechanical means or by other means.

(3) A hearing officer may, in his discretion, order a transcript be made of all or a portion of any recording of an administrative action assigned to that hearing officer. The agency shall bear the cost of a transcript ordered by the hearing officer.

(4) Following the close of the formal administrative hearing, the agency shall take custody of all exhibits introduced at the administrative hearing and shall retain those exhibits with the record for at least five (5) years.

**Section 18. Posthearing Procedures; Exceptions; Jurisdiction.** (1) At the conclusion of an administrative hearing, the hearing officer may, within his discretion, order the parties to submit posthearing memoranda or draft recommended orders for the agency head.

(2) As soon as practicable after the conclusion of the administra-

Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: John W. Patterson, Victim Advocate, Attorney General's Office, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, (502) 573-5900, FAX (502) 573-8315.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Patterson, Victim Advocate

(1) Type and number of entities affected: This administrative regulation will affect how persons work with sexually abused children in law enforcement agencies, prosecutor's offices, social service agencies, community mental health agencies and schools. It should not result in any increase in costs or expenditures to any state or local entity.

(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: This will be determined after the public comment period and review of any comments which 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 comments received: It is not anticipated that this administrative regulation will impact the cost of doing business. However, this will be determined after the public comment period and review of any comments which 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: Local multidisciplinary teams must submit, for approval, a copy of the protocol developed for their community to the Kentucky Multidisciplinary Commission on Child Sexual Abuse. Teams are already required to compile an annual report of activities pursuant to existing statute (KRS 620.040). The report includes data related to victims, offenders and prosecution, general statistics on rates of reporting and substantiation, and other information which describes the team's activities.

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

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

(5) Source of revenue to be used to for implementation and enforcement of administrative regulation. The Kentucky Multidisciplinary Commission on Child Sexual Abuse is charged with implementing the regulation promulgated by the Attorney General. The commission accepts or denies approval of the protocol submitted by local teams. The commission is provided staff support by the Office of the Attorney General, Victim Advocacy Division. This staff support is provided as part of the mission of the division. Commission members are provided no compensation for their service.

(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 the administrative regulation will be implemented: There is no anticipated economic impact, however, this can be determined with more certainty after the public comment period.

(b) Kentucky: Same response as (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Statute required that this regulation be developed.

(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 multidisciplinary teams should have the effect of providing further safeguards for children who have been victims of child sexual abuse. The coordinated efforts of team members will decrease the likelihood of a child "falling through the cracks" of the child protection, mental health and criminal justice systems. Professionals will work together instead of separately to assist the child during this traumatic phase of the child's life.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this regulation would have detrimental effects on children who have been victims of child sexual abuse.

(c) Developing a model protocol which is incorporated into administrative regulation gives further support to law enforcement, social service and other agencies who serve children in their efforts to provide a coordinated, community response to children who are endangered as a result of this crime.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. No area of the state or group will be treated differently. All children who are served by multidisciplinary teams shall be treated in a like manner. All teams are expected to develop protocols which are reflective of the guidance in the model protocol as developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.

#### 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: While the administrative regulation does mention several agencies considered part of local governments, and in that sense "relates" to local government, it does not fiscally impact these agencies. The purpose and function of the regulation is to establish a model protocol upon which local agencies, who form a team to investigate child sexual abuse and to provide services to its victims, will base their own protocols which define roles and job responsibilities for acting together as a team. These activities currently are part of the jobs of local professionals acting separately. The creation and submission of local protocols merely formalizes

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- (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  
APPROVED BY AGENCY: December 6, 1996  
FILED WITH LRC: December 9, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 29, 1997 at 10 a.m. at the Emergency Operations Center, Boone National Guard Center, Frankfort, Kentucky 40601-6168. Individuals interested in attending this hearing shall notify this agency in writing by January 22, 1997, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lieutenant Colonel John P. Roth, Education Services Officer, Attn: KG-DOP-ED, Boone National Guard Center, Frankfort, Kentucky 40601-6168. Phone number: (502) 564-8550, Fax number: (502) 564-0720.

### 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



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actual terms of the loan agreement between the applicant and the eligible lending institution.

(2) The eligible lending institution shall submit to the department by September 1 of each year a report of all principal repayments made by the eligible institution to the State Investment Commission for the preceding year beginning July 1 and ending June 30.

(3) The first annual report shall be filed on or before September 1, 1997 indicating all repayments made between July 15, 1996 and June 30, 1997.

Section 5. Incorporation by Reference. The "Agribusiness Linked Deposit Loan Application (7/96)" is incorporated herein by reference. A copy of the form of application may be inspected, copied or obtained from the Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601 (502) 564-4696 from 8 a.m. to 4:30 p.m., Monday through Friday.

This is to certify that I have reviewed this administrative regulation, prior to its filing by the Department of Agriculture with the Legislative Research Commission, as required by HB 872.

MARVIN E. STRONG, JR., Secretary  
Economic Development Cabinet  
GORDON MULLIS, Secretary  
State Investment Commission

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: November 12, 1996

FILED WITH LRC: December 5, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, January 22, 1997, at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, January 15, 1997, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

### REGULATORY IMPACT ANALYSIS

Contact Person: Mark Farrow, General Counsel

(1) Type and number of entities affected: All Kentucky agribusinesses which apply for a loan under the Linked Deposit Investment Program.

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

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

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applicants for loans under the Linked Deposit Investment Program will be required to complete and submit "Agribusiness Linked Deposit Loan Application (7/96)" which is incorporated by reference by this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be an impact on state revenues. Currently, the funds in the unclaimed and abandoned property account are invested with the earnings accruing to the benefit of the General Fund. Under current market conditions, the General Fund will forego approximately 100 basis points in yield as a result of the differential between the linked deposit investment rate as defined in the enabling statute versus the comparable earnings on an eligible governmental investment under KRS 42.500. Assuming the unclaimed and abandoned property cash account in the state's accounting system averages \$40 million dollars annually, the lost earnings at today's interest rate would be \$400,000, assuming all of the funds in the account were lent out under the program. The actual figure could be higher or lower.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Department of Agriculture.

(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.

(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: There is an inherent conflict between KRS 41.600, the proposed regulations and KRS 42.500, 200 KAR Chapter 14 and the policies of the State Investment Commission. While KRS 42.500 permits the State Investment Commission to invest in linked deposit's the commission is also charged with maximizing the return on the state's excess cash balances. 200 KAR 14:011, Section 4(3) states that the commission shall not invest funds in any institution or investment at a yield less than that available on a U.S. Treasury security of a similar maturity. The investments under the linked deposit program will invest cash at yields less than are currently available on a comparable U.S. Treasury security.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is required to be promulgated pursuant to KRS 41.606.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No effort was made to harmonize the proposed administrative regulation and the conflicting law because such harmonization is not possible.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation. All agribusinesses which fall into the category of agribusinesses eligible to apply for loans under the Linked Deposit Investment Program are required to apply for such loans by completing the "Agribusiness Linked Deposit Loan Application (7/96)".

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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: All Kentucky small businesses which apply for a loan under the Linked Deposit Investment Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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 on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applicants for loans under the Linked Deposit Investment Program will be required to complete and submit the "Small Business Linked Deposit Loan Application (7/96)" and the "Cabinet for Economic Development Economic Incentive Disclosure Statement (9/96)" which are incorporated by reference by this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be an impact on state revenues. Currently, the funds in the unclaimed and abandoned property account are invested with the earnings accruing to the benefit of the General Fund. Under current market conditions, the General Fund will forego approximately 100 basis points in yield as a result of the differential between the linked deposit investment rate as defined in the enabling statute versus the comparable earnings on an eligible governmental investment under KRS 42.500. Assuming the unclaimed and abandoned property cash account in the state's accounting system averages \$40 million dollars annually, the lost earnings at today's interest rate would be \$400,000, assuming all of the funds in the account were lent out under the program. The actual figure could be higher or lower.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Cabinet for Economic Development.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and 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: There is an inherent conflict between KRS 41.600, the proposed regulations and KRS 42.500, 200 KAR Chapter 14 and the policies of the State Investment Commission. While KRS 42.500 permits the State Investment Commission to invest in linked deposit's the commission is also charged with maximizing the return on the state's excess cash balances. 200 KAR 14:011, Section 4(3) states that the commission shall not invest funds in any institution or investment at a yield less than that available on a U.S. Treasury security of a similar maturity. The investments under the linked deposit program will invest cash at yields less than are currently available on a comparable U.S. Treasury security.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is required to be promulgated pursuant to KRS 41.606.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No effort was made to harmonize the proposed administrative regulation and the conflicting law because such harmonization is not possible.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation. All small businesses which fall into the category of businesses eligible to apply for loans under the Linked Deposit Investment Program are required to apply for such loans by completing the "Small Business Linked Deposit Loan Application (7/96)" and the "Cabinet for Economic Development Economic Incentive Disclosure statement (9/96)" incorporated by reference in this regulation.

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (New Administrative Regulation)

#### 601 KAR 12:041. Repeal of 601 KAR 12:040.

RELATES TO: KRS 186.018

STATUTORY AUTHORITY: KRS 186.018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.018 as amended by the 1996 General Assembly establishes the fee for obtaining a copy of an individual's driving history record. Therefore, there is no longer a need for an administrative regulation establishing that fee. This administrative regulation repeals 601 KAR 12:040 which established the fee for obtaining a copy of an individual's driving history.

Section 1. Repeal. 601 KAR 12:040, Driving history record; fee is repealed.

ED LOGSDON, Commissioner

JAMES C. CODELL III, Secretary

APPROVED BY AGENCY: October 14, 1996

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

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 23, 1997 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 16, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by January 16, 1997. This request

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1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(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: Retention of regulations will create contradictions with regulation 704 KAR 20:695 and 704 KAR 20:705.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas 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: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 704 KAR 20:695, Standards for accreditation of teacher education, 704 KAR 20:705, Admission, placement, and supervision in student teaching.

(a) Necessity of proposed regulation if in conflict: Regulation will remove overlap and contradiction between old and new regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No, the regulations to be repealed are in conflict with the new standards for accrediting teacher education institutions and programs.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. All teacher education programs will follow the same regulations in the preparation of professional educators.

### **WORKFORCE DEVELOPMENT CABINET Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)**

#### **787 KAR 1:320. Priority of deductions from benefits.**

RELATES TO: KRS 341.391

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.391(4) provides that amounts shall be deducted and withheld from benefit payments in accordance with priorities established in administrative regulation by the secretary. This administrative regulation establishes the priority of deductions from benefits.

Section 1. If deductions and withholding from benefit payments are required under more than one (1) statute or for more than one (1) purpose, the priority for deduction shall be as follows:

(1) Deduction of wages, remuneration in lieu of notice and pension compensation as required under KRS 341.390.

(2) Deduction for recoupment of a previous overpayment as required under KRS 341.415.

(3) Child support obligations as required under KRS 341.392.

(4) Any other mandatory deduction imposed under any federal or Kentucky statute or administrative regulation.

(5) Voluntary withholding of income tax requested by a claimant as provided under KRS 341.391.

RODNEY S. CAIN, Secretary

RHONDA K. RICHARDSON, Commissioner

APPROVED BY AGENCY: November 18, 1996

FILED WITH LRC: November 20, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 28, 1997, at 9:30 a.m. at the Health Services Cabinet Auditorium, 275 East Main Street, First Floor, Health Services Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by, Tuesday, January 21, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Beverly Haverstock, General Counsel, Workforce Development Cabinet, Capital Plaza Tower, 2nd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-7916.

### **REGULATORY IMPACT ANALYSIS**

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Potentially, all unemployment insurance claimants should all choose to have income tax deducted.

(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: Reduces claimant need to make estimated federal income tax payments.

2. Second and subsequent years: Reduces claimant need to make estimated federal income tax payments.

(3) Effects on the promulgating administrative body

(a) Direct and indirect costs or savings: None resulting from this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Claimants electing income tax withholding will be furnished an accounting of the amount withheld.

(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: U.S. Department of Labor administrative funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

# ADMINISTRATIVE REGISTER - 2905

43	35.6	32.8	38.0
44	34.7	32.0	37.1
45	33.8	31.1	36.2
46	32.9	30.2	35.3
47	32.0	29.4	34.3
48	31.1	28.5	33.4
49	30.2	27.6	32.5
50	29.3	26.8	31.6
51	28.5	25.9	30.7
52	27.6	25.1	29.8
53	26.8	24.3	29.0
54	25.9	23.5	28.1
55	25.1	22.7	27.2
56	24.3	21.9	26.4
57	23.5	21.1	25.5
58	22.7	20.4	24.7
59	21.9	19.6	23.9
60	21.1	18.9	23.1
61	20.4	18.2	22.3
62	19.7	17.5	21.5
63	18.9	16.8	20.7
64	18.2	16.1	19.9
65	17.5	15.4	19.2
66	16.8	14.8	18.4
67	16.1	14.2	17.7
68	15.5	13.5	16.9
69	14.8	12.9	16.2
70	14.2	12.4	15.5
71	13.5	11.8	14.8
72	12.9	11.2	14.1
73	12.3	10.7	13.5
74	11.7	10.1	12.8
75	11.2	9.6	12.2
76	10.6	9.1	11.6
77	10.0	8.6	10.9
78	9.5	8.1	10.3
79	9.0	7.7	9.7
80	8.5	7.2	9.2
81	8.0	6.8	8.6
82	7.5	6.4	8.1
83	7.1	6.0	7.6
84	6.6	5.6	7.1
85	6.2	5.3	6.6

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: December 12, 1996

FILED WITH LRC: December 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing will be held at the Department of Workers Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, on Monday, January 27, 1997, at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1997, 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 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: 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: Workers' compensation claimants, employers, the Special Fund, and their attorneys. Approximately 10,000 formal Applications for Adjustment of Claims are filed with the Department of Workers' Claims each year.

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

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

(b) Cost of doing business in geographical area in which the administrative regulation will be implemented to the extent available from public comments received: No public comments have been received.

(c) Compliance reporting and paperwork requirements for the:

1. First year following implementation. No additional paperwork requirements are imposed upon the entities affected by this administrative regulation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional cost for printing copies of the amended administrative regulation; not to exceed \$1,000.

2. Continuing costs or savings: Negligible

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No additional requirements to the agency.

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

(5) Source of revenue to be used for implementation and enforcement of this administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented statewide, and also will affect Kentucky workers' compensation claimants who reside outside of Kentucky. No public comments have been received about any anticipated impact, but this regulation should help to assure uniformity in the calculations made by the Special Fund and all administrative law judges.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: KRS 342.260(2), as amended by the regular session of the 1996 Kentucky General Assembly, requires the commissioner to develop or adopt life expectancy tables for use in making computations for the apportionment of benefits, attorneys fees, and for use in all other situations arising under the Workers' Compensation Act in which the calculation of a life expectancy is necessary or desirable.

(8) Assessment of expected benefits:

(a) Identify effect on public health and environment welfare: No effect.

(b) State whether a detrimental effect would result if not implemented: No effect.

(c) Explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No. Tiering does not apply. The life expectancy table adopted pursuant to 803 KAR 25:036 will be

## ADMINISTRATIVE REGISTER - 2907

in the sale of general lines insurance is not based on 12 USC §92, the Barnett Bank decision or the Department of Financial Institution's Parity Letter 96-2 are only governed by the provisions of Sections 3, 4, 5, 7, and 8 of this administrative regulation.

GEORGE NICHOLS, III, Commissioner  
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: December 5, 1996

FILED WITH LRC: December 5, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on January 21, 1997, 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 January 14, 1997, ten 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 January 21, 1997, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Julie P. Mix, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, FAX (502) 564-1456.

### REGULATORY IMPACT ANALYSIS

Contact Person: Julie P. Mix

(1) Type and number of entities affected: The department does not know how many financial institutions will apply for a license as an insurance agent. At this time, several have expressed interest.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments on this regulation at this time. The public comments received on the emergency regulation did not address this issue.

(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 on this regulation at this time. The public comments received on the emergency regulation did not address this issue.

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

1. First year following implementation: This administrative regulation requires the filing of an application, and examination, where applicable, by all financial institutions interested in becoming licensed as an insurance agent.

2. Second and subsequent years: The only additional information filed with regard to this administrative regulation would occur if something in the original application changed.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will have the responsibility of evaluating the applications and examinations of financial institutions. However, at this time, the department predicts the costs to be minimal since the volume of applications currently evaluated should not increase significantly. Additionally, the department will have the responsibility of evaluating consumer complaints regarding the financial institution agents. However, the increased cost is predicted

to be minimal, in light of the volume of complaints presently investigated.

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: The number of applicants and complaints received.

(b) Reporting and paperwork requirements: The department will have to review all applications for licensing and consumer complaints. The department will have to send an approval or rejection of licensing and a written resolution to complainants.

(4) Assessment of anticipated effect on state and local revenues: Minuscule increase in licensure revenue.

(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 on this regulation at this time. The public comments received on the emergency regulation did not address this issue.

(b) Kentucky: No public comments have been received on this regulation at this time. The public comments received on the emergency regulation did not address this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is necessary for the Department of Insurance to license financial institutions as insurance agents.

(8) Assessment of expected benefits: The department will be able to license financial institutions as insurance agents, in accordance with the U.S. Supreme Court decision. Consumers will enjoy full protection under the Insurance Code from the unique relationship of a financial institution insurance agent.

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

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 287.030(4)

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Parity Letter 96-2 sets aside the statutory prohibition of state banks selling most kinds of insurance in order to give Kentucky banks the same marketing capabilities that national banks were given in *Barnett Bank of Marion County, N.A. v. Nelson*.

(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 financial institution applicants and agents.

### PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance  
(New Administrative Regulation)

806 KAR 17:140. Health insurance rate filing requirements.

RELATES TO: KRS 304.17A-095

STATUTORY AUTHORITY: KRS 304.17A-095(7)

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

## ADMINISTRATIVE REGISTER - 2909

2. The change in Medical CPI plus three (3) percent is calculated as follows for the proposed rates and the trend factor rates. The results shall be expressed as a percentage change:

$$\text{Proposed rate change} = \frac{x/y}{(b/a) - 1 + (1.03)^{-1}}$$

Trend factor rate change =

$$\frac{z/y}{[(b/a) - 1 + (1.03)^{-1}]} \cdot \frac{x/y}{x/12}$$

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".

z = number of months from effective date of existing rates to effective date of trend factor rates.

(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;

(f) Explanation of the determination for healthy lifestyle discount and discount percentage;

(g) The following load factors shall be discussed:

1. Administrative expense, with an explanation for any change from the factor used for existing rates. Discuss how these costs are allocated among plans and attach necessary documentation as exhibits.

2. Commission assumption with an explanation for any change from the factor used for existing rates.

3. Tax (including federal, state and local government) assumption with an explanation for any change from the factor used for existing rates.

4. Investment income assumption with an explanation for any change from the factor used for existing rates.

5. Profit and contingency assumptions with an explanation for any change from the factor used for existing rates.

6. Any other factors.

(h) Information regarding how fees are 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 rates on the policyholders, subscribers, or enrollees.

(3) The actuarial memorandum for filings other than modified community rate filings shall include the following:

(a) The information prescribed in subsection (2)(a), (b), (d), (g) and (h) of this section;

(b) Under prestandard plan filings, the information provided in subsection (2)(b)1 and 4 of this section.

(c) Under large group filings, the following information shall be filed:

1. The information provided in subsection (2)(b)1, 2, and 4 of this section;

2. Formulas for new and renewing business and definitions of terms used in formulas;

3. Credibility criteria used in conjunction with experience rating;

4. Any change in the manual rating formula or experience rating formula shall be identified with detailed explanation;

5. Any change in factors which would be used in any formula shall be identified with detailed explanation;

6. Any periodic trend rate applied in a formula shall be provided;

7. The effect of any change in formula and formula factors, shall be calculated on a composite basis under subsection (2)(d)1 of this section. Likewise the current periodic trend rate shall be stated for a projected comparison with the change in Medical CPI plus three (3) percent under subsection (2)(d)2 of this section; and

8. Provide trend assumptions used in experience rating.

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; or

(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

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: December 13, 1996

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

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on January 21, 1997, 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 January 13, 1997, 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 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 January 21, 1997, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 239, Fax Number: (502) 564-1456.



**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of December 2, 1996**

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 2, 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 November 6, 1996 meeting were approved.

**Present were:**

**Members:** Representative Jesse Crenshaw, Chairman, Senators Nick Kafoglis, Joey Pendleton, Richard L. Roeding; Representatives Woody Allen, Jimmy Lee.

**LRC Staff:** Greg Karambellas, Donna Little, Steve Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Catherine Iannello, Sharon Cantrell, Cindy Schweickart, Laura Hendrix, Don Hines.

**Guests:** Wilbur W. Frye, Eli Miller, University of Kentucky; Robert A. Bowman, Hanson Williams, Personnel Board; Jeff Blair, Real Estate Commission; Pete Pfeiffer, Roy A. Grimes, Tom Bennett, Department of Fish and Wildlife Resources; James Hale, Robert Daniell, Natural Resources and Environmental Protection; David Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund; Brenda Priestley, Jack Damron, Tamela Biggs, Department of Corrections; Ronald T. England, Heidi Engel, Lt. James E. Vanhook, Gary L. Bush, Kentucky State Police; Jim Roberts, Transportation Cabinet; Kevin Noland, Board of Education; Barbara Locker, Robert Sherman, Preston Lewis, Department of Education; Rita Osborne, Ronda Tamme, Education Professional Standards Board; George Parsons, Sue Simon, Department of Vocational Rehabilitation; Larry W. Moore, Beverly Haverstock, Workforce Development Cabinet; Bill Ralston, Tim Chancellor, Kembra Taylor, Labor Cabinet; Julie Mix, Department of Insurance; Deborah Eversole, Public Service Commission; William E. Doyle, Department of Financial Institutions; Judith Walden, Department for Housing, Buildings and Construction; John H. Walker, Ralph Von Derau, Ked Fitzpatrick, Betty Weaver, Patricia Howard, Kay Kirkland, Karen Doyle, Jayne Arnold, Cabinet for Health Services; Joyce Lea, Graham Duvall, Cookie Whitehouse, Cabinet for Families and Children; Maureen Fitzgerald, Protection and Advocacy; Libby Marshall, Eve Proffitt, Kentucky School Board Association; Gretchen A. Lampe, KEA; Genevieve M. Young, Camille Wagner, Marshall E. Prunty, Nancy Oldham, Marty McKenney, Steven Trumbo, Melinda Prunty, Parents and Professionals Involved in Education; Gail Lincoln, Kentucky Disabilities Coalition; Dandridge F. Walton, KCFA; Patsy Hendrick, Fredia Baker, Representative Sheldon Baugh, Russellville Middle School; Duane Miller, Owensboro Schools; Richard Day, Cassidy School; Carrie Bearden, Ohio Valley Educational Cooperative; Mike Helton, KPMA, KAHK, HMO Association; Carl Sumner, Prentice Harvey, State Farm; John Cooper, Kentucky Bankers Association; Carl Breeding, Breeding, Cunningham, Dance & Cress; Dr. Bob Glass, Kentucky Developmental Disabilities Council; John Brazel, Kentucky Chamber of Commerce; Michael T. Walsh, Dennis Desmond, Ted Bradshaw, Robert Moore, Independent Insurance Agents of Kentucky; Charles Wolfe, The Associated Press; Gerald H. Lunney, Association of Independent Kentucky Colleges and Universities; Michael W. Wooden, Kentucky Association of Life Underwriters; Jim Carlross, KAR; Denise Keene; Donna D. Lawlor, Jonathan Lawlor; Joannis Lawlor; Patty Walton; Frank Simon; Janet Lynch; Deborah S. Wright; Cindy Rausch; Patricia Cerrito; Francis Charles Peller.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Agricultural Experiment Station: Commercial Feeds**

12 KAR 2:006. Definitions. Wilbur Frye, Director, and Elam Miller

represented the Division of Regulatory Services.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 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); and (3) a new section, Section 5, was created to incorporate by reference the official publication of the Association of American Feed Control Officials, as required by KRS 13A.2251.

12 KAR 2:011. Label format. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 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); and (3) Section 3 was amended to correct punctuation.

12 KAR 2:016. Brand and product names. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 through 3, and 5 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

12 KAR 2:017. Product purpose statement. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1, 2, 4, 5, 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).

12 KAR 2:018. Guaranteed analysis. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 12 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) a new section, Section 13, was created to incorporate by reference the official publication of the Association of American Feed Control Officials, as required by KRS 13A.2251.

12 KAR 2:021. Guarantees. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 2 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).

12 KAR 2:026. Ingredients. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 10 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) a new section, Section 11, was created to incorporate by reference the official publication of the Association of American Feed Control Officials, as required by KRS 13A.2251.

12 KAR 2:036. Nonprotein nitrogen. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity

permitted to bring; (7) Western Kentucky Correctional Complex permits a larger amount due to the difference in prices at the inmate canteen; (8) each warden is like the mayor of a small city and has the executive authority to determine what goes on in the prison so long as it is within the confines of Corrections Policies and Procedures and administrative regulations; (9) it is forbidden for inmates to possess cash money; (10) the Department has a problem with money being smuggled into the institutions; (11) money is frequently found in searches of prisoners and their cells; (12) the more money a visitor is permitted to bring in, the greater the chance that money can be smuggled into the prison; (13) wardens have a different philosophy on the amount of money they will allow; (14) the warden of Northpoint felt that \$6 was adequate for a visitor to purchase snacks while visiting an inmate; (15) neither KRS Chapter 13A nor other statutes prohibit prisons from permitting different amounts of money to be brought in by a visitor.

This administrative regulation was amended as follows: (1) NTC 11-05-02, A., NTC 11-07-01, A., NTC 13-20-02, A., NTC 16-02-01, A., 3., and NTC 16-02-01, B., 4., b. were amended to comply with the drafting requirements of KRS 13A.222(4); The Reference Section of NTC 13-20-02 was amended to cross reference 902 KAR 2:020-160; and (3) The Reference Section of NTC 15-05-01 was amended to cross reference CPP 15.

**Department of Training: Concealed Deadly Weapon Licensing**

503 KAR 6:020 & E. Application for license to carry concealed deadly weapon. Gary Bush, Kentucky State Police, and Lt. James Van Hook, Kentucky State Police, represented the Department.

Mr. Bush stated that the administrative regulations: (1) enabled the Department to implement KRS 237.110, which was commonly referred to as the carrying concealed deadly weapons licensing system; and (2) established a system of: (a) forms; (b) processing; (c) quality control standards; (d) denial and revocation; and (e) appeals.

In response to questions by Senator Roeding, Mr. Bush stated that: (1) the administrative regulations, which dealt with the actual application process, had been in force since October 1; (2) if a citizen met the criteria specified by statute, he could walk into a sheriff's office and obtain an application; (3) within 5 days, the application would be forwarded to the state police for processing; and (4) regional training conducted throughout the Commonwealth informed sheriffs that when the sheriff's office was open, applications should be accepted and forwarded to the Department.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 2, 5 through 7, and 9 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).

503 KAR 6:030 & E. Applicant photograph requirements for license to carry concealed deadly weapon. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 2 and 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).

503 KAR 6:050 & E. Denial of application form and consideration process. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

503 KAR 6:060 & E. Incomplete application for license to carry

concealed deadly weapon. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 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).

503 KAR 6:080 & E. Replacement and renewal of license to carry concealed deadly weapon. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 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).

503 KAR 6:090 & E. License denial and reconsideration process. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) 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)(b).

503 KAR 6:110 & E. License revocation notice and reinstatement process. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 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).

**Transportation Cabinet: Department of Vehicle Regulation: Commercial Driver's License**

601 KAR 11:020. Commercial driving history record. Jim Roberts, Deputy Commissioner of the Department of Vehicle Registration, and Steve Coffey, Assistant Director of Driver Licensing represented the Department.

Mr. Roberts stated that this administrative regulation adopted language enacted in House Bill 400 that lowered the driving history record fee for commercial drivers from \$5 to \$3.

In response to a question by Representative Allen, Mr. Roberts stated that: (1) the Department found that commercial drivers represent only 4 to 5 percent of the driving population; (2) employers and insurance companies were requesting the driving history of commercial licensees from the Department; and (3) the \$3 fee decreased the bookkeeping of the Department.

This administrative regulation was amended as follows: (1) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with KRS 281A.100; (2) Sections 1, 4(2), and 5 were amended to comply with the format requirements of KRS 13A.220(4); (3) Section 2 was amended to comply with the drafting requirements of KRS 13A.222(4)(a); (4) Section 3 was amended, pursuant to KRS 13A.120(2), to: (a) comply with KRS 187.310; and (b) delete language that repeated or summarized KRS 187.310; and (5) Section 4 was amended to delete provisions that modified KRS 281A.100, as required by KRS 13A.120(2)(i).

**Department of Education: Office of District Support Services: School Terms, Attendance, and Operation**

702 KAR 7:125 & E. Pupil attendance. Mr. Noland stated that this administrative regulation: (1) implemented House Bill 100, enacted at the 1996 Regular Session of the General Assembly; and (2) was the

the public on securities. Bill Doyle represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) 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)(b).

808 KAR 10:300. Registration exemptions - pension plans. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

#### **Department of Housing, Buildings and Construction: Plumbing**

815 KAR 20:120. Water supply and distribution. Judith Walden, General Counsel, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 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 (4) the incorporation by reference information was moved to the last section of the administrative regulation.

815 KAR 20:195. Medical gas piping installations. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 2, 5, 9, 10, 12, 14, 16, 17, 18, 21, and 22 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

#### **Cabinet for Health Services: Certificate of Need**

900 KAR 6:040 (& E). Licensure hearings. John Walker, Counsel, and Jane Arnold, Office of Certificate of Need, represented the Cabinet.

Subcommittee staff stated that while the initial review had questioned whether the exemption from KRS Chapter 13B provided to the predecessor body, the Health Policy Board, remained in effect after transfer by Executive Order reorganization of the subject matter of this administrative regulation to the Cabinet, in its opinion, the exemption from KRS Chapter 13B remained in effect.

This administrative regulation was amended as follows: (1) Sections 3 and 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); (2) Section 3 was amended to clarify that a personal relationship between the hearing officer and a party was a relationship that would make it impossible for the hearing officer to serve impartially; and (3) Section 5 was amended to extend certain deadlines to the periods established for those deadlines by KRS Chapter 13B.

#### **Department for Medicaid Services**

907 KAR 1:034 & E. Early and periodic screening, diagnosis, and treatment services. Betty Weaver, Department for Medicaid Services, and Genevieve M. Young, Parents and Professional Involved In Education, appeared before the Subcommittee.

Ms. Weaver stated that: (1) 907 KAR 1:034 was a coverage administrative regulation that defined coverage for preventive,

diagnostic, rehabilitative, and treatment services for Medicaid children under 21; and (2) amendments included changes: (a) in administrative body names to comply with the Executive Order 96-872 reorganizing the Cabinet; (b) required by federal law; and (c) required by KRS 605.115 to permit local school districts to participate as Medicaid providers.

Ms. Young stated that: (1) she requested this administrative regulation be deferred; (2) Kentucky's Medicaid state plan did not cover early and periodic screening diagnostic and treatment services; (3) the General Assembly has opted not to cover these services under the Medicaid program; (4) federal law provides that if these services are provided to Medicaid eligible children under 21, the services are reimbursable; (5) Kentucky has applied for a Medicaid state plan amendment that would provide that EPSTD services provided to children by schools would be reimbursed under Medicaid; (6) for the 1996-1997 school year, this reimbursement will: (a) cost Kentucky \$23 million; and (b) provide a federal match of \$56 million; (7) with respect to services not covered in the state plan, page 20.9 of attachment III 1 a, and page 20.7 of attachment 419 B, of the state plan state that: (a) Kentucky will comply with the requirements of Section 1905 of the Social Security Act relating to medically necessary services to EPSTD recipients; and (b) for services not covered by the Title XIX state plan, school-based services, the state will determine the medical necessity for the EPSTD services on a case-by-case basis through prior authorization; and (8) the cost of the program will be drive up, because these administrative regulations indicate that when EPSTD services are delivered in the schools, Kentucky will not seek prior authorization on a case-by-case basis for such services.

In response to questions by Chairman Crenshaw, Ms. Weaver stated that: (1) the state was mandated by HCFA to provide EPSTD services; (2) most providers of EPSTD services currently are local health departments; (3) local health departments: (a) provide preventive screening services for preventive health services for children under 21, such as: 1. TB tests; 2. immunizations; and 3. health education; (b) can bill Medicaid for these services as EPSDT services; and (c) federal law provides that states that provide EPSDT services will also cover medically necessary services under the EPSDT program for children under 21, whether or not a service is currently covered under a state's plan; (3) an example was private duty nursing services which, although not covered under the Kentucky Medicaid plan, would be reimbursed under EPSTD if needed by a child under 21; and (4) there are 2 components to EPSTD as far as Kentucky Medicaid is concerned: (a) screening; and (b) the diagnosis and treatment component, special services.

In response to a question by Chairman Crenshaw relating to the savings to Kentucky through Medicaid reimbursement, Ms. Weaver stated that it is hoped that preventive care will reduce future expenditures. Ms. Young stated that: (1) these services were currently available to children in Kentucky through the local health departments; and (2) the administrative regulations providing for the provisions of services through local school districts: (a) is duplicative; and (b) would add another bureaucratic layer and additional costs. Ms. Weaver stated that the program would not be duplicative because: (1) screening services were not: (a) available in local school districts; or (b) covered or reimbursed to local school districts by Medicaid Services; and (2) local school districts provide services listed in a child's IEP.

In response to a question by Chairman Crenshaw relating to the level of services currently received by those in need and the opposition to the provision of these services to those in need, Ms. Weaver stated that she was unsure of the reason for the opposition. Ms. Young stated that the: (1) opposition stemmed from the requirements for the delivery of EPSTD services established by federal law that mandate services must include a comprehensive physical and mental history, and an unclothed physical examination; and (2) PPIE believed that these services are best delivered in the privacy afforded by the

education children: (a) is established by federal law, the Individuals With Disabilities Education Act ("IDEA"); and (b) would be required regardless of KRS 605.115; (6) the purpose for the enactment of KRS 605.115 is merely to provide a funding source for local school districts that choose to participate to help them fund this obligation without using state and local dollars; (7) while local school districts would pay 100% of the cost without the option provided by KRS 605.115, KRS 605.115 provides a 50% match from Medicaid; (8) although this administrative regulation was filed in Spring, 1995, implementation of KRS 605.115 was delayed because it took about a year to obtain the required approval of Medicaid covered services by the Health Care Finance Administration ("HCFA"); (9) while KRS 605.115 requires the Cabinet for Health Services ("Cabinet") to promulgate administrative regulations implementing the program, the Kentucky Board of Education ("Board") administrative regulation was promulgated: (a) at the request of the Cabinet; (b) pursuant to the requirement of KRS 605.115 that the Board be involved in its implementation; (c) under the Board's regulatory authority pursuant to KRS 156.160 and 156.070; and (d) while, under Title XIX of the Social Security Act the state agency implementing the Medicaid program cannot require a Medicaid provider to provide the state match, the Board can establish the voluntary program for local school districts under which they would provide the state match; (10) implementation of the program will save money because: (a) local school districts will pay half, rather than the whole, cost; (b) additional state appropriations will not be required for the Medicaid program; and (11) parents: (a) will be part of the process in the determination of the services provided; and (b) have the option of consenting or refusing to participate.

Ms. Kirkland stated that: (1) as required by KRS 605.115, the Department for Medicaid Services designed a Medicaid program that would provide funding to local school districts that chose to: (a) participate in the program; and (b) contribute the state match required by Medicaid to receive the federal match; (2) the state/federal match is 30/70, with 70% of federal dollars received by the local school districts from federal Medicaid agencies; (3) new services for Medicaid coverage have not been created; (4) the Individuals With Disabilities Education Act mandates provision of services to a child through local school districts, and coverage of those services by Medicaid if: (a) the child with a disability is determined to be eligible for those services; and (b) an approved IEP for the child exists; (5) an approved IEP means that it has been approved by the: (a) parent or legal guardian; and (b) appropriate professionals; (6) the administrative regulation outlines the services and professionals that are covered under 1905a for Medicaid reimbursement; (7) Medicaid will pay only for children who are currently Medicaid eligible; (8) this administrative regulation: (a) does not increase eligibility or alter eligibility criteria outlined in other administrative regulations; and (b) simply complies with the mandate of KRS 605.115 to implement policies and procedures to develop a plan by which local school districts could become Medicaid providers to receive reimbursement for children who have: 1. disabilities; and 2. an IEP.

Mr. Miller stated that: (1) By its enactment of the Individuals With Disabilities Education Act, Congress never intended for the services routinely provided by schools be paid by the schools; (2) a policy clarification by the federal office of Health and Human Services, and a recent Supreme Court decision, make it clear that: (a) a service was not an educational service just because it is contained in an IEP; and (b) Medicaid could assist schools pay for such services; (3) this program will not: (a) result in coverage of chlordane not already covered; or (b) in the provision of services that are not already required of schools; or (c) in the duplication of services; (4) placement cannot be made without a parent's consent; (5) an IEP is required prior to placement and determines what services could be reimbursed by Medicaid; and (6) he did not believe it advisable to add additional consent requirements, especially since parents frequently ask why placement takes so long.

Ms. Keene stated that: (1) her child had multiple disabilities, and

received speech and physical therapy; (2) she was familiar with school finances as a certified public accountant who had done school audits; (3) when a school districts obtains additional resources, it has a positive effect on all public school children; (4) the Medicaid and educational services covered under this administrative regulation, such as audiology, speech and language, OTPT, assisted technology devices which are extremely important to children with disabilities, especially communicative disorders, are required to be part of the IEP in order to be covered; (5) there appeared to be confusion over the parents' role in the IEP process, which involves parents throughout the process: (a) due process is granted parents; (b) parental approval is required for the: 1. referral and evaluation processes; and 2. the IEP; (c) parents have the right to object to the school's recommendation: 1. at an administrative meeting; 2. through mediation; and 3. by suit in federal court; and (d) parents can refuse to have Medicaid billed for the service; and (6) school districts need to be creative, seek out and utilize all resources.

Ms. Bearden stated that: (1) the quality of services provided children with disabilities would not be jeopardized by these administrative regulations; and (2) special educators were obligated by federal and state law to provide services needed to implement the IEP.

Ms. Young stated that: (1) there was not adequate statutory authority for the promulgation of these administrative regulations; (2) KRS 605.115 is part of the Unified Juvenile Code, which is applicable only to: (a) state agency children; or (b) children under the auspices of the Kentucky educational collaborative for state agency children; (3) KRS Chapter 605 establishes a limited grant of authority that has been used by the Departments of Education and Medicaid Services to justify an inclusive program that exceeds the limitations established by the Individuals With Disabilities Education Act; (4) while the program applies to all eligible children under 21, the Individuals With Disabilities Education Act applies only to children with disabilities who have an IEP; (5) the program exceeded what the legislature had authorized; (6) the Department for Medical Services had violated Federal Medicaid law by providing the Department of Education a computer diskette containing the names, identities, and eligibility numbers of every Medicaid eligible child without parental consent; (7) such an exchange of information by the private sector would have resulted in an investigation by the Inspector General; (8) this exchange of information: (a) violated federal privacy law, Title V, U.S.C. Section 552; (b) potentially could give rise to a civil rights class action suit by parents of Medicaid eligible children against Kentucky for this transfer of confidential information without informed consent; and (c) indicated that this program would be over-utilized; (9) HCFA has not issued its final approval; (10) one of the problems found by HCFA is that, contrary to the entitlement of all Medicaid eligible individuals to fee for service medical services from a physician, this program envisioned the provision of services by providers who are not physicians, such as guidance counselors; (11) Medicaid eligible children are entitled to more protection than will be afforded by non-physicians, such as: 1. nurse practitioners; 2. licensed physical therapists; and 3. unlicensed but supervised physical therapy aides; (12) rather than a fee for service basis reimbursement, these administrative regulations would reimburse on a capitated level based on aggregating average costs; (13) a list of reimbursement rates was not contained in administrative regulations, in violation of the requirements of KRS Chapter 13A; which violates Medicaid recipients' entitlement to fee for service violates Medicaid recipients entitlement; (14) the program established by administrative regulation: (a) duplicates the established public and private health system in the state, which provides adequate medical care; and (b) will establish and place school clinics in charge of the delivery of health care services; (15) peer review for practitioners in school system will not exist; (16) delivery of health care through local school districts will result in less quality in the health care that is provided under the program; (17) required forms, such as the form relating to Medicaid billing, are not

the case of a minor, the parent; rather than the school system; (7) Section 4 was inadequate with regard to parental consent, because it: (a) did not guarantee parents the right to grant prior and informed consent before each service; and (b) provided for a blanket consent given annually; (8) with regard to mental health counseling, parents should be informed that a child's career opportunities could be limited because provision of the service by local school districts would appear on the child's records; (8) an investigation should be made of lawsuits filed with regard to similar regulations in other jurisdictions such as Pennsylvania relating to general physical examinations given to grade school children without parental consent having been obtained; and (9) the Subcommittee should determine that: (a) an emergency administrative regulation should not have been filed because an emergency did not exist; and (b) the administrative regulations did not comply with KRS Chapter 13A, because they exceeded statutory authority.

Ms. Walton stated that: (1) 2 years ago, she had received a 3-page consent form from her school clinic; (2) the clinic was staffed and stocked by the local health department, in a room provided by the school; (3) parents were asked to grant consent for, among other matters, basic laboratory tests such as a tuberculosis skin test, to be given at the clinic; (4) in response to her call, the school informed her that, although not specified on the consent form, students would be referred to the health department for: (a) pregnancy tests; (b) contraceptives; (c) HIV testing; (d) abortion counseling; (e) pre-natal care; and (f) venereal disease testing; (5) she was informed that, if a student tested positive for venereal disease, the student would be given an antibiotic; (5) she was informed that parental consent for these matters was not required; (6) while she was aware that the health department could give minors contraceptives without parental consent, she was: (a) unaware that an antibiotic could be given without parental consent; and (b) frightened, because her child was allergic to antibiotics; (7) she was concerned that the school, an authority figure that a child is taught to respect and obey, was forced to offer services without the knowledge or consent of a parent that could endanger her child; (8) after she learned that the school board and other parents unaware of this situation and the referrals, she attempted to change the consent form; (9) the local health department officials notified her that the Cabinet for Human Resources ("Cabinet") had instructed the health department that it was legally required to treat minors even without parental consent; (10) she had been invited by the health department to help devise a new consent form, after she had showed the health department the applicable statute and Attorney General's opinion relating to the requirement for parental consent; (11) a few weeks later, she had been informed by the health department that the Cabinet would not authorize the new consent form that permitted parents to refuse referrals; (12) parents are not given consent forms that inform them of the specific services that a minor could receive at the health department as a result of a referral by the school; (13) it was extremely dangerous to permit the administration of an antibiotic to a child who is allergic to antibiotics without parental notification or consent; (14) referrals without parental notification or consent deprives a parent and the child of the protection that exists when the parent deals with the child's doctor and pharmacist; (15) the consent form and procedures followed by schools violates the law which permits a health provider to refuse to see a minor without parental consent; (16) the Attorney General has ruled that a local health department could not be held liable for a refusal to provide contraceptives to a minors without parental consent, even if the minor becomes pregnant; (17) the Cabinet's illegal policy of denying full disclosure to parents has been forced on local health departments, and places children at risk for health problems; (18) the incident related to her child was not an isolated incident; (19) in a case involving a Danville family resource center, parents were denied the right to develop a consent form that would require parental consent for the provisions of services to minors by the resource centers; (20) approval of administrative regulations that would allow

schools to become Medicaid providers, would result in a policy that would require all schools to have IEP's for all students with disabilities regardless of the severity of disability and wishes of child's parents; (21) one of her children: (a) had ADD which is considered to be a disability; (b) like less than 1% of children in the school district with ADD, does not, and has not ever, had an IEP; (c) contrary to the government's determination that ADD is a disability, is not, in her opinion, under a disability; (d) has maintained a B average since his diagnosis; and (e) has learned to overcome ADD because he has not been given special treatment; (22) if schools were required to have IEP's for all students who have government classified disabilities, parents will: (a) be forced to accept unauthorized health services that could endanger their children; and (b) have only the recourse of hiring attorneys to fight it, which most parents cannot afford; (23) her youngest child had suffered seizures caused by high fever and cannot be immunized against whooping cough; (24) while Section 4 required health care providers to immunize recipients who are screened, it did not require prior parental consent or knowledge unless the service is listed in an IEP; (25) an immunization would not be part of an IEP; (26) while schools have a record of a child's immunizations they: (a) do not have a record of the reasons a child may not have been immunized; and (b) would not be aware of a health risk related to an immunization; (27) while she did not object to the offering of health care services to the truly disabled, or truly indigent, she: (a) objected to the state removing children's health care from parental control; and (b) believed that parents should be fully informed of every health related service, including mental health services, prior to their delivery; (28) it would be better if there were non-school clinics at which children could be provided health care at reduced rates of free; and (29) requested the Subcommittee to disapprove these administrative regulations because they could result in the provisions of health services without parental consent that could endanger a child.

Ms. Waller stated that: (1) she was a home-school parent; and (2) these administrative regulations were prejudicial to home-school children who: (a) may have disabilities; and (b) choose not to attend a public school.

Ms. Fitzgerald stated that her division: (1) provided advocacy services and legal representation to individuals with disabilities in Kentucky; (2) had: (a) monitored these administrative regulations for several months; and (b) negotiated changes to the provisions relating to consent and notice to ensure adequate notice and informed consent; (2) believed the administrative regulations were adequate; and (3) supported the approval of these administrative regulations.

Ms. Young stated that the: (1) record did not reflect the substance of the agreement between Protection and Advocacy Division and the agency; and (2) agreement was not relevant.

Chairman Crenshaw stated that: (1) in order to permit people to testify fully on the issues raised by these administrative regulations, the: (a) Subcommittee had permitted testimony from a witness on an issue that some parties felt was not relevant to the specific subject matter of these administrative regulation; (b) Subcommittee meeting was an administrative hearing at which the technical rules of evidence did not apply; (c) the relevance of a negotiated agreement relating to changes in the wording of administrative regulations was not in issue; (2) Ms. Young could obtain a copy of the agreement from the parties; and (3) requested the Department to provide Ms. Young with a copy of material relating to the negotiated agreement if such material could appropriately be provided.

Mr. Noland stated that: (1) KRS 605.115 covered Medicaid eligible children with disabilities under the age of 21; (2) the codification of KRS 605.115 in the Juvenile Code did not alter or expand its language, requirements, or those to whom it applied; (3) federal consent for covered services was received September, 1996; (4) local school districts already are: (a) required to obtain parental consent under the federal Family Educational Rights and Privacy Act; and (b) provided with a consent form that may be used; (5) the suggested consent form: (a) is the item derived after negotiations with Ms.



(3) Ms. Kirkland had clarified for her that if 1 of the EPSDT services is included in a disabled child's IEP, the fact that the service was included in the child's IEP constitutes automatic prior authorization; and (4) whether this interpretation was correct under federal law was unclear.

Representative Lee asked whether Ms. Young agreed that while this portion may be open to interpretation, the HCFA document examined by Ms. Young that listed the pre-approved Medicaid services allowed by local school districts is a valid document approving the state program. Ms. Young stated that HCFA had not approved the program established by these administrative regulations. In response to Representative Lee's question, whether the program listed in the document had been approved, Ms. Young stated that the HCFA letter stated that (1) HCFA had approved Medicaid state plan amendment 95-10; (2) at a meeting with Medicaid Services in September 18, 1996, while she: (a) had been given documents relating to Medicaid state plan 95-10, she had not been given the document dated September 11; and (b) did not know why she had not been given the September 11 document.

In response to a question by Representative Lee, Ms. Kirkland stated that: (1) the September 11 document was HCFA approval for the state plan amendment, reflected in these administrative regulations, relating to the authorization for coverage of provision of services by local school districts; authorized treatment and programs performed in local school districts; (2) another state plan page, that had been approved previously, referred to EPSDT services and provides for coverage; (3) 95-10 specifically outlines the reimbursement for school-based services; (4) authority already had been granted to cover services that were identified as diagnosis and treatment under EPSDT; (5) while prior approval of EPSDT special services is required by administrative regulations, the administrative regulation clearly provides that school-based services are considered medically necessary if they are: (a) in an IEP; and (b) consistent with services covered under Title XIX; and (6) the state: (a) clearly has authority to cover the services; and (b) pursuant to 95-10, was granted authority to reimburse those services as a package of school-based services.

In response to questions by Representative Lee relating to the controversy over physical examinations given in other jurisdictions without parental consent, Ms. Kirkland stated that: (1) while she was unsure of all that would be contained in an IEP, the state would not pay for something that had not been approved by: (a) a parent or legal guardian; and (b) professionals who would be required to recommend that the service should be received or was necessary; and (2) informed consent by parent or guardian was required for the delivery of services listed in an IEP.

Senator Roeding stated that: (1) he questioned whether 702 KAR 3:285 should have been promulgated as an emergency administrative regulation, because it was not promulgated for one of the four reasons for which KRS 13A.190 permits the promulgation of an emergency administrative regulation; (2) agencies seemed to get around the requirements of KRS 13A.190, governing the promulgation of emergency administrative regulations; and (3) this administrative regulation did not meet the requirements for promulgation established by KRS 13A.190, that its promulgation was necessary to: (a) meet an imminent threat to public health, safety, or welfare, as required; (b) prevent the loss of federal funds; (c) meet a deadline established by federal or state statute; or (d) protect human health or the environment.

Senator Roeding: (1) stated that the agencies had been working on these administrative regulations for a long time; and (2) asked which of the requirements for the promulgation of an emergency administrative regulation established by KRS 13A.190 had been met or applied to the promulgation of 702 KAR 3:285 as an emergency administrative regulation. Mr. Noland stated that: (1) the legislation requiring this administrative regulation was enacted during the 1994 Regular Session of the General Assembly; (2) while it had taken too

long since enactment to promulgate the administrative regulation: (a) the delay was due to the need to obtain federal approval of the services to be covered; and (b) an emergency administrative regulation had to be promulgated because the Department had been notified that federal fund reimbursement for local school districts voluntarily participating in the program for the 1995-1996 school year would be made only if administrative regulations were in effect before the end of the fiscal year; and (3) this administrative regulation complied with KRS 13A.190, because it was required to prevent the loss of federal funds.

In response to a question by Senator Roeding, Ms. Kirkland stated that the: (1) 30/70 match still existed; (2) state welfare programs, such as AFDC, had been transformed into a block grant; (3) Medicaid was an entitlement program: (a) under Title XIX, Social Security Act; and (b) not a block grant program; (4) these administrative regulations provided an avenue of funding to the local school districts that permitted access to the federal 70% match for services provided by them; and (5) only some aspects of the Medicaid program, such as that relating to coverage of certain aliens, had been changed under federal law.

In response to a question by Senator Roeding relating to the certification as a Medicaid provider eligible for reimbursement for covered services, and Certificate of Need statutes designed to contain costs by requiring review and approval of services and clinics, Ms. Kirkland stated that local school districts are: (1) required to provide services under IDEA, a federal statute; and (2) not subject to the CON requirements.

Mr. Noland stated that: (1) KRS 605.115 applied only to children with disabilities who are Medicaid eligible; and (2) these administrative regulations do not: (a) extend beyond this class; or (b) establish new health services. In response to questions by Senator Roeding, Mr. Noland stated that these administrative regulations: (1) would not result in a change in services, since local school districts already have been required to: (a) provide the services; and (b) bear the cost for the services; and (2) simply provide that the costs for the services will be shared with the Medicaid program, rather than being paid completely by the state or local school district.

In response to a question by Senator Roeding, Ms. Kirkland stated that the: (1) total Medicaid cost will increase; (2) while the federal share of the total Medicaid cost will increase, the state share will not; (3) the state share, as provided by enactment of the General Assembly, will not increase because local school districts voluntarily participating in the program, have to provide the state match pursuant to KRS 605.115; and (4) the local school districts will receive a 70% savings in cost.

Senator Roeding stated that: (1) Kentucky was one of the few states that had preempted parental consent; (2) the preemption of parental consent was accomplished by KRS 214.185, which provides that a physician may make a diagnostic examination for a great number of matters: (a) upon consultation by a minor as a patient; and (b) after the minor consents; and (3) these administrative regulations would further preempt parental consent, based upon KRS 214.185. Ms. Keene stated that KRS 214.185 would not apply to a child with a disability because: (1) the service must be part of the child's IEP; (2) parental consent for the IEP is required; and (3) these factors provide additional safeguards for informed parental consent. Ms. Young stated that: (1) KRS 214.185: (a) was restricted to a physician-patient relationship; and (b) would not apply to a child consults a nurse practitioner at a school clinic; and (2) these administrative regulations dealt with services that would be delivered by non-physicians, such as: (a) advanced registered nurse practitioners; and (b) others with less skills and training than licensed physicians.

Representative Lee stated that whether the Subcommittee approved these administrative regulations had no bearing on KRS 214.185: (1) had no bearing on these administrative regulations; (2) related to a different subject matter than that governed by these administrative regulations; and (3) was not relevant to the consider-



## ADMINISTRATIVE REGISTER - 2923

- 12 KAR 3:017. Brand and product names.
- 12 KAR 3:022. Guarantees.
- 12 KAR 3:027. Ingredients.
- 12 KAR 3:037. Additives.
- 12 KAR 3:042. Statement of caloric content.

### Real Estate Commission

201 KAR 11:190E. Rules of practice and procedures before the Kentucky Real Estate Commission. Jeff Blair, General Counsel, represented the Commission.

Subcommittee staff stated that: (1) because an emergency administrative regulation could not be amended, staff would work with the Commission to amend this administrative regulation prior to its filing with LRC; and (2) the amendments would delete provisions in the administrative regulation that repeated or summarized KRS Chapter 13B, as required by KRS 13A.120(2)(e) and (f).

In response to a question by Chairman Crenshaw, Mr. Blair stated that this administrative regulation: (1) was not the same administrative regulation that the Subcommittee considered at its June, 1996, meeting; and (2) brought the Commission into compliance with the administrative procedures established by KRS Chapter 13B.

### Justice Cabinet: Department of Training: Concealed Deadly Weapon Licensing

503 KAR 6:010E. Carry concealed deadly weapon licensing. Gary Bush, Kentucky State Police, and Lt. James Van Hook, Kentucky State Police, represented the Department.

Subcommittee staff that some of the emergency administrative regulations on the agenda would be allowed to expire because KRS Chapter 13A did not require an administrative regulation on matters of internal administration, the subject matter governed by them.

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

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

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

### Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:330 & E. Annual overweight permits for nondivisible loads. Mr. Roberts stated that this administrative regulation implemented the provisions of House Bill 168, that allowed for the transportation of overweight loads along specific routes and set axle weights.

Subcommittee staff stated that amendments suggested by staff on its review of the emergency version of this administrative regulation were made to the ordinary administrative regulation.

In response to a questions by Chairman Crenshaw, Mr. Bennett stated that: (1) there were changes to the federal definition on non-divisible loads; (2) weight limits were increased for steering axles with dual wheel axles; (3) the Department of Highways engineering staff reviewed the weight limit increase; and (4) engineering staff felt that the dual wheels under the axle would be sufficient to permit the weight increase without causing road damage.

### Department of Education: Office of Chief State School Officer

701 KAR 5:065. Repeal of 701 KAR 5:060. Kevin Noland, General Counsel, and Dr. Ed Reidy, Deputy Commissioner, represented the Department. Mr. Noland stated that: (1) this administrative regulation repealed a 1985 administrative regulation that established a Code of Ethics for test administration under a statutory scheme that had been repealed; and (2) the State Board had promulgated a more current Code of Ethics in 703 KAR 4:110.

### Office of District Support Services: School Administration and Finance

702 KAR 3:285 & E. School district Medicaid providers. (See discussion above at 907 KAR 1:715)  
School Terms, Attendance, and Operation

702 KAR 7:055E. Repeal of 702 KAR 7:010, 7:020, and 7:050. Mr. Noland stated that: (1) this administrative regulation repealed 3 administrative regulations: (1) the provisions of which concerned pupil attendance; and (2) which were now included in a new administrative regulation, 702 KAR 7:125; and (2) the amendments to the pupil attendance requirements came in response to House Bill 100, enacted during the 1996 Regular Session of the General Assembly, that gave more flexibility to local districts in scheduling instructional hours during the year.

In response to a question by Chairman Crenshaw, Mr. Noland stated that: (1) House Bill 100 required a school board to include in its school calendar at least the equivalent of 175 six-hour instructional days, which equaled 1,050 instructional hours; (2) the local boards of education were required to establish their calendars to include the requisite number of hours; and (3) the scheduling of those hours impacted the way pupils were counted which, in turn, affected average daily attendance and state funding.

### Education Professional Standards Board: Board

704 KAR 20:475 (&E). Probationary certificate for teachers of technology education. Ronda Tamme, Director Teacher Certification, and Rita Osborne, Director of Testing and Internship, represented the Board.

### Labor Cabinet: Occupational Safety and Health

803 KAR 2:600. Occupational safety and health standards for agriculture. Kembra Taylor, General Counsel; Bill Ralston; and Tim Chancellor, represented the Cabinet.

Subcommittee staff stated that: (1) the agency was submitting a written response to a request made by Representative Bruce at the November, 1996, Subcommittee meeting to outline the administrative regulation; (2) a copy of the report would be transmitted to Representative Bruce; and (3) if he had further questions, staff would inform the agency.

Ms. Taylor stated that: (1) there were no substantive changes to this administrative regulation; and (2) the report outlined the standards applicable to agriculture in Kentucky as requested by Representative Bruce.

### Department of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:240E. Financial institutions licensed as noncredit related insurance agents. Julie Mix, Counsel, represented the Department. Ms. Mix stated that: (1) this administrative regulation: (a) responded to the Barnett Bank v. Nelson case, a Supreme Court decision that allowed national banks to sell insurance; and (b) defined the parameters and standards that would apply; (2) the Department would amend the ordinary administrative regulation in response to the public hearing that was held on the emergency version of this administrative regulation; (3) Commissioner Nichols had been quite vocal about the changes; and (4) she thought everyone was in agreement with the emergency administrative regulation.

In response to a question by Representative Lee, Ms. Mix stated that even though the Insurance Code contained protections against coercion of loan customers, to purchase insurance from banks, this administrative regulation contained additional coercion provisions that: (1) required a bank to make certain disclosures to customers; and (2) prohibited a bank from delaying credit decisions based on customer action relating to the purchase of insurance.

### Public Service Commission: Utilities

807 KAR 5:003. Utility filing of updated information. Deborah Eversole, Attorney, represented the Commission. Ms. Eversole stated that this administrative regulation required an updated filing with the Public Service Commission within ten days of a utility's change of such items as its address, telephone number, and contact person.

## ADMINISTRATIVE REGISTER - 2925

- 401 KAR 35:120. Liability requirements (IS).
- 401 KAR 35:180. Use and management of containers (IS).
- 401 KAR 35:190. Tanks (IS).
- 401 KAR 35:200. Surface impoundments (IS).
- 401 KAR 35:210. Waste piles (IS).
- 401 KAR 35:230. Landfill (IS).
- 401 KAR 35:245. Containment buildings (IS).
- 401 KAR 35:250. Thermal treatment (IS).
- 401 KAR 35:275. Air emission standards for process vents (IS).
- 401 KAR 35:280. Air emission standards for equipment leaks (IS).
- 401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (IS).

- 401 KAR 35:290. Appendix on recordkeeping instructions (IS).

### **Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities**

- 401 KAR 36:005. Definitions related to 401 KAR Chapter 36.
- 401 KAR 36:020. Hazardous waste burned in boilers and industrial furnaces.
- 401 KAR 36:025. Tables and procedures associated with the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.

- 401 KAR 36:030. Recyclable materials used in a manner constituting disposal.

- 401 KAR 36:070. Spent lead-acid batteries being reclaimed.

### **Waste Management - Land Disposal Restrictions**

- 401 KAR 37:005. Definitions related to 401 KAR Chapter 37.
- 401 KAR 37:010. General provisions for land disposal restrictions.
- 401 KAR 37:030. Prohibitions on land disposal.
- 401 KAR 37:040. Treatment standards.
- 401 KAR 37:050. Prohibitions on storage.

### **Hazardous Waste Permitting Process**

- 401 KAR 38:005. Definitions related to 401 KAR Chapter 38.
- 401 KAR 38:010. General provisions for permitting.
- 401 KAR 38:020. Interim status provisions.
- 401 KAR 38:030. Conditions applicable to all permits.
- 401 KAR 38:040. Changes to permits; expiration of permits.
- 401 KAR 38:050. Public information procedures.
- 401 KAR 38:060. Special types of permits.
- 401 KAR 38:070. Applications procedures.
- 401 KAR 38:080. Contents of Part A application.
- 401 KAR 38:090. General contents of Part B application.
- 401 KAR 38:100. Specific Part B requirements for groundwater protection.
- 401 KAR 38:150. Specific Part B requirements for containers.
- 401 KAR 38:160. Specific Part B information requirements for tanks.

- 401 KAR 38:170. Specific Part B requirements for surface impoundments.

- 401 KAR 38:190. Specific Part B requirements for incinerators.

- 401 KAR 38:250. Specific Part B requirements for equipment.

- 401 KAR 38:500. Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board.

### **Hazardous Waste Fees**

- 401 KAR 39:005. Definitions related to 401 KAR Chapter 39.
- 401 KAR 39:080. Recycling and universal waste fees.
- 401 KAR 39:110. Registration fees.
- 401 KAR 39:120. Application fees.

### **Enforcement and Compliance Monitoring for Hazardous Waste**

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

### **Underground Storage Tanks**

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

### **Standards for Special Collection System Wastes**

- 401 KAR 43:005. Definitions related to 401 KAR Chapter 43.
- 401 KAR 43:010. General standards.
- 401 KAR 43:020. Standards for small quality handlers of universal waste.

- 401 KAR 43:030. Standards for large quality handlers of universal waste.

- 401 KAR 43:040. Standards for universal waste transporters.

- 401 KAR 43:050. Standards for destination facilities.

- 401 KAR 43:060. Import requirements.

- 401 KAR 43:070. Petitions to include other waste under 401 KAR Chapter 43.

### **Standards for the Management of Used Oil**

- 401 KAR 44:005. Definitions related to 401 KAR Chapter 44.

- 401 KAR 44:010. Applicability.

- 401 KAR 44:020. Standards for used oil generators.

- 401 KAR 44:030. Standards for used oil collection centers and aggregation points.

- 401 KAR 44:040. Standards for used oil transporter and transfer facilities.

- 401 KAR 44:050. Standards for used oil processors and refiners.

- 401 KAR 44:060. Standards for used oil burners who use off-specification used oil for energy recovery.

- 401 KAR 44:070. Standards for used oil marketers.

- 401 KAR 44:080. Standards for use as a dust suppressant and disposal of used oil.

### **Solid Waste Facilities**

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

### **Standards for Solid Waste Facilities**

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

### **Solid Waste Planning**

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

### **Justice Cabinet: Department of Corrections: Office of the Secretary**

501 KAR 6:130. Western Kentucky Correctional Complex. Subcommittee staff stated that (1) there was an amendment to this administrative regulation; and (2) this regulation had been found deficient at the October 7, 1996 meeting of the Subcommittee.

Mr. Damron stated: (1) there were grammatical and spelling amendments made to this administrative regulation at the suggestion of Subcommittee staff; (2) that while he was not present in November, he understood that Representative Bruce was concerned that there was no provision for insuring inmate mail or hobby crafts; (3) the Department has the ability to register or send certified mail; (4) in order to insure a package, mailroom staff has to: (a) take each package to the local post office to determine the cost; (b) return it to the prison to have the inmate provide payment of the costs; and (c) take the package back to the post office to mail; and (5) as an alternative to this burden, the Department permits a visitor to come in and pick up a craft to prevent damage in transit.

In response, Subcommittee staff stated: (1) the issue that led to the deferral of this administrative regulation in November was the need to determine the effect of the amendment to the administrative regulation agreed upon by the Department and Subcommittee staff regarding the insuring of packages; (2) originally, there was a provision that an inmate could not insure a package; (3) Subcommittee staff recommended that this language be deleted because the Department of Corrections did not have the authority to regulate the U.S. Postal Service; (4) there is a provision in Corrections Policy and Procedures, CPP 16.2, VI., E., that permits: (a) insuring of inmate packages; and (b) the registration and certification of inmate mail; and (5) this provision would, in effect, overrule any administrative regulation promulgated by WKCC that prohibited the insurance of inmate packages.

In response to a question by Chairman Crenshaw, Mr. Damron stated that this administrative regulation had been found deficient in October.

Subcommittee staff stated that: (1) under the new procedure required by KRS 13A.330, if an administrative regulation is found deficient, the finding of deficiency is submitted to the Governor; (2) the administrative regulation is suspended until the Governor

program to meet the rigorous demands of this new way of teaching and assessing students; (4) the teachers at his school, Cassidy School, had spent much time and many dollars in professional development activities designed to: (a) change the way teachers teach to prepare students for the assessments, which required: 1. greatly improved writing and thinking skills; and 2. the ability to work with other students; and (b) enhance the learning experiences for students; (5) as a result of these and other efforts, the nature of instruction at the school changed for the better with students: (a) working together; (b) solving problems together; and (c) communicating their solutions; (6) because the assessment program identified his students as needing improvement in science and writing, his school spent thousands of dollars and hours making improvements in the school's academic program; (7) his school learned halfway through Accountability Cycle 2 that the performance events had been removed and they would, in effect, be penalized for their hard work on the performance events; (8) while he realized that any new assessment system was likely to require some minor adjustments during its development, the adjustments to the KIRIS assessment seemed to be unusual both in number and in scope; (9) he questioned: (a) how his school could be expected to prepare students when the standards kept changing, including the inclusion and subsequent removal of: 1. math portfolios; and 2. performance events; and (b) whether the proposed changes indicated a more serious problem with the assessment system; (10) he wondered if the Department had lost faith in the assessment program; (11) it was his understanding that: (a) the changes had occurred without any action from this Subcommittee; (b) whole sections of the tests had been removed; (c) test scores had been recalculated retroactively; and (d) the Department was now asking for the Subcommittee's permission to do what had already been done; (12) because he did not receive any help from the Department or the State Board, he was repeating his concerns to the Subcommittee; (13) after he testified on August 6 to the KIRIS Accountability Oversight Committee of the Kentucky Board of Education, he learned information that he believed constituted a direct violation by the Department of its administrative regulations; (14) the State Board had originally promulgated 703 KAR 4:010 to require, among other things, that performance events be used in the calculation of rewards and sanctions; (15) performance events were made a part of Accountability Cycle 1 after the items were field tested in accordance with the terms of the Department's contracts with Advanced Systems; (16) the field testing was an important, but expensive and time-consuming, process that helped statisticians understand: (a) the relative difficulty of items; and (b) their equivalence from one assessment cycle to the next; (17) because the Department was satisfied that the performance events data used in Accountability Cycle 1 was sufficiently reliable to withstand statistical scrutiny, the decision was made by the State Board to keep performance events in the administrative regulation at that time due to their powerful impact on instructional practices; (18) in Accountability Cycle 2, a decision was made to discontinue the requisite field testing for the performance events items, which he believed led to the downfall of performance events because, without the field tests, the Department could not meaningfully: (a) compute performance results; or (b) equate between assessment cycles; (19) the technical panel reviewing the process: (a) determined that no meaning could be taken from the performance events scores; and (b) recommended their discontinuation; (20) without returning to the State Board for permission, the Department: (a) informed the education community that the performance events would be discontinued; (b) calculated the scores without their inclusion; (c) recalculated the scores from 1992-1993 and 1993-1994 without the performance events; and (d) informed the schools and the press in February or March of the new results; (21) because the Kentucky School Boards Association's ("KSBA") request to the Department for the performance events data in March was turned down, KSBA appealed to the Attorney General's Office; (22) on August 6 when the Department presented this amended adminis-

trative regulation to the State Board, (a) he asked that schools be held harmless by the recalculation, because the action resulted in a change in his school's scores; and (b) the Department and the Committee determined that the administrative regulation would proceed to the full Board as written; (23) he believed the performance events portion of the KIRIS assessment: (a) had a powerful and positive impact on instructional practices in Kentucky; (b) was at the heart of the reform he wanted to support and see continue; and (c) more closely approximated real life problem-solving for his students; (24) while he supported continued research on the performance events and assessments, he believed that an extremely important part of the reform was being eliminated because somebody had messed up; (25) schools that had focused on instructionally-rich methods of assessing students did not receive credit for their hard work; (26) while he does not doubt the importance of the Department's technical advisors, or the OEA's technical review panel, that importance paled when compared to the state's need to: (a) clearly articulate a curriculum to its faculties and parents; and (b) allow the system the time it needed to work; (27) he questioned: (a) what possible advantage existed in requiring schools to reach a moving target; and (b) whether schools were being fairly judged when the standards against which they were measured changed in the middle of the assessment process; (28) a report submitted to the OEA in June, 1995 by Dr. Richard Hambleton and others: (a) discussed the procedural due process requirements in law that were owed to schools; and (b) stated that in order for schools to be held accountable for the assessment performance of their students, fairness dictated that: 1. the schools have adequate notice of what they would be held accountable for; 2. notice meant not only knowing in advance, but being given clear information about what was to be taught, and the specific outcomes expected; and 3. school personnel should be provided with clear indications of the specific knowledge and skills for which they would be held accountable; (29) since the August State Board meeting, the Department had proceeded as if it knew the Subcommittee would approve the administrative regulation; (30) even though he did not know if the performance events had been scored, he was relatively certain that the Department could provide a long list of reasons why not approving the administrative regulation would create great problems; (31) he asked whether: (a) someone was required to sue the government in order to do what was right; and (b) the Subcommittee stood ready to assure Kentucky's citizens that: 1. there were no rubber stamps; and 2. that every governmental entity was required to follow the administrative regulations; and (32) because the Interim Joint Committee on Education had called for an investigation, he suggested that this administrative regulation be deferred until the Finance Cabinet and the OEA had completed their investigations of the Department of Education and ASME.

Ms. Baker stated that: (1) her school had spent a lot of time and expense in preparing its students for the different types of KIRIS assessment; (2) this preparation included the purchase and use of the performance events kits that were used in the first accountability cycle after she was told that the kits would be an adequate way to prepare students for performance events; (2) her school was later informed that the performance events would no longer count; (3) even though she understood, and shared, some of the concerns about parts of the KIRIS assessments, a school official or student: (a) was not allowed to make a mid-course change if something was not working; and (b) would still be held accountable for their scores; (4) her school had taken everything in stride and tried very, very hard to work with the different types of assessments; (5) while her school knew that some of the assessments would be modified, it was hard for her school to instruct students, and justify to parents, what it was doing when it did not know exactly for what it would be held accountable; (6) some of the past changes entailed: (a) the inclusion, removal, and now re-inclusion of multiple-choice questions; and (b) the inclusion and removal of math portfolios; (7) even though the math portfolios had been removed from the scoring, students are still required to prepare

that were issued in February, 1995 and October, 1996, for the two years in this accountability cycle, 1994-95 and 1995-96, did not have performance events in them; (15) while he did not know whether the inclusion of performance events in the schools' scores would change the result, he knew that, when the Department looked at the impact of including or excluding the performance events, on average the impact was relatively small; (16) because KSBA produced a report and then later amended it, there were a couple of lists circulating as to what the impact might be; (17) the Department had the data only for 1994-1995; (18) the performance events were pulled, because the Department believed that the data: (a) was not stable; and (b) could not be counted on; (19) while it was possible that, if the Department had scored the 1995-1996 performance events, the scores might have gone up or down for the schools affected, it was the Department's belief that including the performance events would have adversely affected the scores of every school in the Commonwealth; (20) at the time the schools started their year, they were under the impression that their evaluations would include the performance events; (21) because February, 1995, was the first time schools were notified that a change was possible, the notification occurred somewhere between half and two-thirds of the way into the cycle; and (22) even though it would have been much better if the performance events could have been left in had they been above that marginal technical standard, because they were not above the standard, he could not call something true when it was not.

In response to a question by Senator Kafoglis, Mr. Noland stated that: (1) if the proposed administrative regulations were not approved and the emergency expired, the existing administrative regulation would remain in effect; (2) this would mean that: (a) performance events would remain a part of the accountability scoring system; (b) the administrative regulation would not conform to the Budget Bill's requirement that math portfolios be removed for this biennium; and (c) the technical experts would have a problem with the accountability system; (3) schools did not expect performance events to be a part of the accountability system this year; and (4) the removal of performance events was one of the: (a) major recommendations of the OEA panel, even though the Department and State Board recognized the instructional value of performance events; and (b) big issues that were to be addressed by the Task Force on Public Education, and the Interim Joint Committee on Education.

Dr. Reidy stated that because the Department believed performance events were not an adequate measurement for the accountability system, the Department would not be able to defend the credibility of the system if it included performance events at this time.

Senator Kafoglis stated that: (1) while this was a policy decision, the whole accountability index needed to be addressed by the Interim Joint Committee on Education; (2) when he met with Ms. Baker and her faculty a couple of weeks ago, while they had a number of other concerns besides this particular administrative regulation, they did discuss the question of not counting performance events; (3) he hoped Ms. Baker would appear before the Interim Joint Committee on Education to share the concerns she and her faculty had expressed to him; (4) because this Subcommittee was not the Interim Joint Committee on Education, it was required to decide whether the Department and State Board had the statutory authority for this action; (5) it was very unfortunate that this situation existed, because while the removal of the performance events damaged the Department's credibility, the integrity of the system would be impaired if the events were not removed; and (6) he was not sure what the right answer was.

Dr. Reidy stated that: (1) originally, while the Department believed it was appropriate to develop performance events because the events, especially in science, were valuable components, it believed that a variety of measures of students' understanding in each subject was more appropriate; (2) because the Department was trying to develop and implement a system for which guidance and standards were not clear, the risk existed that things might not work out as the

Department hoped they would; (3) when confronted with the problem, the Department had a simple choice: it could (a) equivocate and justify the events by stating the performance events were okay even though the Department knew they were not; or (b) recognize the credibility and integrity problem, and make the appropriate decision; (4) because the decision to remove performance events was a reluctant policy decision of the State Board, the Department did not make this decision by itself; (5) throughout its meeting, the State Board mentioned several times that it was removing performance events with great reluctance, because it recognized the bind posed by performance events; (6) he was happy the State Board and the Department moved forward with the decision; and (7) if performance events were brought back in the future, they would be brought back much better than they were before.

In response to questions by Senator Kafoglis, Mr. Noland stated that: (1) the statutory authority was found in KRS 158.6453, which required the State Board to create and implement a statewide, primarily performance-based assessment program to assure school accountability for student achievement of the education goals set out in the statute; (2) while people could argue all day about the pros and cons of including performance events, that decision was a policy decision within the statutory authority of the State Board; and (3) before it decided to remove performance events, the State Board: (a) received an optimal amount of input from: 1. local school superintendents; 2. school district assessment coordinators; 3. teachers; and 4. others; (b) did not rubber stamp actions proposed by the Department; and (c) was a very informed and independent body.

In response to questions by Chairman Crenshaw, Dr. Reidy stated that: (1) the February notification was for April, 1996; (2) the notification for August, 1996 through May-June, 1997 had remained constant; (3) schools knew exactly what was expected of them for this year; and (4) the requirements and expectations were not going to change before May, 1997.

In response to questions by Chairman Crenshaw, Mr. Noland stated that: (1) because the State Board had released the assessment results for 1994-1995 and 1995-1996, the schools already had their scores; (2) a school that disagreed with its performance judgment: (a) was permitted to file an appeal with the State Board within 45 days of receiving the judgment; and (b) could make an argument to the State Board based on the removal of performance events; and (3) the time limit for filing appeals had not expired.

Dr. Reidy stated that: (1) the instability of the performance events scores was discovered in late January, 1996, when the Department was reviewing its data; (2) the Department worked for six months with a group of national advisors to determine how to fix the situation; (3) at the end of the six months, after much consideration of all of the options, the Department concluded that there was not an honest way to use the data; (4) the Department believed there was not an appropriate way to resolve the issue except through the appeals process for people who felt they had been unfairly treated; (5) in past years, the State Board had granted some of the appeals filed with it; (6) because they had done everything they could do on this issue, he did not think that the Department or State Board could find a solution if the administrative regulation was deferred until January's Subcommittee meeting; (7) the inclusion of performance events would impact schools as well, because those schools would feel invalid data was used to compute the accountability scores; (8) the Board felt that its primary responsibility was to ensure the integrity of the school classification system; and (9) Dr. Sander's office, and Dr. Lynn of the OEA panel, had reviewed this and noted that, given the technical data, it was an appropriate decision.

Senator Roeding (1) stated that: (a) this was a dilemma; (b) he could not figure out a solution; and (b) requested that Dr. Penney Sanders of the Office of Education Accountability be asked to explain OEA's recommendations.

In response to a question by Senator Roeding, Dr. Sanders stated that: (1) while she did not have the panel report from June,

## ADMINISTRATIVE REGISTER - 2931

### **Services: Unemployment Insurance**

787 KAR 1:320E. Priority of deductions from benefits.

### **Labor Cabinet: Department of Workers' Claims: Workers' Claims**

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

803 KAR 25:036E. Computation of life expectancies for purposes including apportionment and attorney's fees.

### **Department of Alcoholic Beverage Control: Licensing**

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

### **Malt Beverage Equipment, Supplies and Service**

804 KAR 11:010. Equipment and supplies.

### **Department of Insurance: Health Insurance Contracts**

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

### **Kentucky Racing Commission: Thoroughbred Racing**

810 KAR 1:026. Racing associations.

### **Harness Racing**

811 KAR 1:020. Registration and identification of horses.

811 KAR 1:035. Claiming races.

811 KAR 1:120. Licensing of race meetings.

### **Cabinet for Health Services: Department for Public Health: Health Services and Facilities**

902 KAR 20:275E. Mobil health services.

### **Hazardous Substances**

902 KAR 47:080E. Training and certification requirements for individuals who perform lead-hazard detection or lead-hazard abatement.

902 KAR 47:090E. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

902 KAR 47:100E. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

### **Cabinet for Families and Children: Department for Social Insurance: Public Assistance**

904 KAR 2:410E. Child support collection and distribution.

### **Department for Social Services: Child Welfare**

905 KAR 1:180E. DSS policy and procedures manual.

### **Day Care**

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

### **Cabinet for Families and Children: Department for Medicaid Services: Medicaid Services**

907 KAR 1:013 & E. Payments for hospital inpatient services.

### **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.

### **Department for Mental Health and Mental Retardation Services: Mental Health**

908 KAR 2:100E. Kentucky Early Intervention Program definitions.

908 KAR 2:110E. Kentucky Early Intervention Program point of entry.

908 KAR 2:120E. Kentucky Early Intervention Program evaluation and eligibility.

908 KAR 2:130E. Kentucky Early Intervention Program assessment and service planning.

908 KAR 2:140E. Kentucky Early Intervention Program primary service coordination.

908 KAR 2:150E. Kentucky Early Intervention Program personnel qualifications.

908 KAR 2:160E. Kentucky Early Intervention Program covered

services.

908 KAR 2:170E. Notice of action and administrative appeal.

908 KAR 2:180E. Kentucky Early Intervention Program mediation.

### **Other Business**

Chairman Crenshaw introduced Angela Phillips, the new administrative assistant to the Regulations Compiler.

The Subcommittee adjourned at 6:00 p.m. until January 6, 1997 at 10 a.m. in Room 131 of the State Capitol Annex.

## ADMINISTRATIVE REGISTER - 2933

during its meeting of December 12, 1996, having been referred to the Committee on November 13, 1996, pursuant to KRS 13A.290(6): 803 KAR 25:089

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 December 12, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The committee reviewed the changes and there were no objections.



# ADMINISTRATIVE REGISTER - G1

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates ..... G2

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 ..... G12

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 ..... G25

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 - G3

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
301 KAR 2:221E	1880	10-2-96	704 KAR 20:305E	367	6-28-96
301 KAR 2:222E	1883	10-2-96	704 KAR 20:475E	370	6-28-96
301 KAR 2:224E	1887	10-2-96	707 KAR 1:180E	91	6-14-96
301 KAR 2:225E	1544	8-16-96	Replaced	2474	12-5-95
302 KAR 3:010E	325	7-15-96	781 KAR 1:030E	1548	9-12-96
302 KAR 20:110E	2439	11-6-96	787 KAR 1:200E	371	6-26-96
302 KAR 20:120E	2440	11-6-96	787 KAR 1:320E	1898	10-3-96
302 KAR 78:020E	61	6-5-96	803 KAR 25:034E	2442	11-14-96
Replaced	1934	11-11-96	803 KAR 25:036E	1899	10-15-96
307 KAR 5:010E	327	7-15-96	803 KAR 25:089E	372	6-28-96
401 KAR 8:030E	1888	10-7-96	Replaced	2485	12-12-96
401 KAR 50:035E	62	6-14-96	803 KAR 50:010E		
415 KAR 1:050E	328	7-3-96	Replaced	191	9-11-96
415 KAR 1:060E	330	7-3-96	804 KAR 13:010E	373	7-8-96
415 KAR 1:070E	333	7-3-96	Replaced	1942	11-11-96
415 KAR 1:080E	336	7-3-96	806 KAR 5:060E	375	7-15-96
415 KAR 1:090E	340	7-3-96	806 KAR 9:240E	1901	9-20-96
415 KAR 1:100E	343	7-3-96	806 KAR 17:100E	376	7-15-96
415 KAR 1:110E	344	7-3-96	Replaced	1822	12-11-96
415 KAR 1:114E	348	7-3-96	806 KAR 17:120E	378	7-15-96
415 KAR 1:120E	352	7-3-96	Replaced	1824	12-11-96
415 KAR 1:125E	359	7-3-96	806 KAR 17:130E	379	7-15-96
502 KAR 45:005E	1350	8-14-96	Replaced	1825	12-11-96
502 KAR 45:035E	1351	8-14-96	806 KAR 17:140E	1550	8-23-96
502 KAR 45:045E	1351	8-14-96	806 KAR 18:060E	382	7-15-96
502 KAR 45:055E	1897	10-15-96	Replaced	1828	12-11-96
502 KAR 45:075E	1352	8-14-96	806 KAR 18:080E	2443	11-15-96
502 KAR 45:150E	1353	8-14-96	900 KAR 6:010E	383	7-11-96
502 KAR 60:010E	1354	8-14-96	900 KAR 6:020E	390	7-11-96
Withdrawn		9-11-96	900 KAR 6:030E	391	7-11-96
503 KAR 6:010E	1355	8-14-96	900 KAR 6:040E	392	7-11-96
503 KAR 6:020E	1357	8-14-96	902 KAR 16:011E	393	7-12-96
503 KAR 6:030E	1358	8-14-96	Expires		1-18-97
503 KAR 6:040E	1359	8-14-96	902 KAR 17:030E	394	7-11-96
503 KAR 6:050E	1360	8-14-96	902 KAR 17:040E	395	7-11-96
503 KAR 6:060E	1361	8-14-96	902 KAR 20:275E	1380	8-13-96
503 KAR 6:070E	1362	8-14-96	902 KAR 20:320E	398	6-16-96
503 KAR 6:080E	1363	8-14-96	902 KAR 47:080E	1903	10-1-96
503 KAR 6:090E	1365	8-14-96	902 KAR 47:090E	1907	10-1-96
503 KAR 6:100E	1366	8-14-96	902 KAR 47:100E	1911	10-1-96
503 KAR 6:110E	1367	8-14-96	902 KAR 105:070E	98	6-12-96
603 KAR 5:320E	1546	9-3-96	Replaced	2524	11-20-96
603 KAR 5:330E	366	7-12-96	902 KAR 115:020E	99	6-12-96
701 KAR 5:020E	80	6-14-96	Replaced	2524	11-20-96
Replaced	2464	12-5-96	904 KAR 2:410E	1918	10-1-96
701 KAR 5:051E	81	6-14-96	904 KAR 2:470E	410	7-12-96
Expired		10-14-96	904 KAR 3:025E	2700	11-27-96
701 KAR 5:055E	82	6-14-96	905 KAR 1:180E	1552	9-12-96
Replaced	2465	12-5-96	905 KAR 1:320E	411	7-12-96
701 KAR 5:086E	84	6-14-96	Replaced	2525	11-20-96
Expired		10-15-96	905 KAR 1:360E	100	6-6-96
701 KAR 5:090E	85	6-14-96	Replaced	1952	10-16-96
Replaced	2466	12-5-96	905 KAR 2:100E	416	7-12-96
702 KAR 1:080E	86	6-14-96	905 KAR 2:140E	2444	11-15-96
Replaced	2467	12-5-96	907 KAR 1:019E	2453	11-15-96
702 KAR 7:055E	1368	8-12-96	907 KAR 1:022E	104	6-13-96
702 KAR 7:065E	87	6-14-96	907 KAR 1:025E	109	6-13-96
Replaced	1433	12-5-96	907 KAR 1:060E		
702 KAR 7:125E	1369	8-12-96	Expired		8-18-96
703 KAR 3:060E	1372	8-12-96	907 KAR 1:061E		
703 KAR 3:205E	89	6-14-96	Expired		8-18-96
Replaced	2472	12-5-96	907 KAR 1:417E	2454	11-15-96
703 KAR 4:010E	1376	8-12-96	907 KAR 1:673E	2455	11-15-96
703 KAR 4:090E	1379	8-12-96	907 KAR 3:020E	421	7-28-96



# ADMINISTRATIVE REGISTER - G5

## LOCATOR INDEX - EFFECTIVE DATES

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201 KAR 1:130			301 KAR 4:200		
Amended	465		Amended	472	
As Amended	1579	9-13-96	As Amended	1933	11-11-96
201 KAR 8:015			302 KAR 3:010	2898	
As Amended	1394	8-21-96	302 KAR 78:020	1471	
201 KAR 8:430	211		As Amended	1934	11-11-96
As Amended	1395		307 KAR 2:020	1812	
As Amended	1581	9-18-96	As Amended	2461	12-11-96
201 KAR 9:021			307 KAR 5:010	2900	
Amended	2836		401 KAR 5:001		
201 KAR 9:041			Amended	1621	
Amended	2838		Amended	2755	
201 KAR 9:141			401 KAR 5:005		
Amended	2839		Amended	1633	
201 KAR 9:310			Amended	2766	
Amended	2840		401 KAR 5:006	1814	
201 KAR 10:050			Amended	2780	
Amended	170	9-11-96	401 KAR 8:010		
201 KAR 12:082			Amended	2538	
Amended	2195		401 KAR 8:060		
201 KAR 12:200	2335		Amended	2543	
201 KAR 20:390			401 KAR 8:070		
Amended	2534		Amended	2548	
201 KAR 22:031			401 KAR 8:100		
Amended	171	8-21-96	Amended	2560	
201 KAR 22:106			401 KAR 8:150		
Amended	173	8-21-96	Amended	2563	
201 KAR 22:135			401 KAR 8:200		
Amended	175	8-21-96	Amended	2568	
201 KAR 31:060	213		401 KAR 8:250		
As Amended	1583	9-13-96	Amended	2573	
201 KAR 32:060	215		401 KAR 8:300		
As Amended	1584	9-18-96	Amended	2579	
300 KAR 2:010	1810		401 KAR 8:350		
As Amended	2459	12-11-96	Amended	2593	
301 KAR 1:016			401 KAR 8:400		
Amended	2197		Amended	2595	
As Amended	2713		401 KAR 8:420		
301 KAR 1:100			Amended	2600	
Repealed	1929	11-11-96	401 KAR 8:440		
301 KAR 1:201			Amended	2606	
Amended	468		401 KAR 8:500		
As Amended	1929	11-11-96	Amended	2609	
301 KAR 2:176	217	9-11-96	401 KAR 8:600		
301 KAR 2:140			Amended	2612	
Amended	2200		401 KAR 8:700		
As Amended	2714		Amended	2614	
301 KAR 2:211			401 KAR 30:005	1052	
Repealed	217	9-11-96	401 KAR 30:010		
301 KAR 2:221			Amended	475	
Amended	2842		401 KAR 30:031		
301 KAR 2:222			Amended	487	
Amended	2844		401 KAR 30:040		
301 KAR 2:224			Amended	490	
Amended	2848		401 KAR 30:080		
301 KAR 2:225			Amended	492	
Amended	2536		401 KAR 31:005	1054	
301 KAR 3:022			Amended	1956	
Amended	1619		401 KAR 31:010		
As Amended	2460	12-11-96	Amended	494	
301 KAR 3:028			401 KAR 31:030		
Amended	471		Amended	509	
As Amended	1932	11-11-96			

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## LOCATOR INDEX - EFFECTIVE DATES

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401 KAR 36:005	1154		401 KAR 40:001	1205	
Amended	2076		401 KAR 42:005		
401 KAR 36:020			Amended	986	
Amended	760		401 KAR 43:005	1207	
401 KAR 36:025			Amended	2145	
Amended	783		401 KAR 43:010	1219	
401 KAR 36:030			401 KAR 43:020	1222	
Amended	795		401 KAR 43:030	1226	
401 KAR 36:070			Amended	2159	
Amended	797		401 KAR 43:040	1231	
401 KAR 37:005	1166		Amended	2163	
Amended	2089		401 KAR 43:050	1233	
401 KAR 37:010			401 KAR 43:060	1235	
Amended	799		401 KAR 43:070	1237	
Amended	2103		401 KAR 44:005	1240	
401 KAR 37:030			Amended	2165	
Amended	809		401 KAR 44:010	1242	
401 KAR 37:040			401 KAR 44:020	1245	
Amended	816		401 KAR 44:030	1248	
401 KAR 37:050			401 KAR 44:040	1249	
Amended	925		Amended	2167	
401 KAR 38:005	1179		401 KAR 44:050	1253	
Amended	2113		401 KAR 44:060	1258	
401 KAR 38:010			401 KAR 44:070	1261	
Amended	928		401 KAR 44:080	1264	
401 KAR 38:020			401 KAR 46:060		
Amended	931		Recodified from 401-49:220		11-8-96
401 KAR 38:030			401 KAR 46:070		
Amended	934		Recodified from 401-49:230		11-8-96
401 KAR 38:040			401 KAR 47:005	1265	
Amended	938		401 KAR 48:005		
Amended	2127		Amended	990	
401 KAR 38:050			401 KAR 49:005	1272	
Amended	943		401 KAR 49:220		
401 KAR 38:060			Recodified as 401-46:060		11-8-96
Amended	949		401 KAR 49:230		
401 KAR 38:070			Recodified as 401-46:070		11-8-96
Amended	956		401 KAR 50:035		
401 KAR 38:080			Amended	1646	
Amended	959		Amended	2785	
401 KAR 38:090			401 KAR 51:017		
Amended	961		Amended	2203	
401 KAR 38:100			415 KAR 1:050		
Amended	965		Amended	2218	
401 KAR 38:150			415 KAR 1:060		
Amended	968		Amended	2220	
401 KAR 38:160			415 KAR 1:070		
Amended	970		Amended	2223	
401 KAR 38:170			415 KAR 1:080		
Amended	972		Amended	2226	
401 KAR 38:190			415 KAR 1:090		
Amended	974		Amended	2230	
401 KAR 38:250			415 KAR 1:100		
Amended	976		Amended	2232	
401 KAR 38:500			415 KAR 1:110		
Amended	978		Amended	2234	
401 KAR 39:005	1192		415 KAR 1:114		
Amended	2132		Amended	2239	
401 KAR 39:080			415 KAR 1:120		
Amended	980		Amended	2242	
401 KAR 39:110			415 KAR 1:125	2336	
Amended	982		500 KAR 11:001		
401 KAR 39:120			Amended	1000	
Amended	983				11-8-96



# ADMINISTRATIVE REGISTER - G9

## LOCATOR INDEX - EFFECTIVE DATES

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701 KAR 5:051	1472		704 KAR 20:260		
Withdrawn		10-15-96	Amended	2280	
701 KAR 5:055			704 KAR 20:305		
Amended	1423		Amended	2856	
As Amended	2465	12-5-96	704 KAR 20:430	2902	
701 KAR 5:065	2350		704 KAR 20:460		
701 KAR 5:086	1473		Amended	2282	
Withdrawn		10-15-96	As Amended	2734	
701 KAR 5:090			704 KAR 20:475	2356	
Amended	1425		704 KAR 20:670		
As Amended	2466	12-5-96	Amended	1017	10-3-96
702 KAR 1:080			704 KAR 20:695	2357	
Amended	1426		Amended	2822	
As Amended	2467	12-5-96	704 KAR 20:700	2362	
702 KAR 3:100			704 KAR 20:705	2364	
Amended	1428		704 KAR 20:710	2365	
As Amended	2468	12-5-96	As Amended	2735	
702 KAR 3:130			707 KAR 1:180		
Amended	185	9-5-96	Amended	1436	
702 KAR 3:270			As Amended	2474	12-5-96
Amended	1429		735 KAR 1:010		
As Amended	2468	12-5-96	Amended	1443	11-7-96
702 KAR 3:285	1474		735 KAR 1:020		
702 KAR 4:150	2351		Amended	1447	11-7-96
Amended	2820		781 KAR 1:030		
702 KAR 5:130			Amended	2283	
Amended	1431		As Amended	2737	
As Amended	2471	12-5-96	785 KAR 1:010		
702 KAR 5:150			Amended	1679	
Amended	2268		As Amended	2480	12-5-96
Amended	2821		787 KAR 1:200		
702 KAR 7:010			Amended	1681	
Repealed	1368	8-12-96	787 KAR 1:210		
702 KAR 7:020			Amended	189	10-14-96
Repealed	1368	8-12-96	787 KAR 1:320	2903	
702 KAR 7:050			803 KAR 2:019		
Repealed	1368	8-12-96	Amended	1682	12-13-96
702 KAR 7:065			803 KAR 2:200		
Amended	1433	12-5-96	Amended	1684	12-13-96
702 KAR 7:125	2352		803 KAR 2:300		
As Amended	2722		Amended	1687	12-13-96
703 KAR 3:060			803 KAR 2:301		
Amended	2269		Amended	1689	12-13-96
As Amended	2724		803 KAR 2:302		
703 KAR 3:205			Amended	1690	12-13-96
Amended	1434		803 KAR 2:303		
As Amended	2472	12-5-96	Amended	1692	12-13-96
703 KAR 4:010			803 KAR 2:304		
Amended	2273		Amended	1694	12-13-96
As Amended	2728		803 KAR 2:305		
703 KAR 4:090			Amended	1696	12-13-96
Amended	2276		803 KAR 2:306		
As Amended	2731		Amended	1698	12-13-96
703 KAR 4:110	2355		803 KAR 2:307		
As Amended	2731		Amended	1702	12-13-96
704 KAR 3:345			803 KAR 2:308		
Amended	2277		Amended	1705	12-13-96
As Amended	2732		803 KAR 2:309		
704 KAR 3:390			Amended	1708	12-13-96
Amended	186	9-5-96	803 KAR 2:311		
704 KAR 20:050			Amended	1711	12-13-96
Repealed	1292	10-3-96	803 KAR 2:312		
704 KAR 20:052	1292	10-3-96	Amended	1713	12-13-96

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815 KAR 25:010			904 KAR 2:001		
Amended	1769		Amended	2874	
As Amended	2508	12-11-96	904 KAR 2:380		
815 KAR 30:060			Amended	2876	
Amended	1780		904 KAR 2:390		
As Amended	2518	12-11-96	Amended	2880	
900 KAR 1:015			904 KAR 2:400		
Repealed	1300	9-18-96	Amended	2881	
900 KAR 2:060			904 KAR 2:470	2387	
Amended	2294		904 KAR 3:042	1304	
900 KAR 6:010	2373		As Amended	1600	9-18-96
900 KAR 6:020	2380		905 KAR 1:320		
900 KAR 6:030	2381		Amended	1786	
900 KAR 6:040	2382		As Amended	2525	11-20-96
As Amended	2746		905 KAR 1:360	1484	
902 KAR 1:400	1829		As Amended	1952	10-16-96
As Amended	2521	11-20-96	905 KAR 2:100		
902 KAR 2:060			Amended	2884	
Amended	1024		906 KAR 1:040		
Expired		9-5-96	Amended	2320	
Amended	2628		907 KAR 1:013		
902 KAR 2:090			Amended	1790	
Amended	1463		907 KAR 1:022		
Amended	2190		Amended	2322	
As Amended	2522	11-20-96	907 KAR 1:025		
902 KAR 8:090			Amended	2327	
As Amended	1397	8-21-96	907 KAR 1:034		
902 KAR 14:010			Amended	1796	
Amended	1027	9-18-96	As Amended	2747	
902 KAR 14:070			907 KAR 1:035		
Amended	1029		Amended	1799	
As Amended	1943	10-16-96	907 KAR 1:140		
902 KAR 14:080			Amended	1801	
Amended	1032		As Amended	2750	
As Amended	1915	10-16-96	907 KAR 1:160		
902 KAR 14:082	1295	9-18-96	Amended	2631	
902 KAR 14:090			907 KAR 1:170		
Amended	1040	9-18-96	Amended	2633	
902 KAR 17:030	2383		907 KAR 1:416		
902 KAR 17:040	2384		Repealed	2454	11-15-96
902 KAR 20:016			907 KAR 1:423	2650	
Amended	2296		907 KAR 1:450		
902 KAR 20:018			Amended	202	
Amended	199	8-21-96	Expired		8-6-96
Amended	2859		Amended	2889	
902 KAR 20:041			907 KAR 1:705	2651	
Amended	2863		907 KAR 1:715	1831	
902 KAR 20:078			Amended	2530	
Amended	2866		As Amended	2752	
902 KAR 20:160			907 KAR 3:005	1308	9-18-96
Amended	2870		907 KAR 3:010	1309	9-18-96
902 KAR 20:180			907 KAR 3:020	2656	
Amended	2305		908 KAR 1:300		
902 KAR 20:275	2645		Amended	1045	9-18-96
902 KAR 20:320			908 KAR 1:340		
Amended	2309		Amended	449	8-21-96
902 KAR 55:100	1300	9-18-96	908 KAR 1:350	1833	
902 KAR 105:070			Amended	2827	
Amended	1783		908 KAR 1:360	1487	
As Amended	2524	11-20-96	Withdrawn		9-20-96
902 KAR 115:020					
Amended	1785				
As Amended	2524	11-20-96			



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KRS SECTION	REGULATION	KRS SECTION	REGULATION
150.640	301 KAR 1:016		702 KAR 7:125
150.660	301 KAR 3:022	158.645	703 KAR 3:060
150.990	301 KAR 1:201		703 KAR 4:010
	301 KAR 2:140		703 KAR 4:090
	301 KAR 2:176		703 KAR 4:110
	301 KAR 2:221	158.6451	703 KAR 3:060
	301 KAR 2:222		703 KAR 4:010
	301 KAR 2:224		703 KAR 4:090
	301 KAR 3:028		703 KAR 4:110
	301 KAR 4:200	158.6453	703 KAR 3:060
151B.023	785 KAR 1:010		703 KAR 4:010
151B.110	785 KAR 1:010		703 KAR 4:090
151B.125	785 KAR 1:010		703 KAR 4:110
151B.190	781 KAR 1:030	158.6455	703 KAR 3:060
154.20-010	307 KAR 2:020		703 KAR 4:010
156.035	702 KAR 3:270		703 KAR 4:090
156.070	701 KAR 5:020		703 KAR 4:110
	702 KAR 3:270	158.650-158.750	701 KAR 5:065
	702 KAR 3:285	158.780	703 KAR 3:205
	702 KAR 4:150	158.785	703 KAR 3:205
	702 KAR 7:065	159.035	702 KAR 7:055E
	907 KAR 1:715		702 KAR 7:125
156.101	704 KAR 3:345	159.051	601 KAR 13:070
156.132	701 KAR 5:051	159.170	702 KAR 7:055E
	701 KAR 5:055		702 KAR 7:125
156.153	702 KAR 5:130	160.045	702 KAR 1:080
156.160	702 KAR 3:130	160.345	701 KAR 5:086
	702 KAR 5:130	160.470	702 KAR 3:270
	702 KAR 5:150	160.476	702 KAR 3:270
156.200	702 KAR 3:130	161.020	704 KAR 20:052
156.210	701 KAR 5:051		704 KAR 20:260
157.200	707 KAR 1:180		704 KAR 20:460
157.226	702 KAR 5:150		704 KAR 20:475
157.3175	702 KAR 5:150		704 KAR 20:670
157.320	702 KAR 3:100		704 KAR 20:710
	702 KAR 3:270	161.027	704 KAR 20:460
	702 KAR 7:055E		704 KAR 20:710
	702 KAR 7:125	161.028	704 KAR 20:052
157.350	702 KAR 7:055E		704 KAR 20:260
	702 KAR 7:125		704 KAR 20:305
157.360	702 KAR 3:270		704 KAR 20:430
	702 KAR 7:055E		704 KAR 20:475
	702 KAR 7:125		704 KAR 20:670
	707 KAR 1:180		704 KAR 20:695
157.370	702 KAR 3:270		704 KAR 20:700
157.390	702 KAR 3:100		704 KAR 20:705
157.410	702 KAR 3:270		704 KAR 20:710
157.420	702 KAR 3:100	161.030	704 KAR 20:052
157.430	702 KAR 3:270		704 KAR 20:260
157.440	702 KAR 3:270		704 KAR 20:305
157.620	702 KAR 3:270		704 KAR 20:430
158.030	702 KAR 7:055E		704 KAR 20:460
	702 KAR 7:125		704 KAR 20:475
	707 KAR 1:180		704 KAR 20:670
158.035	902 KAR 2:060		704 KAR 20:695
158.037	902 KAR 2:090		704 KAR 20:700
158.060	702 KAR 7:055E		704 KAR 20:705
	702 KAR 7:125		704 KAR 20:710
158.070	702 KAR 7:055E	161.200	702 KAR 7:055E
	702 KAR 7:125		702 KAR 7:125
	704 KAR 3:390	161.770	701 KAR 5:090
158.100	702 KAR 7:055E	161.790	701 KAR 5:090
	702 KAR 7:125	163.510	735 KAR 1:010
	707 KAR 1:180		735 KAR 1:020
158.135	702 KAR 3:270	164.020	13 KAR 2:060
158.240	702 KAR 7:055E		13 KAR 2:070



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KRS SECTION	REGULATION	KRS SECTION	REGULATION
211.760	902 KAR 1:400		902 KAR 20:180
211.844	902 KAR 1:400		902 KAR 20:275
211.870	902 KAR 1:400		902 KAR 20:320
	902 KAR 105:070	217.075	902 KAR 1:400
211.900-211.905	902 KAR 47:080E	217.126	902 KAR 1:400
	902 KAR 47:090E	217.801	902 KAR 47:080E
	902 KAR 47:100E		902 KAR 47:090E
211.925	902 KAR 1:400		902 KAR 47:100E
211.950-211.956	902 KAR 14:010	217.809	902 KAR 1:400
	902 KAR 14:070	217.950	902 KAR 1:400
	902 KAR 14:080		902 KAR 55:100
	902 KAR 14:082	217.952	902 KAR 55:100
	902 KAR 14:090	217C.040	902 KAR 1:400
211.964	902 KAR 1:400	217C.050	902 KAR 1:400
211.990	902 KAR 47:080E	219.031	902 KAR 1:400
	902 KAR 47:090E	219.370	902 KAR 1:400
211.994	902 KAR 47:080E	222.231	908 KAR 1:350
	902 KAR 47:090E		908 KAR 1:360
	902 KAR 47:100E	222.460-222.475	908 KAR 1:300
212.170	902 KAR 1:400	Chapter 223	401 KAR 8:010
212.210	902 KAR 1:400		401 KAR 8:030E
212.230	902 KAR 1:400	223.070	902 KAR 1:400
212.620	902 KAR 1:400	Chapter 224	401 KAR 8:010
212.627	902 KAR 1:400		401 KAR 8:030E
214.032	902 KAR 2:060		401 KAR 8:060
214.034	902 KAR 2:060		401 KAR 8:070
	902 KAR 2:090		401 KAR 8:100
214.036	902 KAR 2:060		401 KAR 8:150
214.175	902 KAR 20:016		401 KAR 8:200
216.2920-216.2929	902 KAR 17:040		401 KAR 8:250
216.2960	806 KAR 17:130		401 KAR 8:300
216.920	902 KAR 1:400		401 KAR 8:350
Chapter 216B	909 KAR 1:005E		401 KAR 8:400
216B.010-216B.055	906 KAR 1:040		401 KAR 8:420
216B.010-216B.130	900 KAR 6:010		401 KAR 8:440
	900 KAR 6:030		401 KAR 8:500
	902 KAR 14:070		401 KAR 8:600
	902 KAR 14:080		401 KAR 8:700
	902 KAR 14:082	224.01	401 KAR 30:005
	902 KAR 14:090		401 KAR 30:010
	902 KAR 17:030		401 KAR 30:031
	902 KAR 20:016		401 KAR 31:005
	902 KAR 20:018		401 KAR 31:010
	902 KAR 20:041		401 KAR 31:030
	902 KAR 20:078		401 KAR 31:040
	902 KAR 20:160		401 KAR 31:070
	902 KAR 20:320		401 KAR 31:110
216B.010-216B.131	900 KAR 6:020		401 KAR 31:120
	902 KAR 20:180		401 KAR 31:160
	902 KAR 20:275		401 KAR 31:170
216B.105	900 KAR 6:040		401 KAR 32:005
216B.450-216B.459	902 KAR 20:320		401 KAR 32:010
216B.455	900 KAR 6:010		401 KAR 32:020
	900 KAR 6:030		401 KAR 32:030
216B.990	900 KAR 6:010		401 KAR 32:040
	900 KAR 6:020		401 KAR 32:050
	900 KAR 6:030		401 KAR 33:005
	902 KAR 14:070		401 KAR 33:010
	902 KAR 14:080		401 KAR 34:005
	902 KAR 14:082		401 KAR 34:010
	902 KAR 14:090		401 KAR 34:020
	902 KAR 20:016		401 KAR 34:050
	902 KAR 20:018		401 KAR 34:060
	902 KAR 20:041		401 KAR 34:070
	902 KAR 20:078		401 KAR 34:090
	902 KAR 20:160		401 KAR 34:100



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KRS SECTION	REGULATION	KRS SECTION	REGULATION
	401 KAR 43:030		401 KAR 34:280
	401 KAR 43:040		401 KAR 34:290
	401 KAR 43:050		401 KAR 34:360
	401 KAR 43:060		401 KAR 35:010
	401 KAR 43:070		401 KAR 35:020
	401 KAR 44:005		401 KAR 35:050
	401 KAR 44:010		401 KAR 35:060
	401 KAR 44:020		401 KAR 35:070
	401 KAR 44:030		401 KAR 35:080
	401 KAR 44:040		401 KAR 35:090
	401 KAR 44:050		401 KAR 35:100
	401 KAR 44:060		401 KAR 35:120
	401 KAR 44:070		401 KAR 35:180
	401 KAR 44:080		401 KAR 35:190
	401 KAR 47:005		401 KAR 35:200
	401 KAR 48:005		401 KAR 35:210
	401 KAR 49:005		401 KAR 35:230
224.10-100	401 KAR 5:001		401 KAR 35:250
	401 KAR 5:005		401 KAR 35:275
	401 KAR 50:035		401 KAR 35:280
	401 KAR 51:017		401 KAR 35:290
224.10-110	401 KAR 5:001		401 KAR 36:020
224.16-050	401 KAR 5:005		401 KAR 36:025
	401 KAR 5:001		401 KAR 36:030
224.16-060	401 KAR 5:005		401 KAR 36:070
	401 KAR 50:035		401 KAR 37:010
224.20-100	401 KAR 50:035		401 KAR 37:030
224.20-110	401 KAR 50:035		401 KAR 37:040
224.20-120	401 KAR 30:005		401 KAR 37:050
224.40	401 KAR 30:010		401 KAR 38:005
	401 KAR 30:031		401 KAR 38:010
	401 KAR 30:040		401 KAR 38:020
	401 KAR 31:010		401 KAR 38:030
	401 KAR 31:030		401 KAR 38:040
	401 KAR 31:040		401 KAR 38:050
	401 KAR 31:060		401 KAR 38:060
	401 KAR 31:070		401 KAR 38:070
	401 KAR 31:110		401 KAR 38:080
	401 KAR 31:120		401 KAR 38:090
	401 KAR 31:160		401 KAR 38:100
	401 KAR 31:170		401 KAR 38:150
	401 KAR 32:010		401 KAR 38:170
	401 KAR 32:020		401 KAR 38:190
	401 KAR 32:030		401 KAR 38:250
	401 KAR 32:040		401 KAR 38:500
	401 KAR 32:050		401 KAR 40:001
	401 KAR 32:100		401 KAR 43:005
	401 KAR 33:010		401 KAR 43:010
	401 KAR 34:010		401 KAR 43:020
	401 KAR 34:020		401 KAR 43:030
	401 KAR 34:050		401 KAR 43:040
	401 KAR 34:060		401 KAR 43:050
	401 KAR 34:070		401 KAR 43:060
	401 KAR 34:080		401 KAR 43:070
	401 KAR 34:090		401 KAR 44:005
	401 KAR 34:100		401 KAR 44:010
	401 KAR 34:120		401 KAR 44:020
	401 KAR 34:180		401 KAR 44:030
	401 KAR 34:190		401 KAR 44:040
	401 KAR 34:200		401 KAR 44:050
	401 KAR 34:210		401 KAR 44:060
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	401 KAR 34:240		401 KAR 44:080
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			401 KAR 49:005

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KRS SECTION	REGULATION	KRS SECTION	REGULATION
	401 KAR 35:250		401 KAR 44:005
	401 KAR 35:275		401 KAR 44:010
	401 KAR 35:280		401 KAR 44:020
	401 KAR 35:281		401 KAR 44:030
	401 KAR 35:290		401 KAR 44:040
	401 KAR 36:020		401 KAR 44:050
	401 KAR 36:025		401 KAR 44:060
	401 KAR 36:030		401 KAR 44:070
	401 KAR 36:070		401 KAR 44:080
	401 KAR 37:005		401 KAR 48:005
	401 KAR 37:010	224.60	401 KAR 30:005
	401 KAR 37:030		401 KAR 42:005
	401 KAR 37:040	224.60-105	815 KAR 30:060
	401 KAR 37:050	224.60-110	415 KAR 1:114
	401 KAR 38:005	224.60-120	415 KAR 1:050
	401 KAR 38:010		415 KAR 1:060
	401 KAR 38:020		415 KAR 1:070
	401 KAR 38:030		415 KAR 1:080
	401 KAR 38:040		415 KAR 1:090
	401 KAR 38:050		415 KAR 1:100
	401 KAR 38:060		415 KAR 1:110
	401 KAR 38:070		415 KAR 1:120
	401 KAR 38:080		415 KAR 1:125
	401 KAR 38:090	224.60-130	415 KAR 1:050
	401 KAR 38:100		415 KAR 1:060
	401 KAR 38:150		415 KAR 1:070
	401 KAR 38:160		415 KAR 1:080
	401 KAR 38:170		415 KAR 1:090
	401 KAR 38:190		415 KAR 1:100
	401 KAR 38:250		415 KAR 1:110
	401 KAR 38:500		415 KAR 1:114
	401 KAR 39:005		415 KAR 1:120
	401 KAR 39:080		415 KAR 1:125
	401 KAR 39:110	224.60-135	815 KAR 30:060
	401 KAR 39:120	224.60-140	415 KAR 1:050
	401 KAR 40:001		415 KAR 1:060
	401 KAR 43:005		415 KAR 1:070
	401 KAR 43:010		415 KAR 1:080
	401 KAR 43:020		415 KAR 1:090
	401 KAR 43:030		415 KAR 1:100
	401 KAR 43:040		415 KAR 1:110
	401 KAR 43:050		415 KAR 1:120
	401 KAR 43:060		415 KAR 1:125
	401 KAR 43:070	224.70	401 KAR 5:006
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	401 KAR 44:020		401 KAR 34:020
	401 KAR 44:030		401 KAR 34:050
	401 KAR 44:040		401 KAR 34:060
	401 KAR 44:050		401 KAR 34:070
	401 KAR 44:060		401 KAR 34:180
	401 KAR 44:070		401 KAR 34:190
	401 KAR 44:080		401 KAR 34:200
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	401 KAR 35:050	224.70-100	401 KAR 5:001
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238.540	500 KAR 11:060	311.601	201 KAR 9:310
238.545	500 KAR 11:030	311.650-311.658	201 KAR 9:141
238.550	500 KAR 11:025	311.950-311.966	902 KAR 55:100
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238.570	500 KAR 11:025		201 KAR 9:141
244.165	804 KAR 4:330		902 KAR 20:016
244.167	804 KAR 4:330	311.991	902 KAR 55:100
244.500	804 KAR 11:010	313.130	201 KAR 8:430
250.491-250.631	12 KAR 2:006	314.025	201 KAR 20:390
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	12 KAR 2:017	317A.050	201 KAR 12:200
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	12 KAR 2:026	318.010	815 KAR 20:020
	12 KAR 2:036		815 KAR 20:090
	12 KAR 2:046		815 KAR 20:130
	12 KAR 2:051		815 KAR 20:195
	12 KAR 2:061	318.015	815 KAR 20:020
	12 KAR 2:066		815 KAR 20:090
	12 KAR 3:012		815 KAR 20:130
	12 KAR 3:017	318.130	815 KAR 20:020
	12 KAR 3:022		815 KAR 20:090
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257.030	302 KAR 20:120E		815 KAR 20:090
257.070	302 KAR 20:110E		815 KAR 20:130
Chapter 278	807 KAR 5:003	318.160	815 KAR 20:191
Chapter 281	601 KAR 1:005	318.200	815 KAR 20:020
281.600	601 KAR 1:101		815 KAR 20:090
281.655	601 KAR 1:101		815 KAR 20:130
281.656	601 KAR 1:101	322A.010	201 KAR 31:060
281.670	601 KAR 1:101	322A.030	201 KAR 31:060
281.990	601 KAR 1:101	322A.100	201 KAR 31:060
281A.100	601 KAR 11:020	323A.060	201 KAR 10:050
Chapter 292	808 KAR 10:260	323A.100	201 KAR 10:050
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292.310	808 KAR 1:260	325.261	201 KAR 1:045
292.330	808 KAR 10:260		201 KAR 1:130
292.400	808 KAR 10:300	325.270	201 KAR 1:040
292.410	808 KAR 10:300		201 KAR 1:045
304.5-070	806 KAR 5:060		201 KAR 1:130
304.9-080	806 KAR 9:240	327.040	201 KAR 22:106
304.9-130	806 KAR 9:240		201 KAR 22:135
304.12-140	806 KAR 9:240	327.050	201 KAR 22:031
304.12-150	806 KAR 9:240		201 KAR 22:135
304.12-160	806 KAR 9:240	327.060	201 KAR 22:031
304.12-170	806 KAR 9:240	327.075	201 KAR 22:135
304.17A-070	806 KAR 17:120	327.080	201 KAR 22:031
304.17A-095	806 KAR 17:140	333.120	906 KAR 1:040
304.17A-100	806 KAR 17:100	335.340	201 KAR 32:060
304.17A-120	806 KAR 18:060	Chapter 338	803 KAR 50:010
304.17A-300	806 KAR 17:100	338.051	803 KAR 2:019
304.17A-310	806 KAR 17:100		803 KAR 2:200
304.18-020	806 KAR 18:060		803 KAR 2:300
	806 KAR 18:080E		803 KAR 2:301
304.18-050	806 KAR 18:060		803 KAR 2:302
	806 KAR 18:080E		803 KAR 2:303
304.48-220	806 KAR 46:030		803 KAR 2:304
Chapter 310	902 KAR 20:016		803 KAR 2:305
311.241-311.247	902 KAR 20:016		803 KAR 2:306
311.271	201 KAR 9:021		803 KAR 2:307
311.530-311.620	201 KAR 9:021		803 KAR 2:308
311.565	201 KAR 9:041		803 KAR 2:309



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## REGULATION

## KRS SECTION

## REGULATION

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